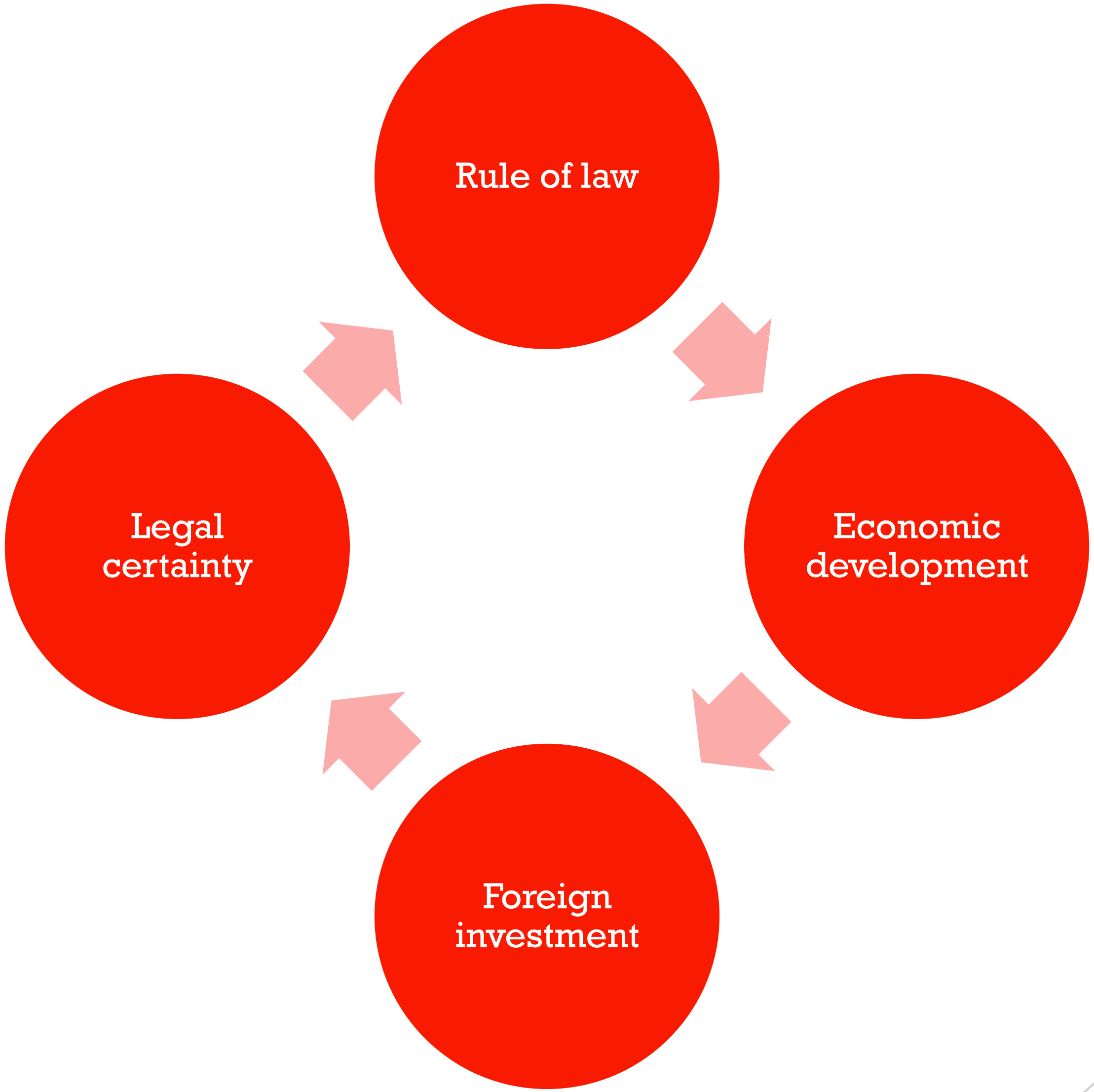
Commercial Codification in Comparative Perspective – Kingdom of Cambodia

Anne-Sophie Milard

Paris Saclay & IRJS Paris 1 Panthéon Sorbonne

INTRODUCTION



CENTRAL QUESTIONS

- I : Common law economies (UK, US) as counterpoint
- The Civil Law approach - approaches
- III : Scope of codification

I. COMMON LAW AND CODIFICATION

Common Law Structure

- Based on *stare decisis* (precedent)
- Case law as primary source of law
- Statutes supplement and override case law
- Contract Law / Law of Tort

I. COMMON LAW AND CODIFICATION

Advantages of Common Law

- Time-saving device
- Flexibility and adaptability
- Case-by-case reasoning
- Practical development of law
- Efficiency through precedent

I. COMMON LAW AND CODIFICATION

Limits of Common Law

- Fragmentation of legal sources
- Complexity of case reporting
- Access to law difficulties
- Legal uncertainty in dense jurisprudence
- Dependence on interpretation of courts

