

The Role of Working Commission Transactions in Afghanistan's Legal System

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ABSTRACT

A commission agent is an individual who conducts business transactions in their own name on behalf of the transaction owner, earning a fee for their services. This contractual arrangement between the transaction owner and the commission agent is referred to as a working commission. It is important to differentiate working commission from representation and advocacy; in traditional representation or advocacy, the representative or advocate acts on behalf of the principal or client, whereas a commission agent often conceals the identity of their principal. Consequently, the party involved in the transaction may only recognize the commission agent's right and not the identity of the principal.

This research highlights the significance of working commission transactions within the Afghan legal framework by thoroughly examining their legal implications. The importance of this discussion is paramount, as it addresses a critical issue impacting Afghan society.

The objectives of this research can be viewed from both theoretical and practical perspectives. Theoretically, the primary aim is to expand the academic understanding of commission transactions. Practically, the research seeks to analyze the position of commission work within Afghanistan's legal system, which constitutes a fundamental legal concern.

The investigation was conducted using library resources and existing legal texts from Afghanistan. Insights and definitions pertaining to this topic were derived from relevant books and legal documents.

Through this research, I have concluded that a commission agent is a businessman who operates in their own name while acting on behalf of others. In this context, entities that establish and manage property dealer offices serve as pertinent examples of working commission practices.

Keywords- a working commission, business transactions, laws, Afghanistan.

I. INTRODUCTION

The Prophet Muhammad, peace be upon him, stated, "The honest businessman is among the

messengers, the righteous, the martyrs, and the pious." This underscores the legitimacy of trading within our legal system as a valid means of generating benefits. One notable instance of business practice is the working

commission. It is important to clarify that the working commission is a relatively new concept that lacks precedent in our jurisprudence and civil law. This innovative structure has been established to facilitate and promote business transactions, as the growth and vitality of commercial relationships depend greatly on mutual trust, reputation, expertise, efficiency, and security.

Commission agents play a vital role in the trade sector, enhancing the importance of these transactions and contributing to the growth and prosperity of commerce. Furthermore, the working commission has seen significant expansion both domestically and internationally, indicating its effectiveness in the marketplace. Recognizing the necessity of commission agents in the business environment, the issue of commission work has increasingly become integrated into our country's legal framework. This topic has been examined and evaluated extensively in various discussions surrounding the definition and legal foundation of working commissions, their distinctive features, and the rights and obligations associated with them.

1.1. Research Purposes:

The objectives of this research can be analyzed from both theoretical and practical perspectives. Theoretically, the primary goal is to expand the scientific understanding of this subject. Practically, this research aims to examine the working commission within Afghanistan's legal system, which has been identified as a fundamental legal issue. Today, it is feasible to employ scientific methods and evidence that provide clearer insights into this problem.

1. 2. Importance of Research

Investigating various fields of law not only enhances an individual's scholarly aptitude but also improves their ability to comprehend and accurately interpret social, legal, economic, political, religious, and judicial issues. This understanding can aid in effectively addressing social problems. The significance of this research becomes evident upon examining the working commission transactions in the context of Afghan laws. This analysis reveals that the discussion surrounding working commissions is one of the most pressing issues related to society within Afghanistan's legal framework, thus underscoring its necessity. Moreover, the working commission transactions in Afghanistan's legal system possess numerous advantages and have the potential to bolster the country's scientific production.

1. 3. Research questions

- How is the working commission explained in the legal system of Afghanistan?
- What is the legal nature of working commission?

1. 4. Research Hypotheses

- **The main hypothesis:** We assume that the working commission is a contractual relationship between the owner of the transaction and the commission agent, from this area the legal implications for the parties are raised.

- **Sub-hypothesis:** It seems that the works caused by the working commission are not formed by the rights and obligations of the commission agent in front of the transaction owner and third parties.

1. 5. Research Methodology

In this method, it is tried to collect and study all available sources, to use reliable sources on the topic, I have tried and tried and referred to the libraries and articles of thinkers. In addition, I have obtained some good and acceptable sources related to the topic from the internet sites. The method that has been used in collecting subject materials is in the form of a library and this research is also a "descriptive" and "analytical" binary method.

