Introduction

The Kingdom of Cambodia has entered a **new phase in the development of its legal system**. Under the leadership of the Royal Government and within the framework of the **Legal Reform Program**, the proposed Commercial Code represents more than a legislative project. It is an opportunity to establish a **coherent legal architecture capable of supporting Cambodia's long-term economic transformation**, **strengthening the rule of law, and enhancing the country's attractiveness to domestic and foreign investors**.

Before reaching the stage of pure codification, following a methodology Mrs Elisabeth Catta will later describe, there are however various elements that are worth pondering over: actually, codifying being extremely demanding, we may ask ourselves if it is really that important to codify. After all, the UK and the US are not famous for their being codified countries, and yet, they are economic superpowers. **A short comparative study between the common law world and the civil law** will make us better understand that real codification, as we shall see, has its logic, its demands, but above all its advantages. **I**
Moving onward, it will be interesting to examine the place of codes **within the Civil Law world** and to note that not all Civil Law countries follow the same pattern. **II**
Last but not least, we will eventually turn to the **scope of codification**, not from a methodological approach, but from a substance one: what is to be codified? To what extend can we proceed in such a way? **III**

I Comparative approach to Common Law in terms of codification

Codification has traditionally been associated with civil law systems, where comprehensive codes provide a structured framework for private law. Common law jurisdictions, by contrast, have relied more heavily on case law and incremental statutory development, with less emphasis on codification in the classical continental sense.

Actually, Common law is deeply rooted in the principle of ***stare decisis*** ("to stand by [things] decided"), where courts follow precedents established by previous decisions. When a similar case has been resolved, courts typically align their reasoning with the precedent set in that decision. Of course, it is possible to **depart from** a precedent, through **overruling, distinguishing of the facts or simply reversing**, but doing so implies either strong justifications or a real authority within the judicial hierarchy.
Statutes are generally understood to supersede common law. They may collect and restate existing common law, create new causes of action that did not exist in the common law, or legislatively overrule the common law.
However, Common law still has practical applications in some areas of law. Examples are **contract law** and the **law of torts** where such laws are based almost exclusively on precedents, and not on statutes.

The following of precedents is a convenient **time saving device** as inferior courts have guidelines to follow. Judges do not have to analyse too much work, and they do not have to look at minor details.

The second advantage proposed is that it creates **certainty and consistency**. This refers to the fact that like cases are decided on a like basis and are not apparently subject to the whim of the individual judge deciding the case in question. This aspect of formal justice is important in justifying the decisions taken in particular cases.

However, such degree of certainty provided by the doctrine of *stare decisis* is undermined by the **absolute number of cases** that been reported and can be cited as authorities. The uncertainty is increased by the ability of the judiciary to select which **authority to follow**.

The major disadvantage is that the operation of the doctrine of binding precedent is dependent on the existence of an extensive **reporting service** to provide access to judicial decisions. Let's face it: apart from some very well-known precedents, it is highly difficult to find cases that however constitute the law. AI may change the logic but so far, it can be said that the famous quotation « no one is deemed to be ignorant of the law » may seem unfair on the average person subjected to common law.

It is interesting to note that, in spite of what we've just said, the concept of codification is not completely unknown to Common Law countries. The philosopher Jeremy **Bentham** (1748–1832) is widely considered the **father of codification** in England. He heavily criticized the common law as **"judge-made tyranny" that was unknowable to the average citizen**. He advocated for a comprehensive, written code of laws (which he called the **Pannomion**).

While Bentham's sweeping dream of a comprehensive civil code was ultimately rejected by the British legal establishment, the movement led to a pragmatic middle ground known as "**statute consolidation**". Statute consolidation (or a consolidating statute) is the **legislative process of combining all existing laws, amendments, and provisions on a specific topic into a single, comprehensive act**. The goal is to organize and simplify the law, making it easier for legal professionals and the public to navigate.

As such, the UK Parliament has successfully « codified » specific, highly **commercial areas of unwritten law**. Examples include the **Bills of Exchange Act 1882**, the **Sale of Goods Act 1893**, and the **Marine Insurance Act 1906**.

We are a long way from the kind of codification found in civil law countries, but it is an effort – albeit a limited one – to make at least some laws more accessible to the general public.

It is in the United States that the codification effort has been most successful to date, with the well-known **Uniform Commercial Code**, the UCC.

The UCC represents a uniquely American form of codification. Unlike the Napoleonic tradition, it is **neither enacted by a national legislature nor conceived as a complete and self-**

sufficient code. It is a model statute **produced by private expert bodies**, jointly by the American Law Institute (ALI) and the Uniform Law Commission (ULC/NCCUSL), voluntarily adopted by **state legislatures**, interpreted through a dialogue among courts across jurisdictions, and continuously supplemented by commercial practice and the common law. Its success lies less in legislative centralization than in cooperative harmonization.

