KPMG

Guide to Investing in Algeria

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Covering all you need to know about the insurance sector in Algeria, its actors, products, and various laws and exercise conditions of this field of activity

- **GUIDE TO EXPATS:**

All you need to know about your international assignment secondment

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CHAPTER 1

GENERAL INTRODUCTION TO ALGERIA

1.1 History and Geography

Algeria is a democratic and popular republic .The country spreads across an area of 2,381,741 km^2, with 1,200 km of Mediterranean coastline. Algeria is a member of the Arab Maghreb Union (AMU) and has common borders with Tunisia, Libya, Morocco, Mauritania, and with two (02) countries of the African Sahel, Mali and Niger and the Western Sahara.

It's a land of sharp contrasts, where Mediterranean landscapes, vast plateaus, and lunar desert-like spaces meet. Its reputation as a Mediterranean country notwithstanding, Algeria is arid and semi-arid. The areas of the Algerian territory receiving more than 400 mm of water a year fit within a band no more than 150-km deep from the coastline.

Being parallel to the coastline, the mountainous ridges exacerbate the dryness of the climate heading south. Three extremely contrasting zones share the Algerian territory: The Tell region, in the North (4% of Algeria's total surface area), the high plateaus region (9% of Algeria's total surface area) and the Saharan region (87% of Algeria's total surface area). Algeria enjoys a Mediterranean climate, temperate in the North and Saharan (hot and dry) in the South. Summers in the North are mild with an average temperature of 25°C, the winters rainy and sometimes very cold. In the high plateaus, the climate is arid and dry.

Algeria is also the ideal junction where three worlds converge (Mediterranean, Arab and African) and a land occupied by a number of peoples (the Phoenicians, the Romans, the Vandals, the Byzantines, the Arabs, the Turks and the French) in spite of the ferocious resistance of the original inhabitants, led by a succession of illustrious figures: Massinissa and Jugurtha (Roman period), Kahina and Koceïla (pre-Islamic period) and the Emir Abdelkader, Lalla Fatma N'Soumer, El-Mokrani, Larbi Ben M'hidi, Abane Ramdane (French colonial period). As a testament to this, a number of archeological sites from the Roman and Phoenician eras exist in Algeria. At least seven Algerian monuments and sites are now registered as part of the World Heritage by UNESCO: La Kalâa des Béni Hammad, Djemila, le Tassili n'Ajjer, Timgad, Tipaza, Vallée du M'zab and the Casbah of Algiers.

Culturally, Algerians, whose population belongs to the same socio-cultural group as that of Morocco and Tunisia, were also influenced by the various civilizations that flourished and prospered around the Mediterranean.

The Arabs and the French left the deepest imprints. The former with the establishment of Islam and a strong linguistic legacy, the latter with the considerable contribution of the French culture and language, which today makes Algeria a quintessentially French-speaking country, as French is the most widely used language of communication, particularly in the business

sector. However, other languages, in particular English are gaining ground; it is increasingly acquired and used by young people and especially in the business sector.

In addition to this cultural and human diversity, Algeria is also characterized by major, varied natural resources, its gas reserves being amongst the largest in the world, whilst the country's underground contains huge oil deposits, in addition to considerable deposits of phosphate, zinc, iron, gold, uranium, tungsten and kaolin.

1.2 Population - Demographics

The population stood at 41.2 millions inhabitants[1]

The projections for the Algerian population until 2100 mainly highlight a strong demographic and fertility rates deceleration, also an aging population and an increased life expectancy. The population is expected to increase by 18% between 2013 and 2025, and by a further 17% between 2025 and 2050, and only to 0.7% between 2050 (population 54.9 million) and 2100 (54.5 million inhabitants)[2].

Nearly 40% of the population lives on the coastline. More than 14 million people live in the Tell region in the North with an average density of 260 inhabitants per km^2. This density drops to less than 1 inhabitant per km^2 in the Great South region, for a national average of 16.64 inhabitants per km2. Along the coastline, the population tends to be concentrated around the major towns. While the urban sector only accounted for 12% of Algeria's population in 1960, it represented more than 70% of the population in 2014.

1.3 Main cities - Languages - Religions

The main part of the Algerian population is spread over some 121 urban centers, 68 semi-urban centers and 58 "potential" semi-urban centers. The main cities of the country are concentrated in the North and in the high plateaus: Algiers (the administrative, economic and cultural capital), Oran, Constantine, Annaba, Sétif, Tlemcen, Skikda, Béjaïa, Tizi Ouzou, Jijel, Tiaret, Batna, Biskra, Mostaganem, Saïda, M'sila, Chlef, Béchar, Ouargla, Ghardaïa, Adrar, El-Oued and Tamanrasset. Arabic is the national and official language, spoken by the majority of the population. Tamazight (Berber) is also national and official language, is also widespread through its numerous regional dialects.

The vast majority of Algerians are Sunni Muslims. The country's constitution made Islam the state religion. Religious freedom is recognized and there is genuine religious tolerance in the country.

Algerian society as a whole is monogamous, although polygamy is allowed by Islamic law and by legal provisions.

1.4 Territorial and administrative organization – Political institutions

The commune is the basic component of Algeria's territorial organization. There are 1,541 communes, grouped into administrative districts (daïras, in total 227) and departments (wilayas, in total 48).

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1 Figures dating from 1 January, 2016, Algerian Statistics Office.
2 Source :ONU: Perspective of global population.

Communes are managed by a Communal Popular Assembly (assemblée populaire communale, APC), which is elected for five years. The president of the commune is elected by the Communal Popular Assembly.

The wilaya (department) has a Popular Assembly (assemblée populaire de wilaya, APW), also elected for five-year terms. The wilaya is managed by a Wali (governor) named by the President of the Republic.

The heads of the daïra (administrative districts that are the equivalent of sub-prefectures) are also named by the President of the Republic.

Article 1 of the Constitution, dating from 1989, revised in 1996, 2008 and 2016 instituted a pluralistic regime which guarantees the full exercise of individual and collective freedoms in all forms and in all areas, and establishes the separation of the executive, legislative and judicial branches. The political regime is of a presidential nature.

The President of the Republic is elected through direct, secret universal voting for a period of five years. The President can be re-elected.

The Prime Minister, the head of government appointed by the President of the Republic, implements the program of the President of the Republic and coordinates government action. The program is subject to approval by the National People's Assembly (APN).

