



A Comparative-Analytical Study of Reconstruction of Educational Activity According to Amendments of Commercial Law in Iran, France and the United States

Shahrokh Sayadian¹
Mohammad Saghari² (Corresponding author)
Farid Mohseni³

ARTICLE INFO	ABSTRACT
<p>Received: 14 May 2020 Revised: 06 June 2020 Accepted: 08 July 2020 Online: 08 November 2020</p>	<p>The commercialization of education in various countries of the world is on rise; however, many aspects of it are still unknown. One of the challenges is position of educational business in commercial law, especially in difficult economic situations such as downtime. The purpose of this paper is to analyze reconstruction of educational activities with an emphasis on commercial law in Iran and selected countries from a comparative perspective. Accordingly, the research method was comparative-analytical and method of data collection is documentary. Data analysis method is a descriptive-analytical approach according to Theisen, and Adams' categories. The findings of study showed that educational business in Iran has several legal loopholes in terms of determining legal status in commercial law. The second finding reveals that there is disagreement between ministries and various organizations of Iran regarding business nature of educational activity. In this way, the various ministries disagree with each other in deciding on commercial issues - such as bankruptcy, stopping and rebuilding educational businesses - and follow different rules. In addition, the research findings show similarities and differences between Iran and France and the United States regarding to educational trade law. The common denominator of three countries is legislator's attention to continuation of business after bankruptcy with priority of main investor. The main difference is frequent referral of Iranian legislators to civil law to settle lawsuits between stakeholders. In view of these findings, it is proposed that an educational commercial law that is independent of commercial law and civil law be prepared and approved by legislators.</p>
<p>KEYWORDS</p> <p>Bankruptcy Commercialization of Education Reconstruction Stakeholders Trade Law France USA</p>	

¹ Ph.D. Student, Department of Private Law, South Branch, Islamic Azad University, Tehran, Iran

² Assistant Professor, Department of Private Law, South Branch, Islamic Azad University, Tehran, Iran & Faculty Member of University of Judicial Sciences, Tehran, Email: mohammadsafari1945@gmail.com

³ Assistant Professor, Department of Private Law, South Branch, Islamic Azad University, Tehran, Iran & Faculty Member of University of Judicial Sciences, Tehran

1. Introduction

The entry of private sector in the field of educational activities during last hundred years in Iran has experienced many ups and downs. Before fall of the Pahlavi dynasty in late 1970s, there were a small number of private schools and institutions for education of children and youth (Ghasemi Pouya, 2004; Jafari, 2010). After change of political regime of Iran to the Islamic Republic, Article 30 of the Constitution explicitly stated that education is free for all Iranians until end of high school. Despite four decades, this law has not changed, while growth of non-governmental schools and centers has been on the rise, with about 12 percent currently studying in private schools (slightly more than a million pupils) (Zinivand, 2019a). These students attend more than 16,000 non-governmental schools (Zinivand, 2020). However, there are no accurate statistics on private schools and centers for teaching subjects such as foreign languages, mathematics, sciences, and university entrance examination classes.

Also, all these schools and centers are engaged in educational activities by obtaining legal licenses from the Deputy of Public Participation of the Ministry of Education (Non-Governmental Schools Support and Development Office, 2009). In this way, investors attract students by establishment of private schools or centers and through advertising and receive money from parents. In addition, according to the Deputy Minister of Education, the founders of these schools and private centers employed more than 200,000 people as teachers and employees - full or part time - to use their services and pay salaries to them (Zinivand, 2019b). From the economic and financial point of view, it should be noted that the Non-governmental Schools Organization has announced that the tuition of these schools in Tehran and in 2019 was at least 9 million (\$US415) and at most 15 million Tomans (\$US692) per year and the minimum tuition in other provinces was 3 million Tomans (\$US140). Therefore, if we consider the average tuition of these schools as 6 million Tomans (nearly \$US280), the parents pay about 9 thousand and 660 billion Tomans (nearly \$US45000000), of tuition to these schools annually (Shokrani, 2019). This huge turnover simply shows that we are dealing with an educational business that requires existence and approval of a business rules and regulations for all stakeholders. Also, like any other business, there must be certain laws about unusual situations - such as stop of activities or bankruptcy.

