

# **Bankruptcy and its Related Rules in Iranian and French law**

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## **Abstract**

Legislators in Iran's law on bankruptcy remain silent and there is no mention of bankruptcy in commercial law. It should be noted that under the commercial law, state-owned companies are subject to their established laws and statutes, and only in matters not mentioned in their laws and statutes, are subject to the provisions of the 1347 Amendment to the commercial law.

The French law was amended in 2005, extending bankruptcy to merchants in addition to non-business companies which their topics business are economic. In the French legal system, more attention is paid to the business institute, so they are considering judicial restructuring, which is a set of privileges for the business institute, which to stand up again to reconstruct its economic and social status, including being able to re-trade, and in France, state-owned companies are acted with exempt from bankruptcy.

**Keywords:** Bankruptcy, Laws, Iranian Law, French Law.

## **1- Introduction**

Bankruptcy is one of the things that has become more important in the present age due to the expansion of economic activities and rapid developments in production, trade, technology and

so on. Given the competitive environment at the national and international levels, facilitating bankruptcy matters can have a positive impact on improving the business environment and boosting economic activity as well as increasing the willingness of foreign investors to invest. Increasing the efficiency of market performance, pressure on companies to improve management, adhering to the principles of exchange and protecting debtors and creditors rights are key features of a proper bankruptcy law. Iran's current commercial law is an adaptation of France's 1807 commercial law. Although French commercial law has undergone numerous amendments since 1807 and was last amended in 2005, no new substantive laws on bankruptcy have been formulated in Iranian law since 1939. On the other hand, as countries progress, new legal arrangements such as restructuring have been created that do not exist in Iranian commercial law. Therefore, it is necessary to amend and revise the commercial law of country according to the current economic and business conditions. The present research will examine the bankruptcy of state-owned companies in Iranian and French law.

## **2- Bankruptcy Concepts**

According to Article 412 of commercial law, the bankruptcy of a merchant or business company is the result of a delay of the payment of the funds owed to him. Also, Article 413 of this law show that a delay in the payment of debts or other cash liabilities shall cause the merchants to be stopped, therefore:

The first condition of bankruptcy is being a merchant or a business company. So, according to the definition of merchant or a business company, ordinary people or non-business companys cannot be considered bankrupt. So the components or crew or apprentice of the merchant will not go bankrupt if they do business. Also, because the company manager does not trade on its own account, he/she will not be considered bankrupt due to company bankruptcy (Mehrabi, 2010).

In the case of non-business companys, whether profit or non-profit, if their activity is solely subject to the statute and become unable to pay their debts because they are not covered by the business company, so they have to settle in accordance with their statutes, and therefore their members must act in accordance with the insolvency act. However, if such organizations conduct business transactions contrary to their subject matter and had delay in payment of debts, they will not be subject to insolvency act and must be treated in accordance with bankruptcy law.

The second condition is to have legal competency for doing business, unless the incompetent person does business transaction and is unable to pay sales, will not go bankrupt.

The third condition is bankruptcy belonging for business practices. So if someone who has a job other than a business deals in business transactions, he/she will be subject to bankruptcy law.

The fourth condition is that the merchant's debt is related to business transactions and that the non-business debt will not requires the stop unless it disrupts business affairs and cannot be resolved.

The fifth condition is that failure to pay one or more debts is the result of their inability to pay, otherwise the mere non-payment, such as the default, will not require bankruptcy.

The sixth condition is that the merchant's assets need not be less than his/her debt, but if he/she fails to pay his debt, he goes bankrupt, whether the merchant may not have access to his assets or have insufficient liquidity or salable goods and cannot pay his debts (Safari, 2009).

Stop after death: Article 412 states that a bankruptcy order for a merchant who has been stopped during his/her death may be issued up to one year after his/her death. So he/she can issue the bankruptcy with the fulfillment of two conditions, namely, the stop of the merchant during his/her death and the non-expiration of one year since his/her death. However, today the bankruptcy will be related to the patrimony and the hereditament and the demand for bankruptcy in addition to the creditors and the prosecutor is also accepted by the heirs (Mehrabi, 2010).