Before the UCC, American commercial law was fragmented:

- Contract law was largely based on common law.
- Sales law differed significantly from state to state.
- Some uniform acts existed (e.g., Uniform Sales Act), but coverage was incomplete.
- Interstate commerce was becoming increasingly important after World War II.

The objective was therefore to stress:

1. **Uniformity** among states.
2. **Predictability** for businesses operating across state lines.
3. **Modernization** of commercial law.
4. **Codification** of widely accepted commercial practices.

The first official text was completed in 1952. The UCC has been labelled in very different ways, from the classification "no code" through "code-like"" to "codification." Many scholars did and still do not categorize the UCC as a codification.

Whatever its name, and even it cannot be denied that the UCC has undoubtedly created a common language for commercial transactions across the United States and has dramatically reduced the fragmentation that existed before the 1950s, some examples - Louisiana, Article 9, good faith, and New York - show that codification alone does not guarantee complete legal uniformity.

Louisiana reminds us that codification operates within pre-existing legal cultures. Its reluctance to adopt the UCC and to implement its Art. 2 on sales led to many differences esp. as far as warranties, remedies, contractual interpretation, and risk allocation were concerned. Louisiana's civil-law heritage limited the extent to which the UCC framework could replace local legal traditions. This illustrates a broader lesson familiar to comparative lawyers: a code is never introduced into a legal vacuum. Existing institutions, concepts, and legal identities continue to influence the reception of codified law.

Second, **Article 9 demonstrates the persistence of political decentralization within a codified system**. The UCC harmonizes the substantive law of secured transactions, but states retain authority over many administrative and procedural aspects of implementation. As a result, a creditor may still need to navigate local filing requirements, title-registration systems, or state-created liens. Uniformity therefore exists at the level of principles, while diversity survives at the level of implementation. The American experience suggests that this form of codification produces coordination rather than complete standardization.

Third, **the doctrine of good faith reveals the limits of textual uniformity**. Even when states adopt identical statutory language, judges may attach different meanings to that language. Some courts view good faith as a powerful tool for supervising commercial behaviour; others treat it as a narrow doctrine subordinate to contractual freedom. This divergence highlights an important reality: legal uniformity depends not only on legislative texts but also on interpretive communities. A code can unify rules, but it cannot entirely unify judicial philosophy.

Finally, **New York demonstrates that uniformity may emerge through economic influence rather than legislative authority**. Formally, New York is merely one state among fifty. In practice, however, because so many important commercial transactions are governed by New York law, its courts exert a disproportionate influence on commercial practice throughout the country. Lawyers frequently structure transactions with New York jurisprudence in mind, even when another state's law could apply. This phenomenon shows that legal convergence can be driven by markets and commercial actors as much as by codification itself.

From a civilian perspective, the UCC is often criticized for being insufficiently "code-like": it is decentralized rather than national, pragmatic rather than conceptual, heavily dependent on judicial interpretation and commercial practice, and incapable of producing complete legal uniformity. this is the exact opposite of Codification, which, in its authentic sense, creates a coherent legal framework organized according to a unified logic and a clear legislative vision.

II Comparative approach to Civil Law countries in terms of codification

In its broadest sense, a code is characterized by two fundamental functions: it gathers written rules of law, and it regulates different fields of law.

As a result, codification is both the action which consists of putting together legal dispositions, whether statutory or regulatory, into one organized system and the by-product of that same action.

Otherwise said, and according to the conception of the Roman-Germanic notion, "a code should not attempt to provide rules that are immediately applicable to every conceivable concrete case, but rather an organized system of general rules which will be easy to discover so that from these rules, through an easy process, judges and citizens may deduce the manner in which this or that practical difficulty must be solved."

Comparative experience provides a number of valuable insights that may inform Cambodia’s ongoing codification efforts.

First, as already mentioned with the Louisiana example, successful codification always reflects <u>local needs rather than foreign imitation</u>.

No country has succeeded by simply copying another country's code. The French Civil Code, the German BGB, the Swiss Civil Code, each emerged from specific historical, economic, and institutional circumstances. Their success derived from their adaptation to national realities to a national political and ideological impulse.

Second, codification requires a balance between stability and flexibility.

A code must be sufficiently stable to provide legal certainty. While in exile in Saint Helena, Napoleon said, "My true glory is not that I have won forty battles. Waterloo will blow away the memory of these victories. What nothing can blow away, what will live eternally is my Civil Code." While the first part of the sentence may not be completely true, the second part is definitely accurate.

A code has a prospective life, and it is not limited to a short-lived or cyclical legislation. Codification is hence to be contrasted with simple legislation tailored. The French Civil Code was for example hardly modified until the end of the nineteenth century. If, since the 60's, the patrimonial and extrapatrimonial family law has been almost completely revised, and if other subject matters have been thoroughly amended, entire sections of the code, in the fields of property and the general theory of obligations, remain intact.