Following the constitutional revision of November 28, 1996, which instituted a bicameral Parliament, the National Popular Assembly became the primary chamber of the Algerian Parliament. There are 462 members elected on the basis of the platform of their respective political party or from lists called "independent lists."

The Council of Nations is the second chamber of parliament. It has 144 members, of which two thirds, that is 96 members, are elected through indirect universal balloting by the elected members of the communal assemblies and the wilayas. The remaining third, that is 48 members, is designated by the President of the Republic, by virtue of a constitutional provision. The Council of Nations passes laws with a majority of three quarters of its members. The Council of Nations debates bills already adopted by the NPA, but does not have the power to amend these bills. In the event of disagreement with the NPA, a commission with equal representation from both chambers is established to prepare a revised text which is then submitted for the approval of both chambers, without the possibility of amendment.

The President of the Council of Nations (Senate) is the second ranking officer of the State. He replaces the President of the Republic, in the event of a vacancy, but cannot be a candidate to his succession

The Constitution of February 1989 created a Constitutional Council made up of nine members.

Only three officers of the State have the right to refer a matter to the Constitutional Council: the President of the Republic, the President of the National Popular Assembly and the President of the Council of Nations. In addition to its duties with regard to the constitutionality of laws, the Constitutional Council is in charge of ensuring that referenda, presidential elections and legislative elections are conducted lawfully. The Council proclaims the results of these operations.

The other main institutions of the Algerian State are: the High Security Council, the Supreme Court, the State Council, the High Islamic Council and the National Economic and Social Council.

1.5 Political parties - Associations

The Constitution of 1989, which instituted a pluralistic system, established and confirmed the end of the monopolization of political power by a single party (the FLN).

The July 5, 1989 Act, promulgated by the application of Article 40 of the Constitution, was immediately followed by the creation of young partisan political parties or the appearance of formerly clandestine parties. The main parties are the Front de Libération Nationale (FLN, National Liberation Front — the former single party which traces its roots to the War of Liberation), the Rassemblement National Démocratique (RND, National Democratic Rally — essentially anchored in administrative circles), two parties: the Front des Forces Socialistes (FFS, Socialist Forces Front, created in 1963) and the Rassemblement pour la Culture et la Démocratie (RCD, Rally for Culture and Democracy), the Mouvement Social pour la Paix (MSP, Social Movement for Peace, affiliated to the Muslim Brotherhood) and El-Islah (The Renewal Party); the Parti des Travailleurs (PT), the Front National Algérien (FNA, Algerian National Front).

1.6 Judicial system

The Constitution provides for an independent judicial system, which protects society and its freedoms, based upon the principles of equality and legality. It authorizes recourse against public authorities. The President of the Republic is the guarantor of the judicial system independence.

Judges are protected against all forms of pressure and solely obey the law. The judge is accountable to the High Council of the Judiciary.

The Algerian judicial system is characterized by three main traits: the duality of jurisdictions, the simplicity of the procedures and the reconciliation between the judicial system and the litigant.

The main structures of the system are:

- The Supreme Court: the body which regulates the activities of the courts and tribunals, which ensure the unification of jurisprudence and the respect of the law;
- The State Council: the highest level of administrative jurisdiction, acts as appellate judge for rulings by administrative courts and supreme court judge to render final decisions without appeal, appellate judge for individual or administrative from administrative authorities and national professional organizations (national association of lawyers, architects, doctors, etc.) finally appellate judge for interpretation and assessment of the legality of acts within its jurisdiction.
- The High Council of the Judiciary: is presided over by the President of the Republic. In particular the Council ensures the respect of the provisions pertaining to the status of the judiciary and the discipline of judges. It has administrative and financial autonomy.

1.7 Staying in Algeria: conditions – procedures – work permit

A valid passport and visa are required to travel in Algeria as a tourist or on business. A visa may be obtained upon submission of a professional or private invitation to an Algerian Consulate.

Excluding tourist visas, two types of visas are issued:

1. The business visa: issued to a foreigner in possession of a letter of invitation from his Algerian partner, a letter of employment or an assignment order from the organization hiring the visa applicant and a hotel reservation or proof that the organization extending the invitation will take care of the applicant.

2. The work visa: issued to the foreigner in possession of an employment contract and a temporary authorization to work issued prior to the work permit by the relevant authorities in charge of matters pertaining to employment, as well as a certificate of the hiring organization stamped by the relevant authorities.

This temporary work visa can also be issued to the foreigner in possession of an assistance or service contract.[3]

Upon entering the country, the traveler benefits from an exemption of duties and taxes, for goods and objects for personal use that he or she might need during his or her stay, with the exception of merchandise imported for commercial purposes.

The foreign traveler is required to conduct foreign exchange transactions in banking agencies during his or her stay in Algeria. The details of those transactions must be written on the flap of the currency declaration form. This form, as well as the foreign exchange transaction receipts, can be checked upon exiting the territory.

Foreign nationals working in Algeria must also hold a work permit or a temporary work authorization issued by the labor inspection services of the relevant wilayas (administrative departments).

The capacity to accommodate travelers in Algeria has improved noticeably these past few years. In addition to the large older Algerian establishments (El-Djazaïr (ex-Saint-Georges), El-Aurassi, Es-Safir (ex-Aletti) business hotel chains such as Sofitel, Mercure, Hilton, Sheraton, Meridien and Ibis have also opened in Algiers and some regional metropolises.

1.8 Practical information

Time zone: G.M.T.+ 1

Weights and measures: the system in application in Algeria is the MKSA or metric system (meters, kilograms, seconds, amperes).

Telephone numbers

Calling Algeria from abroad: +213 (Algeria's country code) + wilaya code (without the zero) + number of the person you wish to call.

Calling abroad from Algeria: 00 + country code + area code (without the zero) + number of the person you wish to call.

A 10-digit dialing plan has been in effect since early 2008 for cellular phones.

Currency

The monetary unit of Algeria is the Algerian dinar (AD); a dinar is subdivided into 100 centimes.

The conversion of foreign currencies into dinars, at the official rate, is authorized. For transactions in which dinars are converted into a foreign currency, conversion is currently only possible within the framework of domiciled commercial transactions and is thus subject to official rules.

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3 Further information in the Expatriate Guide, KPMG Algeria.