I. COMMON LAW AND CODIFICATION

Early Codification Thinking

- Jeremy Bentham: codification advocate
- Critique of “judge-made law”
- « Judge-made tiranny »
- Idea of comprehensive written code
- “Pannomion” project

I. COMMON LAW AND CODIFICATION

UK: Pragmatic Codification

- No general civil code
- Sectoral ‘codification’ through statutes:
  - Bills of Exchange Act 1882
  - Sale of Goods Act 1893
  - Marine Insurance Act 1906
- Statute consolidation approach

I. COMMON LAW AND CODIFICATION

United States Model

- Uniform Commercial Code (UCC)
- Model law adopted by states
- Private drafting bodies (ALI / ULC)
- Goal: harmonization, not central codification

I. COMMON LAW AND CODIFICATION

Not « code-like »

- Codification exists but in fragmented form
- Functional harmonization rather than systematic codification
- No unified legislative architecture
- Contrast with civil law codification logic

I. COMMON LAW AND CODIFICATION

Limits of the UCC

- Non-uniform application (states)
- Legal culture differences (Louisiana)
- Judicial interpretation divergence
- Example: Article 9, good faith doctrine
- Economic influence (New York law)

II. CIVIL LAW AND CODIFICATION MODELS

- "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."

II. CIVIL LAW AND CODIFICATION MODELS

Core Principles of Codification

- Local adaptation (not imitation)
- Stability + flexibility balance
- Accessibility and clarity
- Durable legal architecture

II. CIVIL LAW AND CODIFICATION MODELS

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

III. WHAT SHOULD BE CODIFIED?

The Codification Dilemma

- Too narrow → ineffective code
- Too broad → unmanageable code
- Need for functional selection
- Focus: legal infrastructure of commerce

III. WHAT SHOULD BE CODIFIED?

A) Core of Commercial Codes

- Legal status of economic actors
- Commercial contracts
- Payment systems and negotiable instruments
- Business organisations
- Secured transactions and credit

III. WHAT SHOULD BE CODIFIED?

A) Core of Commercial Codes

Legal status of economic actors

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

III. WHAT SHOULD BE CODIFIED?

A) Core of Commercial Codes

Commercial contracts

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

III. WHAT SHOULD BE CODIFIED?

A) Core of Commercial Codes

Payment systems and negotiable instruments

- bills of exchange,
- promissory notes,
- checks,
- documentary credits,
- negotiable instruments,
- electronic payment instruments,
- digital negotiable records,
- electronic transferable documents.

III. WHAT SHOULD BE CODIFIED?

A) Core of Commercial Codes

Business organisations

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

III. WHAT SHOULD BE CODIFIED?

A) Core of Commercial Codes

Secured transactions and credit

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

III. WHAT SHOULD BE CODIFIED?

B) Border Zone

- Insolvency Law
- Banking Law
- Insurance Law
- Capital Markets and Securities Law

III. WHAT SHOULD BE CODIFIED?

B) **Border Zone** - Insolvency Law

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)

III. WHAT SHOULD BE CODIFIED?

B) Border Zone - Banking Law

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

III. WHAT SHOULD BE CODIFIED?

B) Border Zone - Insurance Law

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)
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)

III. WHAT SHOULD BE CODIFIED?

B) Border Zone - Capital Markets and Securities Law

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

III. WHAT SHOULD BE CODIFIED?

C) Outside the Commercial Code

- Tax Law
- Labour Law
- Competition Law
- Consumer protection Law
- Administrative Law
- Digital Economy
- Intellectual Property Rights

III. WHAT SHOULD BE CODIFIED?

C) Outside the Commercial Code – Labour Law

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)

III. WHAT SHOULD BE CODIFIED?

C) Outside the Commercial Code – Intellectual Property Rights

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

III. WHAT SHOULD BE CODIFIED?

C) Outside the Commercial Code – Tax Law

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)

III. WHAT SHOULD BE CODIFIED?

C) Outside the Commercial Code – Competition 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)
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)

III. WHAT SHOULD BE CODIFIED?

C) Outside the Commercial Code – Consumer Protection Law

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)

III. WHAT SHOULD BE CODIFIED?

C) Outside the Commercial Code – Administrative Law

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

III. WHAT SHOULD BE CODIFIED?

C) **Outside the Commercial Code** – Administrative Law

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

III. WHAT SHOULD BE CODIFIED?

C) **Outside the Commercial Code** – Digital Economy

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

III. WHAT SHOULD BE CODIFIED?

C) Outside the Commercial Code – Courts

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)

FINAL CONCLUSION

- Codification ≠ regulating the entire economy
- Commercial Code = legal infrastructure of commerce
- Must remain focused and coherent
- Exclude public-regulatory domains
- Goal: clarity, predictability, accessibility
- Codification as institutional architecture of markets