Bankruptcy after dismissal from business- the legislature has made bankruptcy related to business transactions. Therefore, if a merchant is stopped in the course of its employment by paying its debt and then quitting the business, it will be subject to bankruptcy. Although he/she is not currently referred to as a merchant. Although there is no provision in the commercial law, the spirit of law and order of priority and rectification can be the leave the business and delay in the payment of debt related to bankrupt business transactions. It seems that the bankruptcy lawsuit here too should not exceed one year.

### **3- Bankruptcy Types**

According to Articles 412, 514 and 549 of the commercial law, three types of bankruptcy can be identified:

1. Ordinary Bankruptcy

2. Clupable Bankruptcy
3. Fraudulent Bankruptcy (Oghbaei, 13)

### **A) Ordinary Bankruptcy**

Ordinary bankruptcy is the same when a merchant is stopped due to external factors or unexpected events without fault or intent and fraud. Ordinary bankruptcy is a situation in which only a series of civil laws and regulations are enacted and bankrupt merchant's disorderly situation is handled and refined by legal aids (Almasi and Sheikh Mohammadi, 2016).

But in clupable bankruptcy or fraudulent bankruptcy, in addition to the merchant's rights are considered, there are also criminal consequences for punishing a bankrupt merchant.

### **B) Clupable Bankruptcy**

Article 543 of the commercial law in the type and amount of the punishment for the offense stated: Clupable bankruptcy is a criminal offense and its punishment is 6 months to 3 years of correctional imprisonment. However, the present article should be outdated in light of the late adoption of the provisions of Article 671, and therefore the punishment of this offense is currently discretionary imprisonment from six months to two years. However, pursuant to the bankruptcy provisions of Article 558 of the commercial law and Article 111 of the amendment bill of commercial law, the actual punishment is also predicted for clupable bankruptcy merchant, which is currently applicable. This actual punishment is the announcement of the judgment of a bankrupt for clupable bankruptcy to company management under Article 558 and the impossibility of assigning a clupable bankruptcy merchant in accordance with Article 111 of the amendment bill of commercial law (Zia Jeldi, 2016).

### **C) Fraudulent Bankruptcy**

Fraudulent is a legal element of a series of crimes that are based on ill will, such as fraud and selling underweight and fake and so on. The commercial law recognizes the following acts by the merchant as fraudulent and that the bankruptcy resulting from it is fraudulent bankruptcy and requires punishment. This type of bankruptcy is considered a criminal level and its punishment is defined in Article 236 of the Penal Code of solitary imprisonment for three to five years. Fraudulent bankruptcy in accordance with Article 559 of commercial law is the described as follow. Any bankrupt merchant who has hidden his/her office or some of his/her wealth or destroyed through formal transactions and also any bankrupt merchant who owes

himself/herself debtor by fraudulent documents or by assets and liabilities to the extent not actually owed (Shaghghi Nejad, 1993).

Many modernists believe that a legal person can also commit a crime. They even cite the example that a press company can offend a person or a company so they commit a crime. It is true that the legal person is not capable of committing the crime at all. Even with the worst ways contained in its statute, it is finally a private person who attends in committing the crime on behalf of the legal person. This is argued for the inability of the legal person to commit the crime.

#### **4- Overview of Bankruptcy Laws of Iran and France**

Bankruptcy laws of France in order to use the experience of major and leading countries, in various aspects including the year of approval or amendment, the application forms, the inclusion scope, the bankruptcy applicants and its terms and conditions, trial reference, responsible for executing bankruptcy process and authorizations, automatically stopping creditors' actions against debtor, invalid and ineffective cases, executing contracts, extradition of goods sold by creditors, debt settlement from assets, post-petition financing, classification of creditors, advocates for the value of creditors, debts determination, creditors committee, reconstructing planning record, approval of reconstruction plan, court authorization to accept reconstruction and exposure to foreign bankruptcy debtors are investigated and compared with Iranian bankruptcy law.

French bankruptcy laws predicts two forms of restructuring and liquidation to apply for bankruptcy. Iran's bankruptcy law does not provide such forms and only a petition for bankruptcy is filed with the court.

French bankruptcy law covers all types of both merchant, non-merchant, legal and private person, with the exception of state-owned and quasi-state institutions such as governors, municipalities, prefectures and other public institutions. China's bankruptcy law is purely state-owned and cooperatives companies. Iran's bankruptcy law covers only the legal and private persons of the merchant, and non-merchant persons are not subject to this law.

