

TOPICS ON COMMERCIAL CONTRACTS

COMMERCIAL CONTRACTS are those which are regulated by the Commercial Code (the Code) and/or those entered by or between entrepreneurs, if their civil nature does not result from the act itself. The Code especially and notably regulates the following commercial contracts:

- Partnerships;
- Association in Participation;
- Commercial mandate (*mandatum*);
- Commission;
- Current account;
- Carriage;
- Loan;
- Pledge;
- Sales.

LEGAL REGIME:

In complement of the special provisions regarding each of the above contracts, there are general provisions applicable to all contracts: some are provided in the Code and other in the Civil Code. The general outline of such regime is as follows:

- *Capacity of the Parties*: any person, Santomean or foreigner, with civil capacity can be entrepreneur, without prejudice to special provisions. Civil capacity is determined by the personal law according the rules of conflict of laws regulated in the Civil Code. Emancipated adolescents may become entrepreneurs and therefore enter into commercial contracts;
- *Language*: the parties may choose any language deemed suitable for their contracts;
- *Liability*: unless otherwise provided (and unlike in civil contracts), co-obliged entrepreneurs are jointly and severally liable under the contracts they enter into;
- *Liability of guarantors*: guarantors of any commercial obligations are several and jointly liable with the debtor;
- *Form*: unless otherwise provided, the parties are free to adopt the form of their contracts. The major exceptions of the freedom of form rule are as follows: (i) any transactions regarding real property must be done by way of public deed; (ii) several acts regarding companies (e.g., act of constitution) must be concluded by public deed; (iii) stipulations of interests must adopt the written form;

- *Delay interest rate*: interests are due if provided by law or by the contracts. When the parties or the law do not provide for an interest rate, the law provides for a supplementary legal rate;

- *Applicable law*: when entered with a foreign party, the parties of commercial contracts are free to choose the governing law of their contracts without prejudice to certain mandatory provisions set in the Civil Code and the Civil Procedure Code;

- *Jurisdiction*: in cross-state relations, parties may also elect a foreign jurisdiction to submit their disputes. However, this solution may raise the problem of recognition of foreign awards by the Santomean courts. The same is specially applicable to arbitration (and other alternative dispute resolution clauses), since Sao Tome and Principe has not yet become a member state of the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards;

- *Interpretation*: contracts are interpreted under the rules of Civil Code: a given declaration has the meaning that an ordinary declarant in the real position of the party would have understood from the counterpart's will and conducts;

- *Execution*: regardless of its clauses, contracts must be performed in good faith and under the «*pacta sunt servanda*» rule: all obligations must be punctually and entirely fulfilled by the parties;

- *Termination*: contracts may terminate upon agreement, dissolution, forfeiture and revocation. There mandatory provisions regarding termination of contracts.

PRIVATE AUTONOMY:

Article 405 of the Civil Code grants freedom of contract to the parties. This means that they may choose whether or not to enter into a contract, to merge provisions of two or more contract and to create other provisions. However, under private autonomy the parties cannot choose to ignore mandatory provisions set by law (on this subject please read our article [Hey Doc, is my contract admissible?](#) in juriSTEP's Papers Section).