The exchange rate (January 2017)

1 euro = 114.492 Algerian dinars

1 dollar US = 108.880 Algerian dinars

Weekend: Friday and Saturday.

Working hours: generally from 8:00 AM to 4:30 PM. However, the branches of the banking agencies close at 3:30 PM, while those of other public services (civil status and postal services, among others) remain open until 6:00 PM.

Holidays

- Independence Day: July 5.
- Anniversary of Revolution: November 1st.
- Labor Day: May 1st.
- New Year's Day: January 1st.
- Religious holidays (based on the Islamic lunar calendar, which is 10/11 days behind the Gregorian calendar each year).
- Eïd-Al-Fitr (Holiday marking the end of fasting during the month of Ramadan): two-day holiday.
- Eid-Al-Adha (the holiday of Sacrifice, 2 months and 10 days after Eïd-Al-Fitr): two-day holiday.
- Awal Mouharem (Islamic New Year): one-day holiday.
- Achoura, 10th day of the lunar month of Mouharem (Holiday for alms-giving): One-day holiday.
- Mawlid en-Nabaoui commonly called "Mouloud," 12th day of the lunar month of Rabî'Ul-Awal (celebration of the birth of the Prophet Mohammed): One-day holiday.

1.9 Economy: key figures[4]

Gross domestic product (GDP): 199.39 billion USD in 2011, 209.01 billion USD in 2012, 209.7 billion USD in 2013, 213.5 billion USD in 2014, 166.84 billion USD in 2015 and estimated to 168.32 billion USD in 2016.

Distribution of GDP/excluding hydrocarbons: 70 %, for the private sector and 30% for the public sector.

Foreign exchange reserves:

Years	2009	2010	2011	2012	2013	2014
Foreign exchange reserves (billion USD)	162.2	181.5	193.4	204.9	216.6	180
Foreign exchange reserves in % of GDP	108%	101%	96%	99%	101%	84.3%

Sources: *FMI*

Gold reserves: 173.6 tons 4.5% of world reserves.

Growth rate:

Years	2011	2012	2013	2014	2015	2016*
Growth rate	2.82	3.3	2.8	3.84	3.9	3.6

4 Sources: National Economic and Social Council, ONS, Bank of Algeria, World Bank and Global statistics (www.statistiques-mondiales.com)

Share of hydrocarbons: 30% of the GDP; 95% of foreign currency proceeds (35.72billion USD in 2015).

Revenues from oil taxes: nearly 38% of all fiscal revenues of the State (1722.94 billion dinars in 2015).

Current account balance:

Years	2011	2012	2013	2014	2015	2016*
Current account balance (Billion USD)	19.802	12.290	0.835	-9.436	-27.452	-25.342

Trade balance: 27.1 billion in 2012, 9.95 billion USD in 2013, 4.3 billion USD in 2014 and estimated to -10.34 billion USD in September 2015.

Total volume of exchanges:

Years	2012	2013	2014	SEP 2015*
Imports in billion USD	46.8	55.03	58.58	39.2
Exports in billion USD	73.9	64.98	62.88	28.86

Inflation:

Years	2011	2012	2013	2014	2015	2016*
Inflation	4.5	8.9	3.3	2.9	4.8	5.9

Unemployment:

Years	2011	2012	2013	2014	2015	2016*
Unemployment	9.9	11	9.8	10.6	11.2	9.9

Outstanding debt: 4 billion USD in 2011, the debt amounted was reimbursed in its totality. 3 billion USD in 2012, 5.9 billion USD in 2013 and 5.2 billion USD in 2014.

Debt service ratio: The ratio was 0.8 in 2011, 1.1 in 2012, 0.7 in 2013, 0.4 in 2014, and 1.7 in 2015.

National debt:

Years	2009	2010	2011	2012	2013
National debt in billion USD	14.4	19.6	22.1	22.0	23.3

Foreign Direct Investment (FDI) :

Years	2011	2012	2013	2014	2015
FDI in Millions USD	2 571	1 484	2 661	1488	1 400

Population: 41.2 Millions habitants in January 2016.

Birth rate: 26.03‰ in 2015.

Fertility index: 3.1 children per woman in 2015.

Life expectancy:

Life expectancy	77.2 years
Men	76.6 years
Women	77.8 years

Population structure:

	Total pourcentage	Men	Women
0 – 14 years	28.40%	5,705,108	5,405,153
15 – 24 years	17.47%	3,480,998	3,351,891
25 – 54 years	42.08%	8,262,096	8,196,233
55 – 64 years	6.33%	1,253,102	1,220,411
65 years and more	5.72%	1,099,859	1,139,424

Life expectancy	77.2 years
Men	76.6 years
Women	77.8 years

- **Real Estate / Public Works:**

Immovable:

- Housing stock in Algeria rose from 5.2 million units in 2005 to 8.04 million units in 2013 with more than 20% of vacant dwellings. This park is segmented mainly in apartments, individual houses, and traditional houses. The single-detached houses dominate the market with a share of 60%, followed by buildings with 14% and traditional houses with 14%.
- Algeria has announced a 2015-2019 five-year public investment plan of 200 billion euros, a dense program for all sectors in all regions of the country.

Public works:

- Algeria has a major road network in the Maghreb and Africa, with a length of 108,302 km, distributed as follows:
  - 76,028 km of national and departmental roads;
  - 32,274 km of secondary roads.
- Algeria has a 6-lane East-West Highway with a length of 1,216 km.
- Algeria has:
  - 45 ports in service, including:
- 11 mixed commercial ports (trade, fisheries and hydrocarbons);
- 02 ports specializing in hydrocarbons (Skikda East and Bethioua);
- 31 harbors and fishing shelters, including 06 within commercial harbors;
- 01 marina in Sidi Fredj.
- 2200 maritime traffic lights;
- 35 airports, including 13 international airports. The most important being the airport of Algiers.
- 10,500 km, 4,200 km of track and 6300 km under construction.3 Trams (Algiers-Oran-Constantine).

- 01 metro in Algiers with a length of 9.5 km with three extensions with a total length of 9.4 km under construction.
- Railway transport: 4600 km (200 operational commercial stations).
- Telecommunications: the entire network is digitized, a national backbone of 15,000 km per fiber optic.
- Fiber optic wiring: over 8,500 km.
- Fixed telephone park: 3.7 million subscribers, teledensity about 10%.
- Mobile phone park: nearly 35 million lines in February 2011, compared with only 600,000 in 2001, a teledensity of more than 95%.