At the same time, a code must remain capable of adapting to economic innovation. Commercial law evolves continuously through new technologies, new financial instruments, digital commerce, electronic payments, artificial intelligence, and emerging business models.

The most successful codes are therefore neither excessively detailed nor excessively abstract. They establish durable principles while leaving sufficient room for judicial interpretation and future legislative adaptation. As Savigny once held, a code is only a basis, but the law must have the possibility to grow.

Third, codification should be accessible.

One of the enduring strengths of the Napoleonic tradition was the belief that law should be understandable, readable by a good part of the population. A code should not become an encyclopedia of technical regulations. It should provide a clear framework capable of guiding economic actors in their daily activities, making the understanding of the law an easier task.

A Code should hence be drafted in clear and consistent language, with harmonized terminology and carefully framed definitions. Particular attention should be given to ensuring that its provisions are readily understandable and capable of being applied in practice.

A clear and accessible Code will facilitate its implementation and contribute to a more predictable and effective legal framework for commercial activities.

Concerning more particularly the Code of Commerce, comparative experience does not reveal a single model. France, Germany and Spain, continue to maintain distinct commercial codes from civil codes, while some jurisdictions have opted for a more unified approach to private law.

The Italian Civil Code of 1942 represents one of the most ambitious experiments in modern codification. Rejecting the traditional dualism of civil and commercial law, Italy abolished its Commercial Code and integrated commercial law into a unified Civil Code organized around the concept of the entrepreneur (*impreditore*) rather than the merchant. The reform sought to reflect the realities of a modern industrial economy and to promote the unity of private law. Yet the subsequent proliferation of specialized commercial legislation raises a recurring question in codification theory: can a single code truly accommodate the growing complexity of modern economic life? Italy is not a unique example, as it appears from the table:

Model	Countries	Basic idea
Strong dualism	France, Belgium, Luxembourg (historically)	Civil law and commercial law remain distinct
Attenuated dualism	Germany, Austria	Separate commercial code, but civil code remains dominant
Monism / unity of private law	Switzerland, Italy, Netherlands, Quebec	Commercial law integrated into the civil code
Functional harmonization	United States	No civil/commercial code distinction; commercial law organized through specialized legislation such as the UCC

What emerges from this comparison is not the superiority of one model over another, but the common recognition that commercial activity presents specific legal needs that require coherent and accessible regulation.

Commercial transactions differ from ordinary civil relations in several respects.

They are conducted by professional actors. They are repeated on a large scale. They depend heavily upon market practices and commercial usages. They often involve sophisticated financing arrangements, complex supply chains, and international transactions. They require speed, predictability, and standardization.

These characteristics justify specific legal solutions.

Consequently, the debate should not focus on whether commercial law exists as a distinct reality. It clearly does. The more relevant question is whether codification can provide a more coherent framework for governing that reality.

For Cambodia, whose economy is increasingly integrated into regional and global markets, the answer appears affirmative.

A dedicated Commercial Code would provide visibility, coherence, and accessibility to rules that are currently dispersed among numerous legislative instruments.

III. The Scope of Commercial Codification: What Should a Commercial Code Contain?

The Impossible Dream of the Complete Commercial Code

Every codification project confronts the same dilemma. If the code is too narrow, it loses its practical significance and becomes merely one statute among many. If it is too broad, it risks becoming unmanageable, rapidly outdated, and incapable of adapting to economic change.

The question is therefore not simply what commercial law is, but rather what commercial law should be for purposes of codification.

Historically, commercial codes have oscillated between two conceptions.

The first conceives commercial law as the law of merchants and market transactions. Under this approach, the code should contain all rules that facilitate commercial exchanges.

The second conceives commercial law more narrowly as a special branch of private law, distinct from public regulation, taxation, labour law, competition law, and sector-specific regulation.

The boundaries of commercial codification therefore depend upon the purpose attributed to the code itself.

A. The Core of Every Commercial Code

There is broad comparative consensus that certain subjects belong to the very heart of commercial law and should normally appear in a Commercial Code.

These subjects form what might be called the "irreducible nucleus" of commercial codification.

1. The Legal Status of Economic Actors

Every commercial code must identify the persons to whom commercial law applies.

Historically this meant merchants.

Modern systems increasingly refer to:

- entrepreneurs,
- traders,
- business operators,
- commercial undertakings,
- enterprises.

The code should therefore regulate:

- commercial capacity,
- registration requirements,
- commercial establishment,
- business names,
- commercial representation,
- commercial agents,
- brokers,
- factors,
- powers of attorney in commercial activity.

Without defining the actors of commerce, commercial law lacks an organizing principle.

2. Commercial Obligations and Commercial Contracts

This constitutes the traditional centre of commercial law.