Emphasizing on unusual business situation in the field of educational activities for investors in a country like Iran - which has been under constant pressure from economic sanctions over the past four decades due to political problems - is quite normal. In fact, while a non-governmental

school seems to be making a huge profit for its owners, in recent years, the favorable growth of the situation of these schools has declined; in a way that some of them are on the bankruptcy line (Tehrani, 2018). In a simple estimate, many non-governmental schools have seen a decline in the number of students and dropped out of school due to high tuition fees. This has kept some non-governmental school founders in a difficult position to continue their work or close it. This is mainly because of sharp decline in income, rising costs, and especially high rent of buildings, the financial pressure on them has doubled. For this reason, in the last two decades, some founders have been forced to close schools and declare bankruptcy due to financial problems (Madandar Arani, 2014 a, b; Madandar Arani, Kikia, and Moazani, 2014; Haji Mirzaei, 2020a; Mirzadeh, 2019). Naturally, this raises fundamental questions for researchers. For example, how are issues such as bankruptcy, investor interests, stakeholder rights, and reconstruction of educational activity considered as a business activity from a legal perspective; are educational activities considered as a business in Iranian commercial law? Has a special commercial law for educational business activities been approved by the Iranian legislature, and what are experiences of other countries on issues such as reconstruction or bankruptcy of educational activities? According to this introduction, the main purpose of the present study is to analyze reconstruction of educational activities with emphasis on commercial law in Iran and selected countries from a comparative perspectives. The sub-objectives of the research are:

- Identification and explanation of educational business activities in Iran
- Identification and explanation of bankruptcy and reconstruction of educational business activities in the Iranian Trade Laws
- Comparison and explanation of the bankruptcy and reconstruction of activities in Iran's Trade Laws with France and the United States

2. Research Method

The present research method is an analytical comparison with Theisen, and Adams classification (1990). In analytical research, unlike descriptive research, which aims to determine what things are, tries to show why things are like this, or why they have become like this. Analytical research seeks to examine factors that cause a problem to be more precise than what is described in the descriptive study. The statistical population includes all countries in the world with trade law and selected samples were three countries of France, Iran, and the United States. The reason for choosing France is that in the past, Iran followed its trade laws. The United States was also chosen

because of pioneering in modernizing trade laws. Data collection method was documentary and resources such as books, articles, databases, news agencies and Internet websites were exploited. Thematic content analysis method was used to analyze the data.

3. Results

According to content analysis of selected sources and documents in three selected countries; the present section includes the following: In first step, we will take a brief look at features of Iran Trade Laws and its limitations according to the educational business. In second step, the current situation of Iran's educational activities is explained by emphasizing on non-governmental schools, as well as challenge of stopping and bankruptcy. In third step, the laws of three selected countries regarding bankruptcy are reviewed and implemented. The fourth step is to consider and compare the reconstruction of educational activities from the perspective of the trade laws in the three countries.

A) A look at the state of Iranian Trade Law

In Iran, from the 1920s onwards, the issue of trade and codification of its laws was raised. Therefore, by borrowing from the French and Egyptian commercial laws, the Iran trade law was first approved in 1924 and during 1931, 1961 and 1968 changes were made in it (Sotoudeh Tehrani, 2003). After the establishment of the Islamic Republic and despite the rapid and major change in all laws of the country, the Trade Laws did not change for nearly two decades. Therefore, the issue of examining deficiency of Trade Laws and amendment proposals was first raised in 1999 and changed in 2005 and 2011, and finally in 2012, with 1261 articles approved by the Iranian Parliament for a five-year trial (Khaledi, 2014). In the current Iranian Trade Laws, eight percent of the previous laws were merged. Also, 21% of the previous laws were amended, 33% were modified and 38% were removed (Davani, 2019). According to Article 1 of this law, a trader is a person who engages in commercial activity in order to obtain material benefits. In Article 2, any distribution or service activity is inherently a commercial activity (Eghtesadgardan, 2013). Through analyzing content of Iran's current trade law, we can point to its problems and limitations:

- No ability to use in new business areas such as modern technologies
- Frequent referral to civil law for arbitration
- Failure to review definition of bankruptcy in accordance with international conventions
- Lack of forecast for business court
- Failure to appoint a specific executor and official for trade law (Davani, 2019)

B) The current situation of educational activities in Iran

Research as well as media news show that business activities in education sector in Iran are facing challenges in various dimensions. These dimensions are:

- *Confusion in Existential Philosophy*: After about 4 decades of beginning of non-governmental schools, the Deputy Minister of Education and the head of Non-Governmental Schools Organization is still forced to defend necessity of establishing these schools and their benefits (Zinivand, 2020b)
- *Confusion and lack of rules related to educational activities*: There are no clear laws about how to hire employees and determine their salary levels (Haji Mirzaei, 2020b).
- *Confusion and lack of laws regarding stopping and bankruptcy*: following civil law and lack of a separate trade law for educational business (Iran Islamic Parliament, 2016).

