

Lecture 4

Obligations of Traders

Obligations of Traders

1. Keeping books and accounts (Art. 63 com.c)

- Petty traders exempted. (Art . 64)
- who are petty traders? Having small capital?
Small no. of employees?

This obligation is important for the trader as well as for the gov't that have interest in the fruits or end results of the trade. E.g. for the purpose of paying tax.

Obligations of Traders

- The court also favors trader who keeps book and accounts. Art.71 com.c
- Art 71 com.c **v** Art 2016 c.c,
 - Art 71 prevails/avoid the consequence of 2016.
- It should be kept for 10 years (Art. 69 com.c). This is for:
 - Research in the field.
 - Tax authorities and for persons undertaking research in to tax collection.

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2. Business Registration:

- Every trader shall be registered before carrying out any trade activity.
- It is ***compulsory***.
- Art. 6 of Proc No 686/10: “No person shall engage in any commercial activity w/c requires business license *without* being *registered* in the commercial register.”

Obligations of Traders

- A *commercial register* is established- Art 5 of 686/10. under Proc 67, there were 3 registers established.
- Registration is conducted **once**, known as *principal* registration, at the place where the head office of the business is situated. Art 104 com.c, Art. 6 of Proc. No 686/10
- Summary registration is abolished under Proc. 686/10

Obligations of Traders

Registration of:

- Art.10- sole business person,
- Art.11- BO
- Art.12- S. company
- Art.13- branch of foreign BO
- Art.14- Federal/Regional public enterprise
- Art.15- com. representative

Obligations of Traders

- **Why registration?**
 - For the purpose of public awareness.

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Art. 16: Alteration and Amendment of registration

- By whom? When the trader require for reasons.
- Why?
- Who effect? The issuing office.

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Art. 17: Cancellation of registration

Why?

- the business ceased to operate,
 - Up on request,
 - lawful decision prohibiting to carry on business,
 - violation of the proclamation,
 - where registration hasn't been renewed as per Art. 18
 - If the business person has submitted false information or documents for registration.
- Cancellation of registration of BO shall be publicized, but not others

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Art. 18: Renewal of business registration

It is a new concept adopted under Proc. No 686/10.

- * Any commercial registration shall be effective from the date of the registration of the applicant in the commercial register.

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Effects of non-registration

- Criminal punishment. The penalty clause of Proc. 686/10 is harsher than that of 67/97. This is one big difference between the two laws. (compare Art. 60 and 40 of the two laws respectively.)
- The effects of non- registration, *inter alia*, includes:
 - Art. 60(3) of Proc. 686, i.e. penalty
 - Art. 115 of the com. code.
 - Art. 379, 434 of Cr. Code. (forgery, and Infraction of the Rules of Compulsory Registration)
 - Administrative measures
 - Status of trader not acquired, privilege to trader not enjoyed- Art. 117 of the com. code.

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3. Trade name

Under Proclamation No 67/97 having trade name was not mandatory. However, under the present law, Procln 686/10, it becomes *mandatory*. (Compare Art. 14 and 24 of the two laws respectively.)

Trade name register which is under the administration of the Ministry of Trade is established by the Proclamation.

A trade name has to be registered both in the commercial register and trade name register.

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Trade name is subject to restrictions under Art. 24(3) (a-o).

The trade name registering office shall, at the expense of the applicant, cause the *publication in a newspaper* which has a nation wide distribution, of a notice indicating the subsequent registration of the trade name.

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Art. 26: Effects of Entry of a Trade Name in the Trade Name Register

- 1/ The registration of a trade name shall be a *prima facie* evidence of entitlement to and validity of the same trade name.
- 2/ Without prejudice to Article 137 and 138 of the Commercial Code, the mere prior registration of a trade name shall not prevent the registration of the same trade name for a business with an entirely different nature.
(Read FSCCD, Vol. 12, FN. 58931)

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Concerning alteration, amendment, cancellation, substitute of trade name, see Arts 27-29.

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3. Business License:

The Ministry of Trade is charged with issuing business license except those provided under Art 30(1) of Proc. 686/10.

- a) prospecting and mining of minerals; *Ministry of Mines* (Art. 27(1)(f))
- b) various water works services, excluding water works construction services; *Ministry of Water and Energy*, Art 26(1)(l)
- c) telecommunication services; *Ministry of Communications and IT*, Art. 24(1)(d)
- d) repairing and maintaining of arms and firearms and sale of explosives; *Ministry of Federal Affairs*, Art. 14(1)(j)

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- e) Air transport services and other aviation services, *Civil Aviation Authority*; Proc. 616/09, Art. 10 (2), (3), (5), (12)
- f) banking, insurance and micro finance services; *National Bank*, Proc. 591/08, Art. 5(7), 14
- g) business of warehouse receipt system; *Ministry of Trade*, Proc. 372/03, Art. 27(1)
- h) generating or transmitting or distributing or selling electricity; *Electricity Agency*, Regulation No. 49/99, Art. 13(1)

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The lists under Art. 30(1) of Proc. No. 686/10 are not exhaustive. For example, in addition to the enumerations under Art. 30(1), the Ministry has no power to issue license for the following activities.

- broadcasting service; *Broadcasting Authority*, Proc. 533/07, Art. 7(2)
- advocates practicing; *Ministry of Justice*, Proc. 691/10, Art. 16(12)

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- Art. 31(10): No person shall carry on a commercial activity without obtaining a valid business license.
- There are activities that need special requirement of professional competence. The relevant authority shall set the requirements. In such cases the M. of Trade shall issue the license along with those authorities.

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- Commercial registration is a prerequisite for obtaining business license. (in certain kinds of business it is necessary to produce certificate of professional competence.)
- *Renewal* of business license: within **four** months after the expiry of the budget year in which the license has been issued or renewed upon payment of the appropriate fee.

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Art. 39 (1) (a-g): Cancellation of business license

Why?

- Provision of false documents in order to obtain or renew the license,
- Using the license for other purpose or for unfair trade practice,
- Committing the faults under Art 37(1) twice,
- Failed to comply with Art 37(3)
- Bankrupt or ceased to operate the business,
- Failure to renew under Art 36,
- Commercial registration cancelled.

Obligation of traders

4. Paying tax: payment of tax to the government is the obligation of any person in a country.

Traders have to pay business income tax pursuant to Art. 17 and the following of Income Tax Proc. 286/02.

For next session...

Read: (Arts. 124-149 of Comm. code and Trade Practice and Consumer Protection Proclamation No 685/10), issues concerning business and elements of business

- Elements of business (Art. 127-149 of comm. code)
 - Good will
 - Incorporeal elements (patents, trademark, trade name, copyright, industrial design,,,,)
- Unfair competition (Articles by Harka Haroye, Alemayehu Fentaw, Hailegebriel Gedecho)
- Merger
- Abuse of dominance
- Concerted agreements