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Governing Rules on Guarantees in Commercial Instruments Based on the New Draft of the Commercial Code (A Comparative Study of Iranian and French Law)

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Abstract

Commercial documents, particularly bills of exchange, play a pivotal role in facilitating commercial transactions and the circulation of funds due to their characteristics such as transferability, high credibility, and ease of debt collection. However, risks such as non-payment of the bill at maturity challenge the trust in these instruments. The legal institution of "guarantee" (aval) has been established as a tool to mitigate these risks and enhance confidence in commercial transactions. Guarantees in bills of exchange, by ensuring payment by a third party (the guarantor) in case of default by the principal debtor, bolster the credibility of the bill and contribute to economic prosperity. This article focuses on the new Commercial Law Bill of Iran, examining the conditions for the validity of guarantees, the characteristics of the parties involved, and the resulting legal effects, while providing a comprehensive analysis through a comparative study with French law.

1. Conditions for the Validity of Guarantees in Bills of Exchange

Guarantees in commercial documents, as a specific type of contract, are subject to the general conditions for the validity of transactions outlined in Article 190 of the Iranian Civil Code, which include the intention and consent of the parties, legal capacity, a definite subject matter of the obligation (the amount of the bill), and the legitimacy of the transaction's purpose. Additionally, specific conditions for the validity of guarantees in commercial documents are stipulated, which are elaborated below:

2. No Requirement to Record the Guarantee on the Document Itself:

According to the principles governing commercial documents, it is not mandatory to record all obligations on the document itself. Article 363 of the new Commercial Law Bill explicitly permits the recording of a guarantee on an attached sheet (allonge), deeming this practice compatible with the speed and ease required in commercial transactions. Similarly, in French law, Article L511-21 of the Commercial Code allows the guarantee to be recorded on the bill or

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	<p>an attached sheet, provided that the phrase "Bon pour Aval" or a similar expression indicating a guarantee is included and signed by the guarantor. French judicial practice, such as the 2024 ruling of the Chambéry Court of Appeal, emphasizes the necessity of explicitly stating the guarantee, deeming a mere signature insufficient.</p>
	<p>3. No Requirement to Specify the Guarantee Date:</p> <p>Iranian Commercial Law does not mandate the inclusion of the guarantee date. In the absence of a date, judicial practice relies on circumstantial evidence, such as the issuance or endorsement date of the document, to determine an approximate guarantee date. If this is not feasible, the guarantee date is presumed to coincide with the date of the principal debtor's obligation. In French law, although the Commercial Code does not explicitly require a guarantee date, judicial practice, as seen in the Paris Court of Appeal's 2023 ruling, underscores its importance for transparency in obligations, placing the burden of proving the timing of the commitment on the creditor.</p>
	<p>4. Possibility of Partial Guarantee:</p> <p>Unlike the current Commercial Law, which does not explicitly provide for partial guarantees, Article 362 of the new Commercial Law Bill expressly allows them. A guarantor may guarantee only a portion of the bill's amount or solely the acceptance by the drawee. This flexibility aligns with the principles of contractual freedom and risk mitigation for the guarantor. In French law, partial guarantees are also recognized, provided formal requirements are met.</p>
	<p>5. Possibility of Hidden Guarantee:</p> <p>A hidden guarantee occurs when a guarantor appears to endorse the document but intends to provide a guarantee. While Iranian Commercial Law does not explicitly address this, given the formal nature of commercial documents, such guarantees are not legally prohibited, and the guarantor's liability mirrors that of an endorser.</p>
	<p>6. Possibility of Guarantee Before Acceptance:</p> <p>Contrary to some English legal scholars who argue that a guarantee is contingent on the drawee's acceptance, in Iranian and French law, a guarantee is recognized as an independent obligation that can be made before the drawee's acceptance. This facilitates the acceptance of the bill and enhances the confidence of the holder.</p>
	<p>7. Conditions of the Parties to the Guarantee</p> <p>Examining the conditions of the parties involved in a guarantee (guarantor, principal debtor, and holder) is crucial, as ambiguities in this area can lead to legal disputes:</p>
	<p>A. No Restriction of Guarantees to Banks:</p> <p>Iranian Commercial Law imposes no restrictions on non-bank individuals or legal entities acting as guarantors. Any person with legal capacity can serve as a guarantor, facilitating access to financial instruments and promoting trade.</p>

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	<p>B. Possibility of Guarantee by Primary Obligors: Unlike English law, which considers guarantees by the issuer or drawee unnecessary due to their pre-existing obligations, Iranian law and Article 362 of the new Bill permit such guarantees. This strengthens the document's credibility and aids in risk management.</p> <p>C. Requirement to Identify the Principal Debtor: Identifying the principal debtor is essential for the validity of a guarantee, as guaranteeing an indeterminate person is logically untenable. However, if the principal debtor is not explicitly identified, some scholars argue that the guaranteee is presumed to benefit the issuer, whose obligations are broader, thereby supporting the holder's interests. Others, citing Article 273 of the Commercial Law, suggest the guaranteee benefits the drawee. In French law, failure to identify the principal debtor may lead to the guaranteee's invalidity, as evidenced by the 2015 French Supreme Court ruling (Case No. 14-17.150).</p> <p>8. Legal Effects of Guarantees D. Guarantees in bills of exchange produce several legal effects, analyzed under three main aspects:</p> <p>A. Guarantor's Obligation and Its Scope: The guarantor's obligation is subordinate to that of the principal debtor and cannot exceed it. Article 364 of the new Commercial Law Bill emphasizes that the guarantor's liability is limited to that of the principal debtor, except in cases of invalidity due to formal defects. French law, under Article L511-21-1 of the Commercial Code, confirms this principle.</p> <p>B. Joint and Several Liability of the Guarantor: Unlike civil guarantees, which transfer liability, guarantees in commercial documents result in joint liability. Article 386 of the new Commercial Law Bill establishes the joint and several liability of the guarantor and principal debtor vis-à-vis the holder, aligning with the goal of maximizing holder protection.</p> <p>C. Rights of the Paying Guarantor: A guarantor who pays the bill assumes the position of the holder, acquiring all associated rights, including the right to recourse against the principal debtor and other obligors. Article 365 of the new Bill guarantees this right, while in French law, Article L511-22 and the principle of legal subrogation (Subrogation légale) affirm it.</p>
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