Based on French and Iranian law, both the debtor and the creditors can file for bankruptcy proceedings. As you can see in the table, the conditions for declaring bankruptcy in these two countries are different. According to Chinese bankruptcy law, if the debtor is unable to pay the debt or the amount of the company's liabilities exceeds its assets, it can file a lawsuit.

Bankruptcy laws of France and Iran have set a deadline for the debtor to be 91 days in France and one day in Iran after stopping the payment of the debt and the debtor must file a bankruptcy lawsuit during this period.

In France, any creditor who has not received his/her claim can file a bankruptcy lawsuit against the debtor. The creditor must prove that he has already tried to get his deferred claim and the debtor is not really able to pay off his deferred debt. He/she must also prove that the recovery of the debtor is completely impossible. According to Iranian bankruptcy law, anyone who claims for merchant can file a bankruptcy lawsuit against each of them in the event of a delay in the payment of such claims by the merchant or business company. The prosecutor, on behalf of the society, also has the right to stop a bankruptcy judgment of the merchant or business company from related court.

In Iran, the general court deals with bankruptcy, and in France the courts vary depending on whether the bankruptcy did business or was an ordinary citizen.

In France, the manager (liquidation) has little executive power and his/her main role is to enforce the decisions of company officials. He/she does not have the power to change the management of the company and can make suggestions to reduce debts or increase their repayment time. In Iran, the court appoints one person as the liquidation manager. The liquidation manager can be either the company manager or other people. If there is a bankruptcy liquidation office within the court, the office or otherwise one person manager specified by the court oversees the performance of the liquidation. Invitation of bankruptcy creditors and debtors, the bankruptcy receiving claims and properties office, selling bankruptcy properties, splitting bankruptcy assets between creditor and declaring bankruptcy can be the responsibility of the liquidation manager.

In France, the creditors' actions against the debtor will automatically stop with beginning the proceedings. The automatic stop period is 1 month, which can be extended by 1 month with court approval. According to Iran's bankruptcy law, the court will set a date of stop. Otherwise, the date of issuance of the bankruptcy judgment shall be deemed to be the date of stop. In addition, creditors can request the court to change the stop date until the deadline set for the recognition and verification of their claims.

In France, legal proceedings by a bankrupt after a bankruptcy judgment and in a suspicious period are ineffective on creditors and are forbidden during the due process hearing for pre-trial debt except as the court permits. According to Iranian bankruptcy law, if stopped a merchant stops to trade with up to five years prior to his/her stop date for escaping debt or damaging to

creditors, which involves a loss of more than a quarter of the price during the transaction, that transaction may be terminated. Unless the transaction party pays the price difference before terminating the order. Formal or pre-emptive transactions are automatically revoked and the financial interests that have been the subject of the transaction have been refunded and transaction party if creditor becomes a creditor, he/she will only be creditor. Also, after the stop of true peace or donation and in general any immovable transfer, whether movable or immovable, the payment of any debt, whether present or rush, in any way, any transaction which confines the finances of the immovable or immovable property to the merchant and end the creditors' losses. And the transaction of bankrupt property by the liquidation office staff or their second-degree dependents is invalid and ineffective.

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| Iran                                                                                                                                                                              | France                                                                                                                                                                                    |                                                    |
| The first law was approved in 3133 and has not changed much. In 3130, the law on the bankruptcy liquidation office was approved.                                                  | The first law was approved in 3081 and the last amendment was made in 5881.                                                                                                               | Year of approval or amendment                      |
| Bankruptcy lawsuit                                                                                                                                                                | There has been a bankruptcy lawsuit until 5881, which two forms of restructuring and liquidation has been considered for bankruptcy since this year.                                      | Proceedings forms                                  |
| Business and non-business companies                                                                                                                                               | The persons, both merchant and non- merchant, and companies, both business and non-business (with the exception of governorship- municipality- prefecture and other public institutions). | Inclusion scope                                    |
| - Each debt merchant is obliged to file a petition for a stop within one day of the stop of the debt payment, together with the asset statement and all commercial offices of the | - Any private or legal person, even a non-merchant who stops to pay his/her debt, must file a bankruptcy lawsuit within 91 days.                                                          | Bankruptcy Applicants and its terms and Conditions |