- **Internet:** the number of subscribers is of the order of 2 million. The goal is to democratize Internet access at high and very high speed (ADSL). Algeria Telecom plus other various providers of Internet access: the three mobile operators with USB, 3G and 4G, Anwarnet, SLC and Icosnet in partnership with Algeria Telecom. Finally, all major OEMs are present in Algeria.
- **Electricity:** 95% of the territory has electricity, 99.4% of households are connected to the network in 2011.
- **Natural gas:** 35% of households are connected to the natural gas distribution network.
- **Press (dailies, weeklies, magazines):** 400 weekly or monthly publications. Around 60 daily publications. 2 million copies per day.

The Algerian media has taken full advantage of the democratic openness and political pluralism instituted by the February 1989 Constitution.

Freedom of the press is now clearly a tangible reality. With sixty dailies and approximately 400 periodicals, the media landscape is extremely diverse. The share held by the private media is predominant in the written press. The total circulation of daily newspapers is around two million.

- **Radio and television**

At the national or local level, several radio stations broadcast a wide variety of programs: Network I (in Arabic), Network II (in Kabyle), Network III (in French, and the most dynamic Algerian radio), Radio El-Bahdja (mixed languages: Arabic dialect or Classical Arabic interspersed with French or Arabic-French sentences). The major regional or local areas (Mitidja, Saoura, Soummam etc.) also have their own radios. To broadcast on an international level, Algeria created a station to this effect called Radio Algérie Internationale which has been emitting since March 2007.

National television, under the auspices of the Entreprise Nationale de Télévision (ENTV), now has several networks. Also, there are some private channels, approved by the government of which Ennahar TV, Echorouk TV, Dzair TV, etc.

Since the end of the 1980s, Algerians have been receiving programs from foreign television networks (France in particular), which, due to their quality, have practically become an essential element in the daily lives of Algerian citizens in both urban and rural areas. Private TV channels are tolerated since 2011.

- Primary and secondary education: over 8 million schoolchildren
- Higher education: over 1.3 million students

- Medical facilities: 100,000 hospital beds (13 university hospital centers).
- Medical coverage:
  - Number of doctors : 1.3 doctors per 1000 inhabitants
  - Number of nurses : 2.23 nurses per 1000 inhabitants
  - Number of dentist : 0.31 Dentists per 1000 inhabitants

Main productive sectors

- **Oil**[5]**:**

Years	2011	2012	2013	2014	2015
In thousand Barrels per Day	1,161.6	1,199.8	1,483.8	1,525	1,586

- **Gas:** 75 million TEP.

Année	2011	2012	2013	2014	2015
In thousand TEP (tones of oil equivalent)	71.6	72.4	73.35	75	74.7

Sources: *OPEP*

- **Electricity**[6]**:** 2.698 DA Kilowatt per hourly rate (Sonelgaz price)

Cost of production factors

a) Minimum wage (salaire national minimum garantie - SNMG) :

Salary paid per month: 18,000 AD/per month (40 hours a week system).

b) Net average monthly salary :

Economic public sector (in DZD)

Managers..... 32,000.00
Supervisors.....21,500.00
Production workers.....17,000.00

Average gross salary by economic sector (in DZD)

Hydrocarbons and oil services..... 36,000.00
Industry 19,500.00
Building, public works, hydraulic.....16,000.00
Services 24,000.00
Transportation 22,000.00
Commerce 19,000.00

NB: it should be noted that the salaries exceeding the national guaranteed minimum salary are only given for reference purposes, as generally speaking, the salaries are set through negotiations between employers and unions as part of a collective bargaining agreement. Twenty collective agreements and twenty-four salary agreements for public and private economic sector were signed on 1 May 2010. Increased salaries is 23% for the public sector and 20% for the private sector.

5 Source: OPEP.
6 Ministère de l'énergie et des mines

c) Social security contributions and taxes

Taxes Social security contributions (base: payroll):

Sectors	Share of the employer	Share of the employee	Quota be borne by the fund company works	Total
Social security	11.5 (%)	1.5 (%)		13 (%)
Industrial accidents and illnesses	1.25 (%)	-		1.25 (%)
Retirement	11 (%)	6.75 (%)	0.5(%)	18.25 (%)
Unemployment insurance	1	0.5 (%)		1.5 (%)
Early retirement	0.25 (%)	0.25 (%)		0.5 (%)
Promotion of social housing (FNPOS)	0.5 (%)	-		0.5 (%)
Total	26 (%)	9 (%)		35 (%)

Overall income tax (OIT) :

Withholding taxes are calculated by applying the monthly-based OIT (overall income tax) scale to taxable amounts as stipulated in the case of salaries and withheld whenever a payment is made by the employer. The withholding rate is:

- 10% for performance bonuses, usually paid by employers but not on a monthly basis; for sums paid to persons who, in addition to their main occupation as salaried workers, engage in activities linked to teaching, research or surveillance, or fill in as contingent workers;

The application of the respective rates of 10% excludes the income tax abatement benefit provided to salaried workers and pensioners.

Overall income tax – progressive scale application (OIT) :

Fraction of taxable income (in AD)	Tax rate (in%)
Under 120,000	0
From 120,001 to 360,000	20
From 360,001 to 1,440,000	30
Over 1,440,000	35

NB: A 50% abatement is awarded to workers residing and working in the wilayas of the Grand Sud (South): Adrar, Illizi, Tamanrasset, Tindouf except for income from mining and hydrocarbon (except activities of distribution and marketing of oil and gas products).[7]

Salaries and wages, as well as related items, now benefit from a proportional abatement on the OIT/S equal to 40%, provided it ranges between a minimum of 12,000 AD/year and a maximum of 18,000 AD/year (between 1,000 AD/month and 1,500 AD/month), regardless of the taxpayer's family situation.

Mutual insurance: 100 to 150 AD/month.

7 Finance act law of 2013.

d) Supplementary payments :

Certain elements, such as bonuses and compensations, entering into the pay scale are calculated and paid by certain employers on the basis of a percentage that varies according to organization or economic sector:

- performance bonus;
- reporting pay (on-call duty);
- shift work allowance;
- transportation allowance;
- territorial allowance (South).