II. THE CONCEPT AND DEFINITIONS OF WORKING COMMISSION

This topic regarding the definition, legal basis and characteristics of working commission has been discussed and evaluated in several titles.

2.1. Definition of working commission

A commission agent is a businessman who makes transactions in his own name, but at the account of others. Article 782 of the Afghanistan Commercial Law defines the commission working as follows: A person who executes business transactions in her own name and on the account of the owner of the transaction in exchange for a fee to earn money is called commission agent and the contract between the owner of the transaction and the commission agent is called working commission. (Afghanistan Trade Law, 1386 SH).

But it should be noted that the right to work is very different from representation and attorney ship, because in normal representation or attorney ship, the representative or attorney acts in the name of the principal or client, while the commission agent often hides the name of its commanding even the transaction party does not know who the transaction is for and only the commission agent recognizes the work in front of it. (Shahidi, 1383 SH).

2. 2. The Legal Basis of Working Commission

Now, the working commission has expanded significantly in the domestic and foreign fields and this is a sign of it fructify. Therefore, considering that the business realm requires the existence of commission agents; The issue of working commission has also entered the legal system of countries. The legal system of some countries according to the definition and special nature that she attached to the power of attorney contract, she was able to justify and explain this institution with regard to the power of attorney ship contract. But the Afghan legislator did not take into account the coordination between the two institutions of advocacy and work commission, adapted the right of work commission from them and like French law, had

such a provision in Article 784 of the Trade Law, except in the cases that are exempted by the relevant articles, the regulations regarding representation in the work commission will also be observed. (Afghanistan Trade Law, 1386 SH).

In this regard, the attorney contract stipulated in Article 784 of the Commercial Law, should not lead us to this way that necessarily, this format to be searched for, must be a attorney 's contract. Because if in the mentioned article, the power of attorney contract is preferred over other specific contracts due to the homogeneity of these two concepts, they are not together; rather due to the adaptation of our legislator from the French law, the power of attorney contract has been chosen. Regardless of whether the selection in French law is completely coordinated or structured in contrast to Afghan law, it should be seen from the appearance of Article 784 of the Commercial Law and sought to determine the appropriate position of the labor commission contract according to its coordinates and characteristics. While in the legal system in some countries, the institution of commission does not compare with the power of attorney. (Samavati, 1378 SH).

2.3. Features of working commission

The work commission contract has its own characteristics. Examining these features will be a significant help in identifying the work commission contract. These attributes have been examined below

2.3.1. Contract without work commission

The work commission contract, like other contracts, requires the agreement of two wills. The two constructive wills of this contract are the wills of the commission agent and the transaction leader. The legislator has not stated specific conditions for concluding a work commission contract; therefore, it is a contract of satisfaction and like other contracts, it does not follow the general rules of contracts and conditions. (Akhlaiqi and Imam, 1379 SH).

2.3.2. being a Reciprocal of working commission

The exchange contract is a contract that has two items; in such a way that each of them is in place of the other. These two items may both be property or obligation, or one property and the other obligation, unlike non-reciprocal contract which has one item and there is no exchange for it. Therefore, the work commission contract is Reciprocal contract. (Moezi, 1388 SH).

According to Article 782 of the Trade Law, a working commission is the work of a person who makes transactions in her own name but on the account of a leader of transection and receives a working commission in return. (Afghanistan Trade Law, 1386 SH). According to this article, the two transactions in the mentioned contract are: Once, the transaction by the commission agent in his own name, to the account of the leader and the other is payment of working commission by leader. The exchangeability of the work commission contract is

one of the essential requirements and one of the important features of this contract, for this reason, if the work commission contract is concluded without substitute or for free, it will undoubtedly be a void contract. (Hajiani, 1386 SH).

As a result of the exchange intention, each of the two contract items becomes so dependent on the other; that when one of the two traded goods is destroyed, or one of the two exchanges is invalid due to opposition to public order or unenforceable for any other reason, the other party's obligation is also canceled automatically. (Katouzian, 1386 SH).

