

ELITE PARS

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IRANIAN CONTRACT LAW

At a Glance Series

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A contract is a legal instrument that creates rights and obligations for the parties towards each other. The purpose of contract law is to provide an efficient framework for parties to regulate their relations and resolve their disputes.

The law of contract is mostly complementary in nature leaving the parties free to agree to whatever they choose. This is known as the “freedom of contract” principle (“*Asleh Azadieh Gharardadha*”).

According to Article 190, for the validity of a contract, the intention and mutual consent of both parties, their legal competence, a definite subject and a lawful cause are required. As long as these requirements are met, which must be met in all types of contracts the contract could be deemed concluded.¹

Broadly speaking, contracts concluded by individuals fall into two categories in terms of applicable legal regiments: 1. Non-Defined Contracts (“*Oghoude Gheire Moayyan*”) that are permitted under Article 10 of the Civil Code; such contracts are valid as long as they do not contradict mandatory laws or public order; 2. Predefined Contracts (“*Oghoude Moayyan*”) that are a number of contract types borrowed from Islamic Sharia Law. The most important predefined contracts under Iranian laws are Sale (“*Be’*”), Lease (“*Ejareh*”), Agency (“*Vekalat*”), Pledges (“*Rahn*”), Partnership (“*Sherkat*”), and Guarantee (“*Zeman*”). The terms and elements in law of such contracts are pre-defined. Under Iranian Civil Code, there are certain provisions which are *per se* applicable to these specific types of contract.

It is to be mentioned that there are no specific acts on contract law in Iranian legal systems and provisions on contract law are contained in Iranian Civil Code and time scattered in other laws. Iranian Civil Code is strongly affected by the French Civil Code, while its main source of inspiration remains Islamic jurisprudence. In Iranian Civil Code, there is no single section allocated to contract law, but the most relevant articles concerning contract law have been included in “contracts and obligations” section, from Article 183 onward which is considered as General Principles of Contract Law (“*Ghavaedeh Omoumieh Gharardadha*”).²

¹ F.Bayat and S.Bayat, The Comprehensive Commentary on the Civil Code (“*Sharhe Jame Ghanoune Madani*”), Arshad Publication, 9th Edition, 1398, Art. 190, p. 133

² Pirhaji, Mehdi; Mazaheri Kuhanestani, Rasul; Eskandari Pudeh, Mohammad, Analysis of Contract Law in Iran, Mediterranean Journal of Social Sciences, 2015.

▪ **Contract Formation**

In most civil law systems, a contract is described as the meeting of the parties' will.³ The contract under French law is based on consent and the theory of autonomy.⁴ General theory of Iranian contract law is also based on consensual nature of contracts ("*Reza'i Boudaneh Oghoud*").⁵ While no specific form is required for the contract formation, certain contracts are not binding if formal requirements are not met.⁶ Generally speaking, contracts are concluded with the exchange of offer and acceptance each of which shall meet certain requirements. An offer shall be conclusive, comprehensive, specific and addressed to the counter party. An acceptance shall be unconditional and in compliance with the offer while following a customary sequence.

▪ **Contract Termination**

According to binding character of contracts' principle ("*Esalato Lozoum*") under Shariah Law, the binding character of contracts is the basis of parties' relations.⁷ According to Article 219 of Iranian Civil Code, contracts concluded in accordance with law are binding on the parties unless they have been terminated by mutual agreement of the parties to do so ("*Eghaleh/ Tafasokh*") or legal reasons.⁸ In other words, termination of the contract may be due to the agreement of the parties, the legal will of one of the parties or by the exclusive rule of law. To be more specific, contracts are divided into revocable ("*JayeZ*") and irrevocable ("*Lazem*") in terms of dissolution and durability under Iranian law.⁹ According to Article 185 of Iranian Civil Code, an irrevocable contract cannot be terminated by either party except under specified

³ Mackaay, Ejan, *The Civil Law of Contract*, Prepared for the Encyclopedia of Law and Economics, Gerrit De Geest (General Editor), 2nd edition, Cheltenham UK, Edward Elgar, 2010, p. 3.

⁴ Article 1172, French Civil Code.

⁵ N.Katouzian, *Iranian Civil Law, General Principles of Contracts*, ("*Hoghoughé Madani, Ghavaede Omoumieh Gharadadha*"), Vol. 1, Behnashre Publications, 4th Edition, 1376, p. 267.

⁶ N.Katouzian, *Iranian Civil Law, General Principles of Contracts*, ("*Hoghoughé Madani, Ghavaede Omoumieh Gharadadha*"), Vol. 1, Behnashre Publications, 4th Edition, 1376, p. 270.

⁷ N.Katouzian, *Iranian Civil Law, General Principles of Contracts*, ("*Hoghoughé Madani, Ghavaede Omoumieh Gharadadha*"), Vol. 1, Behnashre Publications, 1st Edition, 1376, p. 39.

⁸ N.Katouzian, *Civil Code in Light of Current Legal Order* ("*Ghanoune Madani dar Nazmeh Hoghoughie Konouni*"), Mizaan Publication, 4th Edition, 1391, Art. 219, p. 210.

⁹ F.Bayat and S.Bayat, *The Comprehensive Commentary on the Civil Code* ("*Sharhe Jame Ghanoune Madani*"), Arshad Publication, 9th Edition, 1398, Art. 185-186, p. 122.

circumstances and only a party who has been granted such a right can terminate the contract.¹⁰ On the other hand, revocable contracts can be terminated by either party whenever they so wish and there is no need to include the option to terminate the contract in contractual terms.

▪ **Contract Interpretation**

There is no specific section on contract interpretation under Iranian Civil Code. While, the obligations and rights of the parties are generally determined by the contractual terms, certain provisions shall be read into these terms. This can be seen under Article 225 of Iranian Civil Code according to which if certain points that are customarily deemed to be part of the contract are not specified in the contract, they are nevertheless to be considered as mentioned in the contract. This is also mentioned under Article 220 which justifies the role of practice in interpretation of contracts.

In addition, parties' subsequent conduct is also considered as a source for interpretation of contracts as is the case with The Principles of European Contract Law (PECL) and Uniform Commercial Code of United States.¹¹

While the principle of Good Faith ("*Asle Hosne Neiat*") is widely accepted in different legal systems¹², in Iranian contract law, it is not accepted as a single source and its role is yet controversial.

¹⁰ N.Katouzian, Civil Code in Light of Current Legal Order ("*Ghanoune Madani dar Nazmeh Hoghoughie Konouni*"), Mizaan Publication, 4th Edition, 1391, Art. 185, p. 193.

¹¹ Award no. 105 of 2nd branch of General Court of Tehran, dated 14th May 1984.

¹² Mousavi, Seyed Fazel, Mousavi, Seyed Mehdi, Vakili Moghadam, Mohammad Hossein, Gholami, Mehdi, Comparative Study of Contract Interpretation Principle, Private Law Journal, 1st Year, No. 1, 2012, p. 198.

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