The code should regulate contracts that are characteristic of commercial activity, including:

- sale of goods,
- distribution agreements,
- agency contracts,
- commission contracts,
- transport contracts,
- warehousing,
- supply contracts,
- franchising,
- commercial leasing,
- factoring,
- commercial guarantees.

3. Negotiable Instruments and Payment Mechanisms

Historically, commercial law emerged largely from the need to facilitate trade and payment.

For that reason, commercial codes traditionally regulate:

- bills of exchange,
- promissory notes,
- checks,
- documentary credits,
- negotiable instruments.

In the contemporary economy, this category should likely be extended to include:

- electronic payment instruments,
- digital negotiable records,
- electronic transferable documents.

The law governing circulation of value remains one of the foundational components of commercial law.

4. Business Organizations

Commercial law cannot operate without legal structures through which economic activity is conducted.

A commercial code should therefore regulate:

- partnerships,
- limited partnerships,

- corporations,
- limited liability companies,
- corporate governance,
- mergers,
- transformations,
- dissolutions.

Many jurisdictions place company law in separate legislation, but from a conceptual standpoint it remains one of the central institutions of commercial life.

Indeed, it is difficult to imagine a commercial code that excludes the law of business organizations entirely.

5. Secured Transactions and Commercial Credit

Commerce depends upon credit.

Credit depends upon security.

A modern commercial code should therefore address:

- pledges,
- charges,
- security interests,
- retention of title,
- assignments of receivables,
- priorities among creditors.

Functional core of commercial law	France	Germany	Austria	Spain	Italy
Legal status of economic actors (merchants / enterprises)	*Code de commerce*(status of *commerçant*, commercial acts; complemented by Civil Code)	*Handelsgesetzbuch (HGB)* (concept of *Kaufmann*, firm, commercial register)	*Unternehmensgesetzbuch (UGB)* (enterprise-based concept replacing traditional merchant status)	*Código de Comercio* (still formally uses *comerciantes*, but largely residual)	No commercial code; general framework in *Codice Civile*(enterprise concept in Book V)
Commercial obligations &	*Code de commerce* + strong role	*HGB* (limited special commercial rules)	*UGB* + *ABGB* (Civil Code)	*Código de Comercio* + *Código*	*Codice Civile*(centralised contract law; no

contracts	of *Code civil* (general contract law)	+ *BGB*(central contract law)		*Civil*(dominant)	separate commercial contracts code)
Negotiable instruments & payment mechanisms	Historically in *Code de commerce*; now largely in *Code monétaire et financier*	*Wechselgesetz* (Bills of Exchange Act), *Scheckgesetz*(Cheque Act) + payment services law	*Wechselgesetz, Scheckgesetz* + payment services statutes	*Ley Cambiaria y del Cheque*	*Regio Decreto 14 dicembre 1933 n. 1669* (bills), *R.D. 1736/1933* (cheques) + banking/payment laws
Business organisations (companies, partnerships)	*Code de commerce*(Book II: sociétés commerciales)	*HGB* (partnerships) + *Aktiengesetz (AktG)* + *GmbH-Gesetz (GmbHG)*	*UGB* (partnership framework) + *Aktiengesetz, GmbHG*	*Ley de Sociedades de Capital (LSC)*	*Codice Civile* (Book V, companies law centralised)
Secured transactions & commercial credit	*Code civil* (security law largely in Civil Code) + reforms in commercial practice	*BGB* (Sachenrecht: security interests) + insolvency overlays (*InsO*)	*ABGB* + special security statutes	*Código Civil* + *Ley Hipotecaria*	*Codice Civile*(pledges, mortgages) + special credit laws

1. France: “integrated but fragmented”

France is the **closest to a classical commercial code structure**, but in reality:

- Companies and commercial status → *Code de commerce*
- Contracts → mostly *Code civil*
- Payment systems → increasingly *Code monétaire et financier*
- Security law → *Code civil*

So France is **codified in appearance but functionally hybrid**.

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2. Germany: “system of specialised codes”

Germany reflects a **functional separation model**:

- *HGB* → commercial actors + limited commercial rules
- *BGB* → contract + property (dominant private law core)
- Sectoral statutes → payments, securities, insolvency

The *HGB* is no longer a “complete commercial code”, but a **supplement to the Civil Code economy**.

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3. Austria: “German-inspired hybridisation”

Austria closely mirrors Germany:

- *UGB* replaces the old merchant-based system with an enterprise concept
- Civil law (*ABGB*) remains the real contractual backbone

Commercial codification exists, but is **structurally secondary**.

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4. Spain: “formal commercial code, substantive civil dominance”

Spain preserves the *Código de Comercio*, but:

- Company law → separate modern statute (*LSC*)
- Contracts → *Código Civil*
- Financial instruments → special laws

The *Código de Comercio* is **largely historical and residual in private law structure**.