2.3.3. being a covenant of working commission

A covenant contract is a contract that creates a creditorable right and obligation for one party against the other party or for each of the parties against the other party. (Emami, 1377 SH).

According to the commercial law definition of work commission, we will find out that this contract is a covenant contract, as a result of concluding a contract with the leader, the working commission undertakes to trade in its own name and on the leader's account, and the leader also undertakes, pay them for fulfilling the obligations of the commission agent. It should be mentioned that the direct and main effect of the aforementioned contract, i.e., creating an obligation for each of the parties to the contract towards the other, the appropriate part is its essence. With this feature, if in the work commission contract, the obligation of one of the parties is removed, due to non-compliance with the requirements of the nature of the contract, the contract will be void; Because creating two obligations towards each other is the main and fundamental purpose of the commission contract; by taking away an obligation and turning it into a one-obligation contract, the intention of the legislator has not been fulfilled. Therefore, according to Article 808 of the Commercial Law, the main requirement of the commission contract is to create a contractual agreement. (Langerodi, 1401 SH).

With regard to the main effect of the contract, which is to create an obligation, the commission contract is classified as a contractual contract. Authorization and representation also have a secondary aspect in the commission contract. (Samavati, 1378 SH).

2. 3.4. Necessity of working commission

A binding contract is a contract that neither party has the right to terminate, except in certain cases of articles of the commercial law, the legislator has chosen to remain silent regarding the necessity or permissibility of the work commission contract. Based on Article 784 of the Trade Law, we may consider the work commission contract as a permissible contract, just like the attorney contract. This article stipulates: Except in the cases that are excluded by the provisions of this law, the provisions regarding the attorney will be observed in the work commission. In fact, according to Article 762 of the Commercial Law, the contract of attorney is permissible, the contract of working commission will

also be permissible. In this regard, Article 789 of the Commercial Law may also be considered to indicate the permissibility of the mentioned contract. (Chile, 1387 SH).

In this article, it is stated that if the originator withdraws and the Labor Commission is informed of this referral before sending the news of the transaction, she can no longer become a buyer or seller personally. The reference word in this article should not lead us astray and to infer the permissibility of the work commission contract from it. In this way, by referring to this license by the commander, the commission agent is prohibited from concluding a transaction with itself. Therefore, this article does not in any way indicate the permissibility of the work commission contract. This is to explain that if the contract is necessary for the benefit of both parties to the contract, then the contract should be considered necessary. On the contrary, if the only necessity of the contract is for the benefit of one of the parties, the contract should be considered permissible. (Shahbazi, 1401 SH).

With this attribute, the ruling on the license of the work commission contract does not match with its structure; Because by recognizing the above contract as permissible, each of the parties to the contract can ignore the right of the other party by disrupting it and break their commitment; While the contract does not have such a requirement. Also, knowing the necessity of the commission contract is in line with today's business realities. (Langroudi, 1401 SH).

III. THE RIGHTS AND OBLIGATIONS OF THE COMMISSION AGENT AGAINST THE ORDER GIVER

In the above speech, we discuss and evaluate the rights and obligations of the commission agent against the leader in the following titles.

3.1. *The rights of the commission agent compared to the order giver*

We must remind that the commission agent has the following rights relative to the order giver

3.1.1. Demand to right of action

According to Article 782 of the Trade Law, substitute of the activities of the commission agent, is the right of action. Therefore, one of the rights of the commission agent is to demand the right of action against the order giver. Pursuant to Article 805 of the Trade Law, the legislator considers the execution of concluded transactions as a condition for the right of the commission agent to demand the right to work. This article stipulates: At that time, the commission agent is entitled to the right to work, that the execution of the transaction or its non-execution is documented by the act of the order giver. (Afghanistan Trade Law, 1386 SH).

Regarding things that could not be done as a result of other reasons, for its actions, the commission agent will only be entitled to the wages determined by

local custom. Therefore, according to the mentioned article, in cases where the non-execution of the contract is documented by the act of the order giver, the commission agent will have the right to receive the performance fee, Because the leader herself caused the non-execution of the transaction and actually acted against herself, therefore the labor commission should not pay for this action. (Boroujerdi and Bandarchi 1380 SH).

