

Commercial Code, Law No. 15-95

Reference: Dahir No. 1-96-83 of 15 Rabii I 1417 (1 August 1996) promulgating Law No. 15-95 forming the Commercial Code, as amended in particular by Law No. 73-17 (Book V)

Official Bulletin: Official Bulletin (B.O.) No. 4418 of 3 October 1996

Practice areas: Commercial law and debt recovery, Business law, Criminal law and business crime

The Commercial Code defines traders and commercial acts and governs the trade register, the business (fonds de commerce), negotiable instruments (bills of exchange, promissory notes, cheques), commercial and banking contracts, and procedures for preventing and dealing with business difficulties.

Traders and commercial acts

- Trader status is acquired through the habitual or professional exercise of the activities listed in Article 6 (purchase for resale, transport, banking, insurance, industry, etc.).
- A trader's obligations: registration in the trade register (Art. 37), keeping accounts, opening a bank account.
- Obligations arising between traders are time-barred after five years (Art. 5) and proof may be made by any means (Art. 334).

The business (fonds de commerce)

- Components of the business: customers, goodwill, trade name, leasehold right, equipment, goods, patents and trademarks (Art. 80).
- The sale of a business must be recorded in writing and published in the Official Bulletin and in a legal notices newspaper; creditors may lodge an objection within fifteen days (Arts. 81 to 89).
- Pledge (Art. 106 et seq.) and lease-management (gérance libre) (Art. 152 et seq.).

Negotiable instruments and cheques

- Bill of exchange (Arts. 159 to 231), promissory note (Arts. 232 to 238), cheque (Arts. 239 to 328).
- A cheque is payable on sight; the drawer must hold sufficient funds at the time of issue.
- Issuing a cheque without sufficient funds is an offence punishable by one to five years' imprisonment and a fine of not less than 25% of the amount of the cheque (Art. 316), together with a banking ban (Art. 313).

Business difficulties (Book V, Law 73-17 of 2018)

- Prevention: internal alert, external prevention by the President of the Commercial Court, conciliation.
- Safeguard proceedings available to the business owner before insolvency (Art. 560 et seq.).

- Receivership (redressement judiciaire) followed by a continuation or sale plan; judicial liquidation where the situation is irretrievably compromised.
- Sanctions against managers: liability for the shortfall in assets, commercial disqualification, bankruptcy offences.

Key articles

ART. 5

Obligations arising in the course of their trade between traders, or between traders and non-traders, are time-barred after five years, unless special provisions provide otherwise.

ART. 6

Trader status is acquired through the habitual or professional exercise of activities such as the purchase of movable property for resale, the hiring out of movable property, the purchase of real property for resale, the prospecting and operation of mines, industrial activity, transport, banking, credit, insurance operations, brokerage, commission agency, the operation of warehouses, printing, construction, telecommunications, auction sales, the distribution of water, electricity and gas, and postal and telecommunications services.

ART. 334

In commercial matters, proof may be made by any means, unless otherwise provided by law or by agreement of the parties.

ART. 316

A drawer who issues a cheque without prior and available funds, or with funds lower than the amount of the cheque, is liable to imprisonment of one to five years and a fine of 2,000 to 10,000 dirhams, which fine may not be less than twenty-five per cent of the amount of the cheque or of the shortfall in funds.

Points to watch

- Check the registration and the signatory's powers of a company before contracting (recent Model J extract).
- An unpaid cheque must be dealt with quickly: certificate of non-payment, formal notice, then a payment order or criminal complaint depending on the chosen strategy.
- A company in difficulty should apply to the Commercial Court early: safeguard proceedings protect the manager, whereas failing to declare insolvency within 30 days exposes the manager to liability.

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