Tariffs

Energy

a) Electricity

Algeria's H.T. price per kW/h is still the lowest among countries of the Mediterranean Rim.

Supplier: SONELGAZ (EPIC — State-owned industrial and commercial enterprise)

Transport distribution network: 150,300 km

Connected to the electricity network: 97%.

b) Oil products

Supplier: National enterprise for the refining and distribution of oil products: NAFTAL.

Tariffs: Users bulk prices (AD) :

Products	Unit of Measure	Price at the pump
Premium gas	1	35.72
Regular gas	1	32.69
Gas-oil	1	20.42
LPG fuel	1	9.00
Unleaded super	1	35.33

c) Water

Supplier: A.D.E. (Algérienne des Eaux)

Water tariffs[8]:

Categories of consumers	Consumption bracket in m^3	Price (price by base DA/m^3)
Households	1 to 25	1.0 unit
	26 to 55	3.25 units
	56 to 82	5.5 units
	> 83	6.5 units
Local administrations and communities	single bracket	5.5 units
Tertiary sector	single bracket	5.5 units
Industry – Tourism	single bracket	6.5 units

8 Prices fixed by decree (Decree no. 05-13 dated 9 January 2005).

Territorial tariff zone	Price in DA
Algiers, Oran, Canstantine	6.30
Chlef	6.10
Ouragla	5.80

The scale of rates for different categories of users and slices of quarterly consumption is determined by multiplying the base price by the tariff coefficients.

- The bill also includes a sewage treatment tax representing about one third of the total amount.

Postal services and Telecommunications[9]

- Four service providers: Algérie Poste, Algérie Télécom and two private operators, OTA and Watania "Ooredoo".
- Postal establishments: 3.678 post offices until the end of 2015.
- Number of postal account (CCP): 18.08million until the end of 2014.
- Location of the GSM network subscriber base: 26.91 million at the end of 2015
- The mobile segment experienced the actual introduction of 4G mobile telecommunications services including 3 operators on the market have received license exploit.
- Situation of the park 3G subscribers: 16.32 million in December 2015.

Transportation

Tariffs are set according to the type of the merchandise being transported, the distance, itinerary, tonnage, transport zone, and whether it is in the North or the South Zone.

Rates and types of credit

Medium-term and long-term investment credits:

- Length of medium term: 2 to 7 years; below the rate charged for long-term loans. Long term, more than 7 years: free practice, the interest rate varies from 7 to 9%+ 19% VAT on interest.

Different types of credit

- Commercial discount credit;
- Overdraft facilities;
- Overdraft;
- Seasonal credit;
- Advances against receivables;
- Advances against securities;
- Advances against merchandise;
- Advances against government contracts;
- Prefinancing of export transactions;

9 Source Rapport « autorité de régulation de la poste et des télécommunications dossier de presse 27 Décembre 2014 ».

- Revolving prefinancing credits or specialized credits replaced, if need be, by foreign trade promissory notes (discounting of notes);
- Commitments by signature (or indirect help from the bank to the company cash);
- Deferred payment guarantees;
- Guarantees: Customs duty bills, clearing credits, temporary admissions, private bonded warehouses, etc.

The rediscount rate went from 13% in 1996 to 4% in 2010. It is at 3.5% in 2016[10].

VAT and customs duties on imported equipment:

VAT and customs duties on imported equipment	Common law	Ordinance 01-03 on Investments
Customs duties on equipment	0 to 30%	0%
VAT	0 to 19%	0% (exempt)

1.10 Economic policy: development and trend

After independence, the first task was to break with the social and economic organization that prevailed in the colonial era. First governmental systems had to be consolidated in order to proceed with economic transformation, which meant:

- nationalizing industrial enterprises and the banking sector;
- creating a national currency and establish an exchange control and foreign trade.

In 1969, a planning system was established and served as a basis for development plans over several years.

From 1966, Algeria's economy took a new direction, with the main concern of putting an end to the disintegration of the economy and its domination by foreign interests inherent in the country's colonial past.

The construction of a basic industry, land reform and independence with an outward-looking perspective were the three pillars of this pro-active policy.

The goal, beyond national control of wealth and resources, was to raise the high standard of living of the population by offering the maximum employment opportunities to Algerians.

A number of plans followed from 1967 to 1977.

For the hydrocarbon sector, an ambitious plan to upgrade all categories of energy resources (oil, condensate, natural gas) was launched in 1978. It was a 30-year program, whose cost exceeded $35 billion, an amount equal to four times the outstanding debt already contracted at the time of its launch. Upon the death of President Houari Boumediene (December 1978), the plan was abandoned.

By 1984, with dwindling foreign exchange earnings generated by oil exports, Algeria found it very difficult to make repayments. In 1986, with the collapse of oil prices, the vulnerability of the Algerian economy came clearly to the fore.

On October 5, 1988, popular uprisings broke out across all major cities and urban areas of the country. They claimed over 500 victims.

On October 5, 1988 definitively marked the end the old monolithic system; the political system

10 Source: Bank of Algeria, 2016.

established in 1962 having come to a grinding halt and the extreme dependence of the country vis-à-vis its sole energy source.

The country was obliged to reschedule its external debt, estimated at over 25 billion USD in the early 1990s. Rescheduling, coupled with a stringent structural adjustment plan (SAP) for social categories that were already vulnerable, allowed Algeria to reduce by half its annual debt service. The agreement signed in 1994 with the IMF and creditors required Algeria to pay each year until 2006 a significant amount of foreign currency from hydrocarbons export revenues. Hundreds of thousands of jobs were lost and the national average income dropped drastically.

After the implementation of SAP, the external debt dropped from 32.2 billion to 16 billion dollars in 2005 and was under 1.5 billion USD in 2012.

At the same time, Algeria has adopted a policy of liberalization with the adoption of a market economy and the establishment of a new legislative package designed to support domestic private investors and enable the call for capital foreigners. Several laws have been enacted or amended to this effect:

- Ordinance on Money and Credit;
- The Decree establishing a stock market;
- Ordinance on investment development;
- Ordinance on the management of capital requirements of the State;
- Ordinance on the privatization of public enterprises;
- Law on Competition.