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5. Italy: “post-commercial-code model”

Italy is the clearest case of **de-codification of commercial law**:

- No commercial code
- Entire economic private law integrated into the *Codice Civile*
- Sectoral statutes (finance, securities, crisis/insolvency) supplement it

Italy represents a **civil-code-centred economic law system**, not a commercial code system.

B. Subjects That Occupy a Border Zone

Some areas are clearly related to commerce but raise genuine doubts concerning their proper codification.

These subjects reveal the tension between commercial law and regulatory law.

1. Insolvency Law

Arguments for inclusion:

- insolvency directly affects commercial activity,
- creditors' rights are central to commerce,
- commercial risk cannot be understood without insolvency.

Arguments against inclusion:

- insolvency increasingly pursues public interests,
- restructuring affects employees, consumers, tax authorities and society at large,
- insolvency law has become highly technical and autonomous.

Comparative practice is divided.

Many modern systems regulate insolvency through separate statutes.

A strong argument can nevertheless be made that insolvency forms part of the natural life cycle of commercial activity and therefore belongs conceptually within commercial law.

The French Commercial Code treats insolvency as an integral part of commercial law, reflecting a long tradition that regards collective proceedings as inseparable from business activity. Comparative law, however, reveals a different tendency. Germany, Austria, Spain and Italy have progressively detached insolvency law from their commercial codes and entrusted it to specialized legislative instruments. The debate is therefore not whether insolvency belongs to commercial law in a substantive sense—few would deny that it does—but whether its growing technical complexity and public-policy functions justify autonomous codification.

Country	**Commercial Code**	**Principal Insolvency Legislation**
France	*Code de commerce*	Book VI (*Des difficultés des entreprises*), integrated into the *Code de commerce*
Germany	*Handelsgesetzbuch (HGB)*	*Insolvenzordnung (InsO)*
Austria	*Unternehmensgesetzbuch (UGB)*	*Insolvenzordnung (IO)*
Spain	*Código de Comercio*	*Texto Refundido de la Ley Concursal (TRLC)*

2. Banking Law

Banking is indispensable to modern commerce.

However, contemporary banking law contains substantial elements of:

- prudential regulation,
- public supervision,
- monetary policy,
- financial stability.

For this reason, most jurisdictions place banking law outside commercial codes.

The private-law aspects of banking relationships may belong in the code, while regulatory aspects belong elsewhere.

The French Commercial Code contains only limited provisions relating to banking activities, while the core legal framework governing credit institutions and financial services is now found in the Monetary and Financial Code. This evolution reflects a broader comparative tendency.

In Germany, Austria, Spain and Italy, banking law has largely developed outside commercial codes and is governed through specialized statutes and regulatory frameworks.

Country	Commercial Code	Principal Banking Legislation
France	*Code de commerce*	*Code monétaire et financier*
Germany	*Handelsgesetzbuch (HGB)*	*Kreditwesengesetz (KWG)*, supplemented by *Zahlungsdiensteaufsichtsgesetz (ZAG)*and other financial statutes
Austria	*Unternehmensgesetzbuch (UGB)*	*Bankwesengesetz (BWG)*
Spain	*Código de Comercio*	*Ley 10/2014, de ordenación, supervisión y solvencia de entidades de crédito* and related financial legislation
Italy	*Codice Civile*	*Testo Unico Bancario (TUB)* — formally *Decreto Legislativo 1° settembre 1993, n. 385*

Comparative experience therefore suggests that the question is not whether banking activities form part of commercial life—they undoubtedly do—but whether the prudential, supervisory and systemic dimensions of modern banking justify treatment as a distinct regulatory field rather than as a component of commercial codification.

3. Insurance Law

Insurance facilitates commerce by allocating risk.

Historically, many commercial codes contained insurance provisions.

Yet insurance today combines:

- contract law,
- consumer protection,
- prudential regulation.

The trend has been toward specialized insurance legislation rather than codification within commercial codes.

France regulates insurance primarily through the Insurance Code, while Germany, Austria, Spain and Italy likewise rely on specialized insurance legislation separate from their commercial codes.

Country	Commercial Code	Principal Insurance Legislation
France	*Code de commerce*	*Code des assurances*
Germany	*Handelsgesetzbuch (HGB)*	*Versicherungsvertragsgesetz (VVG)* and *Versicherungsaufsichtsgesetz (VAG)*
Austria	*Unternehmensgesetzbuch (UGB)*	*Versicherungsvertragsgesetz (VersVG)* and *Versicherungsaufsichtsgesetz (VAG)*

Country	Commercial Code	Principal Insurance Legislation
Spain	*Código de Comercio*	*Ley 50/1980, de Contrato de Seguro* and insurance supervisory legislation
Italy	*Codice Civile*	*Codice delle Assicurazioni Private* (Legislative Decree No. 209/2005)

The issue is therefore not whether insurance transactions possess a commercial character, but whether the combination of consumer protection, prudential regulation and highly technical contractual rules has transformed insurance law into a sufficiently self-contained discipline to warrant independent codification.

