

## THE SANTOMEAN COMMERCIAL CODE – AN OVERVIEW

### ORIGINS:

The *Commercial Code* (here referred to as the Code) was established under the Portuguese domination of Sao Tome and Principe by the *Royal Decree of 28, June of 1888*. The Code is the primary source of the Santomean Commercial Law.

### VICISSITUDES:

After its enactment – and still during the colonial period – the Code was subject to countless amendments and partial replacements by other independent statutes. As the result of these amendments and replacements, and due to the Portuguese system of implementing legal acts in the colonies, it is not a straightforward task (and often it is quite “kafkaesque”) to assert which act entered into force in the Archipelago and which version (if at all) is in force in Sao Tome and Principe. Additionally, in the post-colonial era, several enacted legislative acts have indirectly revoked or amended the Code. Notwithstanding these amendments and partial replacements, the Code still remains the main reference of the Santomean commercial law. In addition there several other (colonial and post-collection) laws applicable to business, notably the *Lei das Sociedades por Quotas* (which governs the Limited Liability Company Law) and the *General Regime of the Commercial Activity*.

### SCOPE:

Essentially, the Code is a codification (collection and systematic arrangement of rules) which sets the legal regime and general principles applicable to business, commerce, companies, trade and services.

### STRUCTURE:

The Code (initially with 749 articles, many of which have been revoked, amended or replaced by other side acts) is/was structured in the following books:

(a) *Book 1(Commerce in General)*, which sets up namely:

- Scope and object of the Code;
- Applicable law;
- Acts of commerce;
- Entrepreneurs and commercial capacity;
- Firm, bookkeeping and account;

- Commodity Exchange Markets.

(b) *Book 2 (Of the Commercial Contracts in Special)*, which notably covers:

- Commercial companies: general provisions on commercial companies; General partnerships; Stock Companies; Limited Partnerships; and Cooperatives;
- Special commercial contracts such as the Association in Participation Contract; Commercial Mandate (*mandatum*); Contract of Commission; Current account Contract; Carriage Contract; Loan Contract; Pledge; Sales; etc..

(c) *Book 3 (Of Maritime Commerce)* – sets up the legal regime of maritime commerce; and

(d) *Book 4 (Of Bankruptcy)* – used to govern bankruptcy and its legal effects. This Book was revoked by *the Civil Procedure Code*, which currently governs this subject.

### SUBSIDIARY LAW:

In absence of specific rules of the *Commercial Code*, one has to refer to other subsidiary sources. Under the Code’s provisions if a case is not specifically regulated by its norms that case is to be regulated by the law applicable to analogous cases and, in their absence, by norms of the civil law, namely set in the *Civil Code*. Thus, in order to regulate a non-Code-regulated case, one may have to refer to analogy within the Code, then to its general principles; and finally to the *Civil Code*, or if necessary to general principles of law. Foreign and international (whether public or private) law may also be applicable under certain circumstances.

### REPLACED SUBJECTS:

Aside from Book 4, several subjects which initially were regulated in the Code were subsequently replaced by other laws outside the Code, namely:

- Commercial registry regime;
- Fusions of Companies;
- Supervision of Stock companies;
- Bill of notes, Promissory notes and Checks.

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