In fact, it can be said that educational business in Iran is stuck in a cycle based on bureaucracy (Figure 1). This cycle is designed with an emphasis on status of non-governmental schools. The first step is issuance of a license by Ministry of Education, which does not consider activities of non-governmental schools to be a "business" (State Cabinet, 2017a). This creates various consequences for all stakeholders in non-governmental schools; for example, ambiguity in relationship between founder and teachers (as employer and the employee) from a legal point of view or inability of investor to use benefits of trade businesses in laws system of the country. Second, the judiciary, by forcing investors to register their schools as a private company and enforcing laws related to commercial companies, as well as following civil law; Third, the Ministry of Labor, through interference in labor-employer relations and following trade laws.

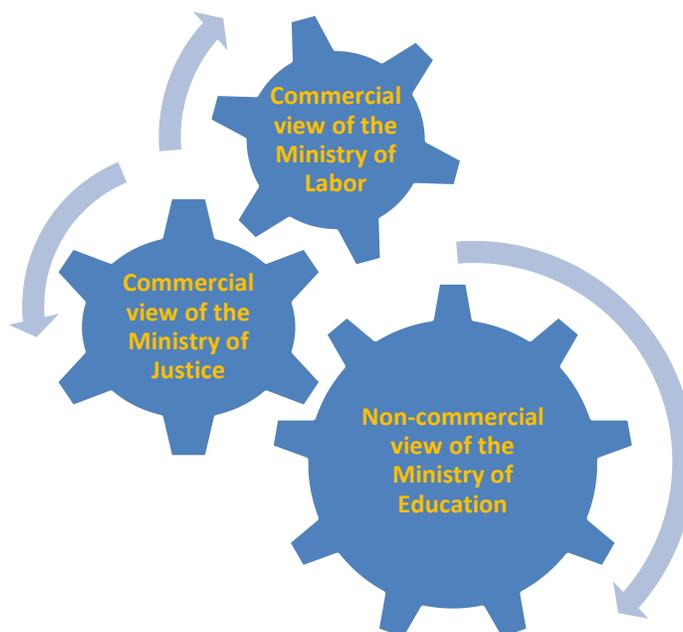


Figure 1. Educational Trade Challenge Cycle

Conflicts between Ministry of Education and other government agencies and organizations make it difficult for investors to invest in educational businesses. In fact, the Ministry of Education has no laws in its rules and regulations regarding suspension, bankruptcy and reconstruction of non-governmental educational schools and centers and only emphasizes on a superficial support of investors (State Cabinet, 2017b). Also, the study of Iran's trade laws shows that there is no clear reference in these laws to business of educational goods and services, but to establish a non-governmental school, the investor firstly has to go through the registration process of commercial companies and secondly whenever there is a dispute between stakeholders, these laws are invoked by judges. In addition, in cases where there is a dispute between investor and the employees, the employees mostly complain to Iran Ministry of Labor, while the Ministry of Education does not consider relationship between founder and staff of non-governmental schools to be commercial in nature. These conflicts cause investor to be in a cycle of different rules and regulations that work against him. Considering what has been said, the next section summarizes three different educational, commercial, and legal perspectives related to bankruptcy and reconstruction of educational activities.