4. Capital Markets and Securities Law

Modern capital markets are undeniably commercial.

However, securities regulation increasingly serves public objectives:

- investor protection,
- market integrity,
- systemic stability.

As a result, securities law is usually excluded from commercial codes and governed by specialized legislation.

In France, the principal rules governing financial markets, investment services and securities regulation are contained in the Monetary and Financial Code, while Germany, Austria, Spain and Italy have similarly entrusted the field to specialized legislative instruments implementing extensive European regulatory frameworks.

Country	Commercial Code	Principal Capital Markets / Securities Legislation
France	*Code de commerce*	*Code monétaire et financier*
Germany	*Handelsgesetzbuch (HGB)*	*Wertpapierhandelsgesetz (WpHG), Börsengesetz (BörsG), Wertpapierprospektgesetz (WpPG)*
Austria	*Unternehmensgesetzbuch (UGB)*	*Wertpapieraufsichtsgesetz (WAG), Börsegesetz (BörseG)*, capital market legislation
Spain	*Código de Comercio*	*Ley 6/2023, de los Mercados de Valores y de los Servicios de Inversión*
Italy	*Codice Civile*	*Testo Unico della Finanza (TUF)* — Legislative Decree No. 58/1998

The debate is therefore not whether capital markets belong to the sphere of commercial activity, but whether the density of public regulation, market supervision and investor-protection rules has made securities law too autonomous and technically specialized to remain within a general commercial code.

C. Subjects That Should Generally Remain Outside the Commercial Code

A commercial code should not become an encyclopedia of economic regulation.

Certain subjects, although related to business activity, are conceptually distinct.

1. Tax Law

Taxation affects every business.

Nevertheless:

- its objectives are fiscal,
- its structure is public-law oriented,
- its principles differ fundamentally from commercial law.

Tax law should remain outside commercial codification. In France, Germany, Austria, Spain and Italy, tax rules are contained in specialized fiscal legislation rather than in commercial codes.

The question is therefore not whether taxation concerns businesses—it undeniably does—but whether its public-law character, its close connection to state finances and its highly technical and frequently changing nature make it unsuitable for incorporation into a general commercial code.

Country	**Commercial Code**	**Principal Tax Legislation / Tax Code**
France	*Code de commerce*	*Code général des impôts (CGI)* and *Livre des procédures fiscales (LPF)*
Germany	*Handelsgesetzbuch (HGB)*	*Abgabenordnung (AO)*, supplemented by individual tax statutes (*Einkommensteuergesetz, Körperschaftsteuergesetz, Umsatzsteuergesetz*, etc.)
Austria	*Unternehmensgesetzbuch (UGB)*	*Bundesabgabenordnung (BAO)*, supplemented by individual tax statutes
Spain	*Código de Comercio*	*Ley General Tributaria (LGT)* and individual tax laws
Italy	*Codice Civile*	No single tax code; taxation is governed by a series of consolidated statutes (*Testi Unici*), notably the *Testo Unico delle Imposte sui Redditi (TUIR)*

2. Labour Law

Commercial enterprises depend upon labour.

Yet labour law is primarily concerned with:

- social protection,
- collective bargaining,
- workplace rights.

Its normative foundations differ profoundly from those of commercial law.

For this reason, labour law should remain autonomous.

France, Germany, Austria, Spain and Italy all maintain extensive and autonomous bodies of labour legislation reflecting objectives that extend beyond the organization of commerce, including worker protection, collective bargaining and social policy.

The issue is therefore not whether labour law affects commercial enterprises, but whether its distinct principles, institutions and policy objectives justify its separation from commercial codification.

Country	Commercial Code	Principal Labour Legislation / Labour Code
France	*Code de commerce*	*Code du travail*
Germany	*Handelsgesetzbuch (HGB)*	No single labour code; labour law is governed by a set of specialized statutes (*Bürgerliches Gesetzbuch*, *Kündigungsschutzgesetz*, *Betriebsverfassungsgesetz*, *Tarifvertragsgesetz*, etc.)
Austria	*Unternehmensgesetzbuch (UGB)*	No single labour code; labour law is governed by specialized statutes (*Arbeitsverfassungsgesetz, Angestelltengesetz, Arbeitsvertragsrechts-Anpassungsgesetz*, etc.)
Spain	*Código de Comercio*	*Estatuto de los Trabajadores* (Royal Legislative Decree 2/2015)
Italy	*Codice Civile*	Labour law is centered on the *Codice Civile* (Book V, Title II) and supplemented by extensive special legislation, notably the *Statuto dei Lavoratori* (Law No. 300/1970)

3. Competition Law

Competition law regulates markets rather than transactions.

Its objectives include:

- preserving competition,
- preventing monopolies,
- protecting market structures.

Although essential to economic life, it belongs to a distinct legal category.