To lay down the changes imposed by the SAP and Algeria's new economic direction, "second generation" reforms were implemented in order to enhance economic development. These reforms included:

Integration into the global economy

Consolidated in order to alleviated dependence on hydrocarbons and improve the standard of living. The Association Agreement with the EU and accession to the WTO are priorities. Support Program for Economic Recovery (PSRE) 2001-2004 contained the tariff reforms to promote the full opening of foreign trade.

Promoting investment and business environment

Articulated around SMEs considered as sources of growth and jobs. The regulatory and institutional framework (regulation on the investment development, competition, standardization, metrology, industrial property policies) and the financing of SMEs are particularly targeted.

Public sector reform / privatization

It's the Ministry of Industry, Small and Middle Enterprise (SME), and Investment Promotion who is responsible for developing the strategy, the opening program of capital and privatization of public enterprises and ensures their implementation.

Banking and financial reform

It is totally clean banks recapitalized, with upgrading, improvement and modernization of the payments system and supervision.

Development of infrastructure and transport

Basic infrastructure in Algeria corresponds to the size of the territory. Their development will be an asset to the economy.

The railway network covers a large part of the country. The age of the fleet and infrastructure required an upgrade and development of long distance traffic and the restructuring of the national company (SNTF).

The airport infrastructure includes 35 airports. The airport of Algiers with a very large capacity, is equipped with the most modern equipment and has been operational since 2006. A new terminal at Algiers International Airport with 10 million passengers per year, is under construction.

On the maritime front, Algeria has 45 main ports. The port of Algiers receives over 30% of goods imported into Algeria. The management of the terminal and the one in Djendjen (eastern Algeria) is assigned to a specialized international company. To cope with the increased congestion at the port of Algiers, authorities have banned the reception of goods that have not been transported in containers at the port of Algiers. A new modern port with a processing capacity of 6.5 million containers and 28 million tonnes of goods is under construction in the Cherchell region west of Algiers.

Modernization of Public Finance

In order to combat fraud and increase tax efficiency, tax administration, carrying special status, is being reorganized and modernized. It is in this context that the Directorate of Large Enterprises (DGE) has been established. The Directorate has been operational since January 2006.

Agriculture / food security

The objective is to tackle the low production efficiency and reduce Algeria's current high dependence on imports.

The program seeks clarification of tenure, a legal mechanism adapted to consolidate the position of the farmer/tenant, the extension of the agricultural area by the concession, the conversion of crops, increased production, sustainable management of natural resources and the development of fisheries.

Water - Environment - Water Resources

The objective is to improve service and reduce water wastage by an effort to mobilize resources. It also includes reorganizing and upgrading sector operators.

Private participation in management will enter into the equation at a later stage. Environmental policy highlights the economic management of resources, soil and energy, particularly through resource pricing and tax incentives.

Water, a vital resource that has becoming increasingly rare, is recognized as a social and economic resource.

Never has it attracted as much attention from the government as now, since repeated forecasts of possible shortages in the near future have fuelled a greater awareness of the problem of managing water resources on the part of Algerian authorities.

Mobilized water resources come to only about 43% of usable volume approximately 12 billion cubic meters.

Available resources primarily come from 43 dams, impounded between 1952 and 1995. But, for lack of maintenance, these works are now facing a high silting rate.

Potential mobilizable resources in Algeria, estimated at 19 billion cubic meters in total, are relatively low. To counter this serious problem with possibly catastrophic consequences, the government has devoted extraordinary financing to strengthen the storage and distribution infrastructure and improve the daily per capita allocation, currently only 170 cubic meters per capita per year or an aggregate demand of about 5 billion m^3/year. The existing dam network already allows for secure supplies of drinking water.

An integrated approach to water management has been adopted and an action program and large-scale development launched. To better manage this resource, a legislative and regulatory framework has led to a genuine "water saving" policy (2010 Finance Law for example). 20 new dams are being built.

Telecommunications

The telecommunications sector has undergone considerable changes. The law of July 2000 abolished the monopoly on this critical sector, separating postal operations from telecommunications. This in turn provided an investment opportunity for private and foreign operators. Moreover, a post and telecommunications regulator (ARPT), which monitors compliance with regulations and ensures free competition among operators, was created.

The Law of 5 August 2000 on Telecommunications provides three plans for investment in this sector: license, authorization and simple statement. This led to the intervention of two new operators, bringing about a real phone revolution in Algeria.

Mining - Energy - Oil

In the Mediterranean, Algeria is the largest producer and exporter of oil and natural gas. Algeria is also the largest producer of LNG in the Mediterranean.

With regard, in particular, to natural gas, with 50% in reserves, 48% of total output and an impressive 94% export rate .

Algeria is equipped with major infrastructure assets and has great production capacity. This sector has experienced important progress since the adoption of Law No. 91-21 of December 4, 1991, amending Law No. 86-14 on Hydrocarbons and thus confirming the opening of this sector to foreign investment. This innovative approach has given a genuine boost to partnerships.

More than 60 exploration contracts have been signed since 1992 between Sonatrach, Algeria's national company, and foreign oil companies and excluding the latest tenders and contract awards. Implemented in the exploration sector as production sharing contracts, partnerships are not limited to this sector, extending downstream with the creation of mixed enterprises in the service, maintenance and engineering sectors.

The liberalization of the hydrocarbon sector, which extended to downstream activities in the oil sector, has been reinforced by the promulgation of Law No. 05-07 on hydrocarbons of April 28, 2005. Although it was amended in 2006, this Law confirms the abolition of the State's operating monopoly in this sector, thus making Sonatrach an economic and commercial enterprise completely stripped of the jurisdictional prerogatives it had enjoyed until then, which were restored to the State and delegated to agencies created specifically for that purpose.

The year 2002 was marked by the approval and promulgation of the Electricity and Gas Distribution Law. The law, which establishes a system of licenses with regard to the distribution of electricity and gas, also allows private investments in the production of electricity and the sale of energy. This sector is still dominated by the government-owned conglomerate, Sonelgaz, which provides electricity to nearly 5 million clients and natural gas to 1.5 million clients. Its production capacity amounts to 6,000 megawatts.

In the field of renewable energies and in addition to the construction of a big solar power plant, the objective for 2030 is the production of 22,000 megawatts from renewable energies.

In the mining sector, there is a discrepancy between Algeria's mining potential and actual results. In order to spur the interest of investors in the exploitation of these resources, Algeria adopted a Mining Law on July 3, 2001 encouraging investments from both Algerians and foreigners. On February 2014, the new mining law was published abrogated the old one.