C) Common views on the bankruptcy of educational activities

From the analysis of data related to trade laws regarding bankruptcy and reconstruction of educational activities, three different views can be inferred:

- *Educational Perspective:* The main emphasis of this perspective is on continuing educational activities. In fact, in this view, the legislature believes that in case of bankruptcy, workers, suppliers and consumers are affected as much as owners and creditors. Bankruptcy rights pursue a number of goals instead of one. Therefore, in the case of bankruptcy, main goal is to rebuild companies (Tajerlou, 2009).
- *Commercial Perspective:* According to Capitalist Theory, the main purpose of bankruptcy rights can be seen only in a single goal, which is to increase credibility of creditors and protect their rights and interests. Proponents of this approach focus more on debt assets (Almasi and Shams, 2017). They argue that purpose of bankruptcy laws is not to protect rights of employees or broader social interests, and therefore bankruptcy assets should be distributed among creditors. In this view, the main foundation of a bankruptcy system is continuity of social order, not establishment of justice. During the monitoring and evaluation period in France, the bankrupt is allowed to work and he can prepare an economic and social balance sheet for the institution. Based on this balance, the court either issues a recovery plan or orders the liquidation of the bankrupt property (Skini, 2011).
- *Legal Perspective:* According to Enterprise and Forum Philosophy, in case of bankruptcy, the emphasis should be on maintaining interests of groups rather than focusing on interests of creditors only. The purpose of this perspective is to pay attention to interests of all stakeholders in business (Tajerlou, 2009). Proponents of this view argue that modern economics is result of a large economic organization, and that each organization focuses on realizing the interests of more people than just protecting interests of one group. For example, the interests of corporate employees, suppliers, managers, and the preservation of national and local economies must be pursued at the same time.

D) Comparison of Reconstruction Laws

1) France

In the case of reconstruction, the French Trade Laws of January 25, 1985 provides for judicial reconstruction of commercial enterprises. According to this law, trade enterprises that are likely to survive and creditors who accept the judge's proposal in this regard have been given concessions

(Erfani, 2015). Contrary to US bankruptcy law, the passage of a bill in French law does not require approval in a commercial court, but in France, a restructuring order to protect traders, companies and commercial establishments, continue to operate and provide employment and pay off debts under the Board of Recognition. According to Articles 2 to 5 of the French Trade Laws, the method of reconstruction is provided after a period of care, according to plan prepared in the Reconstruction Unit in Department of Reconstruction, which has been approved by the Board of Recognition. In French law, the Board of Recognition can decide to transfer the firm, taking into account the report of the Reconstruction Unit. Transfer of economic enterprise means maintaining its activity as an independent operation; maintain all or part of employment as well as depreciation of debts (Aladdini and Azarbayjani, 2015). According to Articles 76 and 77 of French Trade Law, the enterprise may be transferred in whole or in part. In case of minor transfer, a set of operating and production factors that constitute one or more complete and independent branches of company's activity are transferred. Articles 78 to 88 of the Trade Law deal with manner of transfer. Another issue in the process of bankruptcy is financial reconstruction. Financial reconstruction, unlike corporate restructuring, is for real traders. Financial Reconstruction, contrary to the general rules of reconstruction, is reserved for retailers and small business service providers who, in comparison with real and legal traders, enjoy certain rules that can be taken into account while continuing their activities, including paying their debts. The financial reconstruction is set out in Articles 97 to 108 of the French Trade Laws. Pursuant to Article 97 of the said law, every trader covered by Article 100 who is able to pay all or four-quarters of her/his debts within 2 years, is allowed to request her/his financial recovery from the Board of Recognition (Omar, 2008).

2) United States of America

In this country, one of the conditions for approving reconstruction plan is participation of creditors in voting (Qanavati and Kohanmooi, 2010). The court must also consider that each holder is entitled to equal financial value (Buchbinder, 1994). According to Note A of Article 1121 of the Trade Law, the debtor can propose a proposal for adjustment and reconstruction by registering plan in a voluntary petition or in compulsory cases. In this way, the debtor has a 6-month priority to register plan compared to others. The conditions for financial reconstruction in US Trade Law are applicable to both real and legal persons in accordance with Note E of Article 1121 (Kilborn, 2008). In the US bankruptcy system, after the bankruptcy order is issued, the bankrupt property is transferred to an institution called Trust (Almasi and Shams, 2017).