In France, Germany, Austria, Spain and Italy, the principal rules governing anticompetitive agreements, abuses of dominance and merger control are found in specialized legislation and are often closely integrated with European Union law.

Country	Commercial Code	Principal Competition Legislation
France	*Code de commerce*	Book IV of the *Code de commerce* (*De la liberté des prix et de la concurrence*)
Germany	*Handelsgesetzbuch (HGB)*	*Gesetz gegen Wettbewerbsbeschränkungen (GWB)*
Austria	*Unternehmensgesetzbuch (UGB)*	*Kartellgesetz 2005 (KartG)*

Country	Commercial Code	Principal Competition Legislation
Spain	*Código de Comercio*	*Ley 15/2007, de Defensa de la Competencia*
Italy	*Codice Civile*	*Legge 10 ottobre 1990, n. 287* (*Norme per la tutela della concorrenza e del mercato*)

The debate is therefore not whether competition law concerns commerce, but whether its public-enforcement mechanisms, economic methodology and market-ordering function place it beyond the natural scope of a commercial code.

4. Consumer Protection Law

Consumer law often operates as a corrective to commercial law.

Commercial law traditionally assumes professional actors negotiating with one another.

Consumer law seeks to protect weaker parties.

The logic is different.

For this reason, many jurisdictions have moved consumer law outside both civil and commercial codes.

France regulates the field through the Consumer Code, while Germany, Austria, Spain and Italy likewise rely on specialized legislation implementing extensive European standards.

Country	Commercial Code	Principal Consumer Protection Legislation
France	*Code de commerce*	*Code de la consommation*
Germany	*Handelsgesetzbuch (HGB)*	Primarily integrated into the *Bürgerliches Gesetzbuch (BGB)* and supplemented by special statutes
Austria	*Unternehmensgesetzbuch (UGB)*	*Konsumentenschutzgesetz (KSchG)*
Spain	*Código de Comercio*	*Texto Refundido de la Ley General para la Defensa de los Consumidores y Usuarios*
Italy	*Codice Civile*	*Codice del Consumo* (Legislative Decree No. 206/2005)

The question is therefore not whether consumer transactions are commercial in nature, but whether the corrective objective of protecting the weaker party in the marketplace justifies a legislative framework separate from the general law governing commercial transactions.

5. Administrative and Regulatory Law

Modern commerce is increasingly affected by:

- licensing requirements,

- environmental regulation,
- data protection,
- anti-money laundering obligations,
- export controls,
- sanctions.

These rules govern economic activity but are not themselves commercial law.

A commercial code should not attempt to absorb them.

In France, Germany, Austria, Spain and Italy, administrative rules affecting economic activity are generally dispersed across specialized legislation and administrative codes.

Country	Commercial Code	Principal Administrative Framework
France	*Code de commerce*	*Code des relations entre le public et l'administration (CRPA)* and numerous sectoral codes
Germany	*Handelsgesetzbuch (HGB)*	*Verwaltungsverfahrensgesetz (VwVfG)*
Austria	*Unternehmensgesetzbuch (UGB)*	*Allgemeines Verwaltungsverfahrensgesetz (AVG)*
Spain	*Código de Comercio*	*Ley 39/2015 del Procedimiento Administrativo Común*
Italy	*Codice Civile*	*Legge 7 agosto 1990, n. 241*

The issue is therefore not whether administrative regulation influences commerce, but whether its focus on the exercise of public authority places it outside the conceptual boundaries of commercial codification.

D. The Challenge of the Digital Economy

The most difficult question for modern codification concerns digital commerce.

Should a commercial code contain rules governing:

- digital assets,
- cryptocurrencies,
- smart contracts,
- tokenized securities,
- electronic platforms,
- artificial intelligence?

Two approaches are possible.

The first is legislative maximalism: constantly amend the code to incorporate every technological innovation.

The second is legislative restraint: formulate sufficiently general principles capable of applying to new technologies.

The history of codification suggests that the second approach is preferable.

The more technologically specific a code becomes, the faster it risks obsolescence.

France, Germany, Austria, Spain and Italy increasingly regulate the digital economy through specialized legislation, much of it derived from European Union instruments.

Country	**Commercial Code**	**Principal Digital-Economy Legislation**
France	*Code de commerce*	Various statutes, notably *Loi pour la confiance dans l'économie numérique (LCEN)*and EU-derived legislation
Germany	*Handelsgesetzbuch (HGB)*	*Digitale-Dienste-Gesetz (DDG)* and EU-derived legislation
Austria	*Unternehmensgesetzbuch (UGB)*	*Digitale-Dienste-Gesetz (DDG)* and EU-derived legislation
Spain	*Código de Comercio*	Various statutes implementing EU digital legislation
Italy	*Codice Civile*	Various statutes implementing EU digital legislation

- the *Digital Services Act (DSA)*,
- the *Digital Markets Act (DMA)*,
- the *Data Act*,
- the *Data Governance Act*,

- the *AI Act*.