Private sector SMEs/SMIs

The growth of Algeria's private sector over the last two decades is revealing with regard to the change of direction and structure undergone by the Algerian economy.

Private enterprise accounts for nearly 75% of GDP, not including hydrocarbons, and 55% of the value added. The number of SMEs/SMIs keeps growing, in spite of difficulties linked to the business environment, banking and administrative red tape in particular.

In order to promote this sector, henceforth considered a priority as a major economic driver and a producer of added value, the framework law pertaining to the promotion of SMEs/SMIs was promulgated on December 12, 2001. This act is based on two main pillars:

- the definition of small and medium-sized enterprises;
- support and aid measures to promote SMEs.

In the wake of the law, business incubators and centers for facilitating establishment procedures, as well as providing information, direction and assistance to businesses were created, along with a guarantee fund for SMEs-SMIs (FGAR) and a fund guaranteeing credits to SMEs/SMIs. An ambitious program of assistance for the upgrading of 20,000 SMEs has been launched in the 2011-2015 program.

The banking sector

Before launching the far-reaching reforms of the Algerian economy some ten years ago, Algeria's banking system functioned and evolved as a privileged instrument of the public economy and centralized planning. Back then, banking activity focused exclusively on facilitating the operations of public enterprises, which represented the crucial component of Algeria's economic potential.

Starting with Law No. 86-12 pertaining to the banking and credit system, and since the promulgation of the Currency and Credit Law in 1990 in particular, the Algerian banking system has begun to regain some of its prestige. Since the adoption of this law, a new banking and financial environment has been created. It would turn out to be much more compatible with liberalizing the economy from the constraining administrative guardianship it had been under, by making the Bank of Algeria the country's true monetary authority. The Law confirmed the universal character of the Algerian banking and financial system by opening up the sector to both domestic and foreign banks and financial institutions.

This expansion of invitations to tender for banking services allowing foreign banks and financial institutions to establish a presence or be represented in Algeria, and is also accompanied by a concerted effort to modernize the system. Currently underway, this process aims to raise the level of access to banking — still very low - of the Algerian economy, initiating smoother interbanking operations by improving secure communications networks and introducing a wide array of modern means of payment.

Specifically, the beginning of this modernization-stabilization process translates into:

- the recapitalization of the public banks and the stabilization of their commitment portfolios;
- the launching of interbanking projects (a new array of products, international payment cards, data transmission networks, monetics);
- the beginning of wider coverage for the needs of customers, households and individuals with the development of real estate credit and, consumer credit.
- the creation of private equity firms.

Information and communications technologies (ICT)

In these two sectors, Algeria currently appears to be the biggest market in the Euro-Mediterranean region. Sizeable equipment programs have been initiated: more than 12 million mobile telephone lines and 3 million additional landlines. Several hundred thousand computers have been slated to equip thousands of educational establishments, cybercafés, banks, administrations, local communities and tens of thousands of households.

Growth in the application of computer science and Internet in Algeria has been considerable. The interest in NICT is a real social phenomenon. The International Telecommunications Union revealed in 2006 that there were close to 4.6 million Internet users in Algeria, with almost 400,000 subscribers. Algerian websites went from 10 in 1997 to over 4.500, including over a thousand currently under construction. The authorization system for opening cybercafés was abolished in 2000, replaced by a simple registration.

By the end of 2010, there were over 11,000 cyberspaces. The Ministry of Telecommunications planned the creation of a platform for an additional 100,000 Internet subscriptions from 2003. The e-Algerie program has been created to absorb the lag in this sector, with the planned launch by the end of 2013 of the 3G+.

On the legislative and regulatory fronts, a decree was promulgated in October 2000 authorizing and liberalizing the operation of Internet services. Foreign investors specializing in Internet ventures are now authorized to set up operations in Algeria through companies incorporated under Algerian law.

Health – health infrastructure

Since 1962, Algeria has added a sizeable number of healthcare structures, accumulating a global capacity of almost 100,000 beds. A sustained effort to train qualified medical and paramedical personnel had a very positive influence on this development of the infrastructure. Algeria went from 258 doctors and specialists in 1962 to more than 52,000 in 2010. The overall coverage rate of the population by medical and paramedical personnel has also evolved positively, reaching a respectable rate. In 2005, the rate was of one 1.32 doctors for every 1,000 inhabitants[11].

The healthcare sector has come up against serious challenges and problems, particularly in relation to the modernization of the reception and care of patients, but has benefited from complementary budget assistance and adequate reorganization programs launched in 2002. Within 40 years, the life expectancy of Algerians has increased by 26 years. During the same time span, women gained over 30 years of life expectancy.

Agriculture – Food processing – Fisheries

For over two decades of development during which priority was given to Algeria's industrialization, agriculture was not given adequate attention. This translated into a series of substandard performances, producing a lackluster situation in the sector and leading to a significant dependence on imports in order to meet ever-growing needs with regard to cereals, durum wheat, soft wheat, milk, sugar, farm inputs, etc.

Algeria is one of the largest importers of durum wheat, soft wheat, milk powder and products and agricultural seeds in the world.

In order to stimulate a sluggish national production handicapped by a variety of factors (such as the legal status of land and old colonial domains, and a low level of mechanization), which on average covers only 30% of the population's consumption, the agricultural sector has now been made a national priority.

A national plan for agricultural development (PNDA) was started with the goal of creating all the technical, economic, organizational and social conditions necessary to give the agricultural sector a more dynamic role in Algeria's growth, as well as in its social and economic development. The PNDA generates and favors those elements that promote national economic integration, beginning with interactions between the agricultural production sector and the industrial transformation sector.

Forestation programs, land development efforts through a system of licenses, protection of the steppe and development of husbandry and agricultural production are the main features of this plan.

Four years after the beginning of its implementation, the PNDA has shown encouraging results. In addition to the creation of almost 200,000 jobs and a preliminary modernization of agricultural exploitation and production, tangible results have been achieved:

New records have been posted with regard to some productions:

- dates, tomatoes, potatoes, eggs, white meat, milk, fruits and vegetables;

11 Source: international Statistics.

- record investments have been made in certain segments of the food processing sector (flour mills, semolina mills, oil refining plants, sugar refining plants, breweries, dairies, canneries etc.).