Article 782 of the Trade Law deems the commission agent entitled to demand and receive royalties in return for making a transaction in its own name and on the account of the leader. Therefore, it seems that the meaning of transaction implementation in Article 808 of the Trade Law is the implementation of the promise that the commission agent has undertaken in the working commission contract. In other words, at that time, the commission agent is entitled to receive the right of action, if the transaction that is under hem responsibility according to the provisions of the working commission contract, has been realized and implemented by hem. (Hajiani, 1389 SH).

In some cases, the legislator has not considered the labor commission entitled to receive royalties. In this case, Article 797 of the Trade Law states: If the commission agent has made a mistake, especially in the case that he made a price in addition to the purchase price or less than the sale price, will not be entitled to right of action. As a result, if the commission agent commits a mistake in carrying out its mission, or in the interpretation of the legislator commits an incorrect act, it will not be entitled to receive the right of action. (Afghanistan Trade Law, 1386 SH).

3.1.2. Demand other expenses

In addition to the right to receive right of action, the commissioner is also entitled to demand all the expenses incurred in the performance of her duties, article 808 of the Trade Law states: The expenses incurred by the commission agent and also any assistance given in favor of the leader it should be returned to the commission agent at all and beneficially, the commission agent can also charge the storage and transportation expenses to the account of the order giver. The condition of eligibility for the expenses incurred by the commission agent for carrying out the reciprocal transaction is that those expenses are necessary according to the mentioned article. (Afghanistan Trade Law, 1386 SH).

So, these expenses can be demanded from the leader if they are necessary for the transaction and benefit of the leader. If the commissioner has incurred extraneous formalities, she will not have the right to demand it, unless he spent with the permission of the commander or be entitled to it based on custom. Also, it is not necessary that such expenses have been paid by the commission agent to others. When the commission performs the required action itself, it can demand the cost of the action from the leader. It is worth mentioning

that although failure to conduct a transaction with a third party according to Article 804 of the Commercial Law causes the commission agent to be deprived of the right to act; However, if the commission agent has incurred expenses, the above reason will not have any role in the right to Demand expenses. (Hajiani, 1389 SH).

3.1.3. Right to immune

In Article 785 of the Trade Law, the legislator, in order to guarantee the collection of the commission agent claims from the leader, has considered the right of imprisonment. The mentioned article stipulates:

Working commission in front of Amer to collect his claims from him, he will have a lien on the property that was the subject of the transaction or on the price he received. (Afghanistan Trade Law, 1386 SH).

So, the commission agent can the assets gaining due to a transaction with a third part, until he receives all the rights, he incarcerates all the rights that he is entitled to, including the right of action and other rights. The analytical basis of the lien mentioned in Article 785 of the commercial Law is the same which exists in other exchange contracts. In fact, the meaning of the right of lien, generally in contracts of exchange, continuity and connection are two transactions against each other. Each of the two cases of contract is replaced by other cases and the relationship of both of them with contract is the same and none of them has an advantage over the other. (Emami, 1377 SH).

The demands of the Commission agent in Article 785 of the Trade Law mean all rights which the commission agent is meritorious to; including the right of action and other rights that have arisen for him by law and agreement or commercial custom. Therefore, all of these are covered by Article 785 of the Trade Law. (Langerodi, 1400 SH).

3.1.4. Deal with ourselves

In this regard, Article 807 of the Trade Law stipulates: If the labor commission is in charge of buying or selling merchandise with commercial documents or other securities which has a stock or market quote, he can personally hand over the thing she was assigned to buy as a seller or something that he was obligated to sell, should be regard personally as a buyer, unless the commander has given a contrary order. (Afghanistan Trade Law, 1386 SH).

According to the mentioned article, if the assets that the subject to the working commission transaction has a certain price it means that it is a stock exchange or market quote, the commission agent has this authority that the buyer or seller himself, to stand in front of commander in this case, the nature of the contract will also be an attorney contract. Because three people are necessary in the work commission contract. (Ansari and Taher, 1384 SH).