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| <p>jurisdictional office of his/her residence.</p> <p>- Subject to Article 931 of commercial law, any person who has claims from merchant can file a bankruptcy lawsuit against each of them and give ti the court in the event of a delay in the payment of such claims by the merchant or business company.</p> <p>- The prosecutor, on behalf of the society, also has the right to stop a bankruptcy judgment of the merchant or business company from related court.</p> | <ul style="list-style-type: none"> <li>- Any creditor who has not received his/her claim can file a bankruptcy lawsuit against the debtor.</li> <li>- The creditor must prove that he has already tried to get his deferred claim and the debtor is not really able to pay off his deferred debt.</li> <li>- He/she must also prove that the recovery of the debtor is completely impossible</li> </ul> |                                        |
| <p>General court</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <p>The courts vary depending on whether the bankruptcy did business or was an ordinary citizen (The bankruptcy of commercial private and legal persons is handled by the competent general court of commercial litigation.</p>                                                                                                                                                                          | <p>Trial reference</p>                 |
| <p>Bankruptcy lawsuits against commercial companies, which main focus is in Iran, should be filed at the company's headquarters.</p> <p>Whenever a merchant does not have a permanent residence in Iran, the stopping lawsuit will be done in a court that has a commercial company, branch, or agent for</p>                                                                                                                                                                 | <p>The bankruptcy laws of companies which main focus is on the European Union (with the exception of Denmark) include EU Law 5888/3191 adopted in May 1958.</p> <p>In the case of other countries, the law of the court country will apply.</p>                                                                                                                                                         | <p>Facing foreign bankrupt debtors</p> |



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| transactions in its field or previously.                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                               |                                |
| Within 9 days of the date determined, when the creditors' assembly has been convened at the invitation of the supervisor with at least one-half plus one creditor and holders of three quarters claims, bankruptcy will be suspended if the necessary majority agreement is reached to conclude a compensation contract and the merchant will continue to do business. | If the company in debts deadline is able to pay the debt, it can begin the process of reconciliation or restructuring within 9 days.                                                                                                                          | Reconstructing planning record |
| The merchant is required to submit a debt statement. In addition, creditors are required to submit their claimed documents or a copy of it to director of the relevant court office and receive a receipt within one day of the deadline for the publication of the last ad.                                                                                           | The creditors must register their claims for bankruptcy litigation within two months (if outside of main French territory within 9 months) following the publication of the notice of initiation in the official gazette of commercial and civil declaration. | Debts determination            |

**5- Experiences and Suggestions for Iran**

A comparison of the bankruptcy laws of Iran and France shows that over the past 38 years, France has amended its laws and adjusted them to the current conditions of national and international economy. The current Iranian bankruptcy law was adopted by the French Bankruptcy law of 3081 and was enacted in 3133 and has not been amended or changed so far, while France has repeatedly amended its bankruptcy law. Obviously, the economic situation is very different from eight years ago, since the way you deal with a bankruptcy firm is different from the traditional and modern bankruptcy law. It is imperative that the country's bankruptcy law be revised and amended to suit the current state of the national economy, taking into account the conditions of the global economy.

Given France's experience in bankruptcy law, the following are suggested to improve the legal process of bankruptcy in the country:

1. France has a special bankruptcy law, but in Iran bankruptcy is included under the commercial law. Given the importance of the bankruptcy issue and the multitude of articles and related notes, it is best to adopt a separate bankruptcy law from the commercial law.
2. Considering at least two forms, including restructuring and liquidation, to file for bankruptcy lawsuit.
3. Expanding bankruptcy law to include all kinds of legal and natural persons.
4. The debtor's deadline for filing a bankruptcy lawsuit should be increased to at least one month from the 1-day delay in debts payment (The US and China have not set a deadline in this regard, but in France debtor has a 91-day deadline)
5. Establishing a specialized court to handle commercial litigation, including bankruptcy, can speed up the hearing process.
6. Bankruptcy law in Iran does not contain automatic stop of creditors' actions against the debtor and the stop of creditors' actions against the debtor is subject to a court judgment. The automatic stop period is required to include in the law so that creditors are not parallel to the prosecution.
7. In France, a manager may, under certain conditions, request a judge to terminate a contract. Except in special cases, there is a requirement in Iranian law for contracts to continue. There is a need to be more flexible about extending or rejecting ongoing contracts.
8. In Iran, unlike the three US, China and France, there have been no financial arrangements after the bankruptcy lawsuit, so there is a need for ways to address this.
9. Restructuring is an important part of the laws of the US, China and France, while there is no Iranian law and the compensation contract is very flawed in comparison with it. It is therefore proposed to include a chapter entitled reconstruction in the law. Using the experience of these countries, the following can be considered regarding reconstruction:
  - Determining deadline for debtor to submit reconstruction plan.
  - Determining deadline for creditors to approve reconstruction plan by the creditors within creditors committee
  - Empowering the court to accept a restructuring plan even if the creditors do not approve it, provided that the reconstruction interest to the creditors is not less than the liquidation interest.