The debate is therefore not whether digital activities are commercial in substance, but whether the speed of technological change and the cross-sectoral character of digital regulation make comprehensive codification within a commercial code impractical.

E. Intellectual property rights

Intellectual property is simultaneously:

- private law,
- commercial law,
- innovation law,
- competition law.

For many companies, the most valuable assets are:

- trademarks,
- patents,
- copyrights,
- trade secrets,
- software,
- databases.

Historically, most countries have rejected incorporation into commercial codes.

Because intellectual property serves objectives that extend far beyond commerce.

Patent law concerns:

- innovation policy,
- technological development.

Copyright concerns:

- artistic creation,
- culture,
- freedom of expression.

Trademark law concerns:

- consumer protection,
- market transparency.

As a result, IP law has developed into a highly specialized autonomous discipline.

Most jurisdictions therefore maintain separate legislation, such as:

- patent acts,
- trademark acts,
- copyright acts,
- industrial property codes.

France itself is an excellent example with the Code de la propriété intellectuelle. It regulates patents, trademarks and related rights principally through the Intellectual Property Code, while Germany, Austria, Spain and Italy rely on specialized legislative frameworks.

Country	**Commercial Code**	**Principal Intellectual Property Legislation**
France	*Code de commerce*	*Code de la propriété intellectuelle (CPI)*
Germany	*Handelsgesetzbuch (HGB)*	Separate statutes (*Patentgesetz*, *Markengesetz*, *Urheberrechtsgesetz*, etc.)
Austria	*Unternehmensgesetzbuch (UGB)*	Separate statutes (*Patentgesetz*, *Markenschutzgesetz*, *Urheberrechtsgesetz*, etc.)
Spain	*Código de Comercio*	Separate statutes (*Ley de Patentes*, *Ley de Marcas*, *Ley de Propiedad Intelectual*)
Italy	*Codice Civile*	*Codice della Proprietà Industriale (CPI)* and copyright legislation

The question is therefore not whether intellectual property serves commercial purposes, but whether the technical complexity, international harmonization and distinct policy objectives of intellectual property law justify its treatment outside a general commercial code.

F. Jurisdiction clauses

Jurisdiction clauses provide an excellent illustration of the difficulty of defining the proper scope of commercial codification.

Most civilian jurisdictions, including Germany, Austria, Switzerland, Italy and Spain, treat jurisdiction as a matter of procedural law and therefore regulate forum-selection agreements outside commercial legislation.

France adopts a broader conception of commercial codification and has traditionally been more willing to incorporate procedural mechanisms that are closely connected to commercial activity.

The debate ultimately reflects two competing visions of a Commercial Code: one conceives it as a body of substantive commercial law, while the other regards it as a comprehensive legal framework governing the organization and resolution of commercial disputes as well as commercial transactions themselves.

Country	**Commercial Code**	**Legal framework on jurisdiction clauses + commercial jurisdiction**
France	*Code de commerce*	*Code de procédure civile* + EU law (*Brussels I bis Regulation*) **+** special provisions in the ***Code de commerce*** on commercial courts (***tribunaux de commerce***) and jurisdictional organisation of commercial disputes
Germany	*Handelsgesetzbuch (HGB)*	*Zivilprozessordnung (ZPO)* + EU law (*Brussels I bis Regulation*); commercial jurisdiction integrated into general court system (no separate commercial courts of general jurisdiction)
Austria	*Unternehmensgesetzbuch (UGB)*	*Zivilprozessordnung (ZPO)* + EU law; specialised commercial jurisdiction mainly through ordinary courts (no autonomous commercial court system comparable to France)
Spain	*Código de Comercio*	*Ley de Enjuiciamiento Civil (LEC)* + EU law; commercial matters handled within general civil jurisdiction (no separate commercial court system as a general rule)
Italy	*Codice Civile*	*Codice di Procedura Civile* + EU law; specialised sections for business/enterprise disputes within ordinary courts (e.g. *sezioni specializzate in materia di impresa*)

Conclusion

The true challenge of commercial codification is not deciding whether a subject is economically important. Almost every area of modern law affects economic activity. The challenge is identifying those legal institutions that constitute the private-law infrastructure of commerce.

A modern Commercial Code should therefore contain the fundamental law of enterprise, commercial transactions, business organizations, commercial credit, payment systems, and commercial obligations. By contrast, taxation, labour law, competition law, consumer protection, prudential regulation, and other forms of economic governance should generally remain outside the code.

The ultimate lesson of comparative law is that a Commercial Code should not attempt to regulate the entire economy. Its function is more modest and more important: to provide the legal architecture through which commerce itself operates. The most successful codifications are not those that contain the greatest number of rules, but those that identify with precision the institutional foundations of market activity and organize them within a coherent legal framework.