However, according to Article 808 of the Trade Law, when the commission agent finds the work of the transaction party, instead of being a party to the transaction with another person, it becomes a third party, the transaction party itself has been ordered; But the goal

of Amer's opinion has been achieved, that is, the purchase or sale of his goods has been achieved. Therefore, the commission agent, which is essentially a attorney in this case, is entitled to receive the wages and expenses incurred. (Katouzian, 1387).

3.2. Obligations of the labor commission towards the order giver

The commission agent must observe the obligations towards the order giver, which is the following order

3.2.1. Obligation to comply with the expediency of the order giver

The commission agent must consider the benefits and interests of the employer in carrying out its mission. The authority and power that is given to the work commission through the contract is such that on that basis he makes a transaction in his name with the property of the manager; In fact, he takes over the property of the work commission, it means that he should do the same thing with the leader's property as he would with his own property and take into account the leader's benefits and interests. Therefore, if the commission agent ignores the implicit condition of complying with the expediency of the leader and makes a decision contrary to it, there is no doubt that it will not be without a guarantee of implementation; And therefore, he deserves to pay for this mistake. (Katouzian, 1387 SH).

In this case, the legislator considers the work commission transaction with a third party as penetrating and only due to not complying with the expediency of the leader or to interpretation article 786 of the Trade Law due to this negligence the commission agent has held the company responsible for the resulting damages. It is obvious that if the labor commission does not fulfill this obligation, it will deserve to pay damages. (Afghanistan Trade Law, 1386 SH).

Article 797 of the Trade Law stipulates: If the labor commission buys the merchandise for less than the price set by the orderer or sells it for more than the price set by the orderer, does not have the right to use the difference and should consider it in the account of the orderer. (Afghanistan Trade Law, 1386 SH).

According to the mentioned article, the expediency of the commander requires it, If the commission agent has been able to obtain the highest profit in the transaction with the third party, even beyond the limits set in the labor commission contract and if he puts all of it into the account of the orderer, he will not have the right to use this price difference. Because the commission agent is obliged to make more efforts to obtain more profit in the transaction with the third party in line with the expediency of the matter. (Sakini, 1378 SH).

In the same way, according to Article 795 of the Trade Law, the commission agent is not obliged to insure the assets that was the subject of the transaction, unless the order has given an order. (Afghanistan Trade Law, 1386 SH). It is obvious that if the order has given

an order to insure the assets subject to the transaction and the commission agent ignores this order, he is guilty and will be responsible for compensation for the damages. But beyond this matter, even if such a matter does not have an order, but the custom has such a requirement that the said property be insured and the Labor Commission ignores it, since it has not complied with the requirements of the matter, it will be responsible for paying the damages. (Sakini, 1378 SH).

3.2.2. Compliance with the limits of the work commission contract

The commission agent should not exceed the limits of the powers given to it according to the contract, as well as in cases where the contract is silent, what the custom dictates. Therefore, if the commission agent exceeds the limits of the powers given in the working commission contract, the deal will still maintain its credibility and influence. Because he originally creates the nature of the contract in his own name, as a result, the will and consent of the leader is effective in influencing this transaction. Therefore, the departure or non-departure of the commission agent from the Scope of competence has no effect on the status of the party to the contract with him; because he is really genuine in the deal. Nevertheless, the commission agent is committed to take steps within the powers of the working commission contract. If he acts contrary to this, he has committed a fault and must be responsible for all the resulting damages according to Article 784 of the Commercial Law. (Amiri, 1385 SH).

Article 784 stipulates: If the commission agent is at fault, it must pay for the damages caused by not complying with the order. In the same way, Article 797 of the Commercial Law stipulates: If the commission agent sells the merchandise at less than the minimum price set by the orderer, he will be responsible for the difference, unless he proves that he avoided more harm and that he could not obtain permission in time. (Afghanistan Trade Law, 1386 SH).

According to the first part of the aforementioned article, if the commission agent goes beyond its powers and sells the property for less than the minimum price that the orderer had set, he will be solely responsible for the price difference. However, such a commission agent is responsible for compensating the damages caused to the orderer due to the departure from the authority of the working commission contract, and the compensation of these losses will be the payment of the price difference by the labor commission to the manager. (Sakini, 1378 SH).