## **6- Conclusions**

### **One- Bankruptcy in France**

The stages of the company's financial downturn to the period of incubation, cash deficit, the power of financial or commercial debt payment, lack of full debt payment power, and ultimately bankruptcy are decided. Although most bankruptcies follow these stages, some companies may reach bankruptcy without passing all stages.

According to French law, non-payment is a key concept in which a company faces financial problems. It should be noted that if there is a non-payment situation, reorganization or liquidation proceedings should begin.

When a business finds itself in non-payment situation, there is a 45-day period in which to file for non-payment or bankruptcy. Prior to 2005 law, there was a 15-day period. The 45-day period begins on the first day of non-payment declaration. The law recommends that a person be notified without delay. There are penalties for those who do not declare or want to delay their bankruptcy.

The technical meaning of bankruptcy for French lawyers is a broad description of the penalties that apply only if they violate the French commercial law. The person is then described as a bankrupt person.

French law allows a debtor company to get out of its financial trouble. A legal deadline is imposed on person based on creditors' claims, and creditors must accept any reorganization plan that is settled by the court.

The present research examined the bankruptcy of Iranian and French law. There are many shortcomings in Iran's bankruptcy law, including the lack of laws and regulations, the lack of a substantive criterion, the lack of bankruptcy laws and regulations. There are also no references to bankruptcy in commercial law. Iran's Legislators have been silent on bankruptcy and, consequently, on all matters that can resolve such issues. It is worth mentioning only subject to matters not mentioned in their laws and status shall be subject to the provisions of the Amendment 1968 of the commercial law. France has passed bankruptcy legislation sooner than Iran. In addition, France has made amendments to its bankruptcy law in 2005, while no amendments have been made to Iran's bankruptcy law. In France, for example, merchant transactions have been subjected to public law before stopping. While in Iran, before the bankruptcy and stop, if the merchant makes a transaction, transactions are subject to commercial law. French bankruptcy laws provide for two forms of judicial restructuring and

liquidation for bankruptcy petition. In French law- Article 1 of the 565 Law- July 13, 1967, with subsequent amendments to Articles 96 and 104 of the same law, have expanded the bankruptcy, in addition to merchant, to non-business companies whose subject matter is economic (with the exception of governorship- municipality- prefecture and other public institutions). Iran's bankruptcy law only applies to legal and private persons and non-merchant persons are not subject to this law. Under French and Iranian law, both the debtors and the creditors can file for bankruptcy proceedings. Article 438 of French law states that the declaration shall include the specifications of the company law and, in the case of companies with partners, it shall be provided the insurer with the names and other characteristics thereof. The period of declaration in Iranian law is three days from the date of the stop, but 45 days in French commercial law. In France, any creditor who has not received his/her claim can file a bankruptcy claim against the debtor. The creditor must prove that he has already tried to get his deferred claim and the debtor is not really able to pay off his deferred debt. He must also prove that resuscitation of the debtor is impossible. According to Iran's bankruptcy law, anyone who claims from merchant can prepare bankruptcy lawsuits against each of them and give to the court if they are delayed in paying their claims from merchant or business company. The prosecutor, on behalf of the society, also has the right to apply for a bankruptcy judgment from a stopped merchant or business company from court. In Iran, the General Court has jurisdiction to issue bankruptcy judgments of the merchant. And in France, the courts are different depending on whether bankrupt did business or was an ordinary citizen. Finally, it is important to note that one of the privileges often used by state-owned companies in France is bankruptcy laws exemptions.

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