3) Iran

After the passage of the Commercial Code in 1932 - due to non-payment of debt at maturity - only bankruptcy was considered. Therefore, the late conclusion of the Alliance contract - due to the lack of a precautionary aspect regarding the bankruptcy order - does not prevent the settlement of the merchant's property. In the laws after 1932 - and especially the Industrial Protection Law of 1964 - the legislator made great efforts with the aim of preserving the enterprise and making a distinction between cessation (salvage) and bankruptcy (incurable). But these efforts were unsuccessful because they did not comply with commercial law. In the formation of various types of enterprise reconstruction, specific situation of firm is effective, such as status and level of past activity of company, financial and capital facilities, management and employment and production levels (Saqari, 2017). The reconstruction plan includes suspended businessman plans to continue the operation of enterprise, while the intervention and approval of creditors or reconstruction organization in it is inevitable. According to Article 842 of the 2005 bill, a trader who has been considered by the Board of Recognition to be subject to reconstruction must prepare a reconstruction plan within three months from date of announcement of the Board. Article 845 of the bill deals with content of plan, which should include following: method of continuing activity, method of management, names of creditors and way of paying debts, list of obligations and how to fulfill them, method of collecting claims, necessity and method of providing it, merging and decomposing companies, size and type of activity including increasing, deleting and modernizing them, surplus assets, amendments to statutes and financial statements, and determining status of employees (Sirajzadeh, 2015). Also, the suspension of the subject matter of Article 877 of the amendment bill of 2012 has been done after receiving the bankruptcy petition and in case of non-payment of creditors' claims - according to Article 895 - the court will issue a decision to suspend the trader. The bill concludes a precautionary amicable agreement between the merchant and the creditors documented in Article 1036 - and after the convening of the General Assembly of Creditors and the agreement of at least half of the creditors who have more than two-thirds of the recognized claims. The bill seems to be based on the principle of bankruptcy, unless the merchant's assets are sufficient for his debts. Therefore, Napoleon's law of commerce still governs business activities. The business is usually run by the current owner. If the owner has not committed a criminal bankruptcy or has not inflicted the damage caused by malice on enterprise, he has priority over other persons to manage affairs of his enterprise. Otherwise, it is possible to change manager

without assigning it to someone else or handing the company over to a qualified candidate. According to Articles 890 to 899 of the Amendment Bill, transfer may take place in several ways (Isa Tafreshi 2016). The transfer of all or part of property, assets and activities of the trader can take place. According to Article 900 of the bill, financial reconstruction is carried out on those real traders who can repay all their debts by repurchasing within two years, or within one year, pay three-quarters of their debts (Kaviani, 2014).

4. Conclusion

An educational business, like any other business, has periods of boom and bust. During a recession, investors are often unable to meet their financial obligations and go bankrupt. Media reports, statements by non-governmental school officials at the Iranian Ministry of Education and existing research show that some investors have gone bankrupt in recent years, although accurate and official statistics are not available. The findings of present study showed that educational business in Iran faces several challenges in terms of determining its legal status in trade laws. The first finding of the research shows that there is no clear reference to educational activity in Iran's commercial law; although purchase and sale of educational services can be considered under general heading of "services" and related laws include educational services. The second finding of research is ambiguity in the position of educational activities. Iran's current trade law clearly does not state that non-governmental schools should be considered legal entities or economic activities of individuals. This ambiguity manifests itself especially when we find out that the owners of land or buildings in some non-governmental schools are ministries or factories, while these properties are under authority of investor or founder, they will not be able to use them at the time of bankruptcy.

Another finding is that there is disagreement between ministries and various organizations in Iran about nature of educational activity as a type of business. Thus, different ministries disagree on various issues such as bankruptcy, suspension and reconstruction of educational business, and follow different rules. In addition, research findings suggest that there are differences between Iran, France and the United States regarding educational trade laws. The other problem is ambiguity of Iran's commercial law in its preference for support of interests of creditors or interests of other stakeholders in trade, while US lawmakers seem to be defending interests of creditors and French lawmakers protect interests of all stakeholders at the time of bankruptcy. The common denominator between three countries is legislator's attention to continuation of business activity

with priority of main investor. In view of these findings, following suggestions are made for those involved and legislators in the commercial activities of education in Iran:

- Announcing the clear and precise position of Ministry of Education about nature of educational activities in the commercial laws,
- Determining the main legal decision-maker of educational trade in case of deprivation of responsibility of the Ministry of Education in issues such as labor-employer relations, salary and wages, bankruptcy, suspension and reconstruction, and
- Preparation and approval of the Educational Commercial Law independent of the Trade Laws and Civil Code by Cabinet and approval of Iran's Parliament.

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