Article 802 of the Commercial Law also states: If the commission agent sells the goods on credit or pays an advance without the consent of the leader, the resulting losses will be borne by him. It is considered to be unless there is an order to the contrary, therefore, if the commission agent sells the property subject to the working commission contract at a ratio or makes an advance payment outside of its powers, the transaction will be valid. (Afghanistan Trade Law, 1386 SH).

3.2.3. Informing the order giver of his Activities

According to Article 792 of the Trade Law, the commission agent is required to keep the orderer informed about his activities. This article specifies that the commission agent must update the orderer on the progress of his actions, particularly in the event of executing the mission (Afghanistan Trade Law, 1386 SH). As stipulated in the working commission contract, the orderer's property is entrusted to the commission agent. If the commission agent insures the property involved in the transaction and stores it in a warehouse during the course of his mission, he must inform the orderer about the progress of his actions. Failure to notify the orderer regarding the status of the commission agent's activities is considered a breach of commercial law, and the commission agent will be liable for compensating any resulting damages (Hajiani, 1389SH).

Furthermore, according to Articles 800 and 804 of the Trade Law, the commission agent is obligated to promptly inform the orderer in the event of a transaction with a third party. In business, the principle of expediency is paramount, and it is crucial for the orderer to be quickly informed about transactions. For example, if the orderer wishes to engage in another business opportunity that arises from the commission agent's transaction with a third party, failure to inform him may result in lost opportunities and potential harm. Thus, neglecting to inform the orderer in this context constitutes a fault, and the commission agent will be responsible for compensating the orderer for any damages incurred (Bagheri, 1389 SH).

3.2.4. Providing an account of the duty period to the order giver

This issue is the desire and result of the will of both parties of the working commission contract, the leader and the commission agent. In this way, the property resulting from the transaction is the work commission and must be handed over to the orderer. This is why the orderer can use his right of arrest until the said property is rejected and make the payment of labor rights and claims of the labor commission subject to the rejection of the obtained property. (Moazi, 1388 SH).

Based on Article 799 of the Trade Law, the commission agent must provide the leader with the bill of costs and expenses incurred in carrying out its mission. Because, As on Article 791 of the Trade Law, the orderer is obliged to pay the expenses incurred by the commission agent, Therefore, it is natural for orderer to demand a bill to pay the expenses based on it. (Afghanistan Trade Law, 1386 SH).

IV. CONCLUSION

The distinction between work commission and attorney contracts is significant, particularly regarding the fundamental effects of these agreements. The primary effect of a power of attorney contract is to grant permission, categorizing it as an inherent contract.

However, there exists an opposing viewpoint suggesting that attorney contracts are based on the mutual commitments of the parties involved. Upon evaluating these two perspectives, the argument for the intrinsic nature of the power of attorney contract appears to hold greater weight, as its principal purpose is to provide permission and authority over property.

Afghan lawyers have employed various justifications to elucidate the nature of commission work. A prevailing consensus is that many lawyers align commission work with traditional forms within civil law, specifically the contract of attorney. Only a few lawyers advocate for the independence of this institution within commercial law. The rationale behind this inclination is that the provisions governing this institution do not adequately address all related needs, necessitating the application of traditional formats in civil law to resolve emerging issues. This tendency reflects lawyers' motivations to adhere to established contract forms when justifying or addressing new phenomena.

Furthermore, the legislation has only addressed the rulings surrounding working commissions in the context of buying and selling, neglecting to mention other forms of working commission or commission agents. This gap underscores the need to reference traditional civil law forms for recognition and organization. In contrast, the unique characteristics governing commercial activities necessitate that the legislator recognize the working commission contract as a distinct commercial contract, warranting comprehensive discussion and organization. When examining French law, it becomes evident that mere references to a few articles do not suffice to address all pertinent needs and issues independently of established civil contracts. Consequently, given the structural framework provided by the legislator regarding working commissions, and considering the similarities with established civil contract forms, it becomes imperative to adopt one of these formats to adequately justify the nature of working commissions.

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