Similar efforts are being devoted in the fisheries sector to make it more dynamic.

In addition to the promulgation in 2000 of a law pertaining to fishing and aquaculture, a plan geared at modernizing the fisheries sector is currently being implemented.

The goal is to develop productive activities that generate jobs and ultimately increase the supply of fish products by raising the national food ratio from less than 3 kg/a year per capita in 1997 to more than 5 kg in 2005.

At the moment, production amounts to about 130,000 tons. The fishing area, estimated at 9.5 million ha, remains largely unexploited; the recovery program now underway contains provisions calling for an additional production of 30,000 tons of fish and the creation of 10,000 jobs. These priorities are accompanied by the implementation of an action program pertaining to the organization of production activities, the organization of the profession and the distribution networks, both in legal terms and in terms of the necessary framework and incentives such as tax relief measures for rent paid under lease contracts covering materials and equipment produced in Algeria (Supplementary Finance Law for 2009).

Economic public sector organization

The Algerian economy is characterized by the existence of a relatively large state economic sector.

The economic reforms currently underway aim to validate the market economy and establish the corporation as an economic actor with complete autonomy from State support on the one hand, and implement a system that will enable the State to devote itself to its role as strategic regulator and authority, on the other.

In order to accelerate this reform process and enable the entities making up the state economic sector to adapt to the new realities, both new public sector organizations and new regulations were put in place.

This reorganization made it possible to transform state-owned economic enterprises into joint stock companies and to end the State's supervision, which is now exercised by trustees (beginning with equity funds, followed by holdings), to whom all shareholder attributes have been assigned, and by portfolio management firms (SGP), numbering 28, now in charge of managing government assets held by state-owned economic enterprises, and by 18 group enterprises, 11 of which are financial institutions enjoying a dominant position in the banking and insurance sectors in particular.

Heavily indebted and lacking structure, many of these state-owned enterprises are now eligible for privatization; an Ordinance pertaining to privatizations was enacted in August 2001, which should have clarified the regulatory framework and expanding privatization to all competitive segments.

Since 2003, 192 total privatization operations were launched. In 2007, 68 total privatizations were completed, 36 in 2008[12].

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12 Source: Industry and Investment Promotion Ministry (Ministère de l'industrie et de la promotion des investissements – MIPI), figures given in the Economic Forum, "the privatization process in Algeria, Strategy, Assessment and Perspectives", organized by the MIPI, September 24 2008.

Real estate – Public works

The housing crisis in Algeria has been an ongoing problem and at the root of intense social frustration. This problem manifests itself in a variety of ways, in spite of multiple efforts and programs launched in the hope of reducing its effects. The current deficit, based on an occupancy rate of five (05) people per housing unit amounts to approximately 1,200,000 housing units (2002 estimate).

A more realistic occupancy rate objective of 6 people per unit translates into a need for 800,000 housing units.

Paradoxically, over the past ten years the State has made quite substantial credits available to curb these deficits. Moreover, the implementation of a mortgage market has contributed to the creation of the real estate credit necessary to give real estate development a genuine boost. Real estate development now benefits from incentives and guarantees.

When it comes to carrying out programs such as "social housing," "participatory social housing," "housing support" and "lease-purchase," the deficiencies associated with the actual implementation surface as obstacles.

Algeria's housing stock increased from 5,416,331 units in 2000 to 8 040 932 units in 2013 with over 20% unoccupied. This park is segmented primarily apartments, Villas, traditional houses.

Individual houses dominate the market with a share of 60% followed by 14% of the buildings and traditional houses with 14%.

Algeria has announced a 2015-2019 five-year plan of public investment loan of 200 billion euros, said dense program and benefit all sectors in all regions of the country.

In this process, measures have been taken in the Supplementary Finance Law for 2009 and the 2010 Finance Law to promote the development of this sector, especially with improved interest rates by the Treasury on loans granted by banks and financial institutions for collective housing acquisition. The 2010 Finance Law completes these facilities by setting up a relief fund interest rates for the acquisition or construction of housing as well as property developers in the programs supported by the government.

Land

Control over the land, a non-renewable resource, dictates the way in which housing, equipment and industrial programs evolve. Since independence, efforts have been waged to give Algeria an adequate legislative and regulatory structure, with the intent of ensuring that territorial organization is in step with the development policy.

It was from this perspective that legal texts organized land management procedures whose purpose was to take stock of individual ownership over privately-owned land ("Melk") and collectively-owned land ("Arch").

According to the public land law currently in force, there are two legal categories of public land: that of the public domain and that of the private domain of the State.

The public domain is governed by the principle of inalienability. This does not preclude the industrial or commercial exploitation of public domain land, as private sector activities conducted by way of concessions may take place there.

There is no incompatibility between the public domain status and the private nature of the rules governing the management of industrial and commercial services.

Over the past few years the issue of access to land has been at the forefront of the debate over the revival of investment. However, because of its non-availability and the conditions

under which it is managed, land is often presented as an obstacle to investment.

A new framework law addressing this concern was promulgated in 2006. This Law confirms the concession formula for a period of 20 years with the possibility of renewal, convertible into assignment rights when the project pertains to tourism or the service industry, subject to the investment projects involving industrial real estate being actually carried out. The implementation of a centralized data bank at the Ministry of Participation and Promotion of Investment (current Ministry of Industry, SMEs and investment promotion) was initiated. An agency, ANIREF, was created in 2007 to manage the industrial property assets. In 2011, ANIREF was responsible for creating 39 industrial zones to produce 9,000 hectares of industrial land.

In 2008, legislation governing land changed. Two texts were issued: Law No. 08-14 of 20 July, 2008 (amending and supplementing Law No. 90-30 of 1st December 1990) on estate law, and Ordinance 08-04 dated 1 September 2008, relative to land in the private domain of the State for the realization of investment[13] projects. The latter makes the concession the only mode of access and repealing any other text contrary to these provisions. The text sets out the terms and conditions for concession of land in the private domain of the State meant for investment projects. The concession is granted for a minimum period of 33 years, renewable, and a maximum of 99 years according to the type of public auction, open, restricted or by mutual agreement.

1.11 The legal environment for business

Algerian corporate law is, to a large extent, based on civil law. The supplemented and/or amended economic legislation ensures a balance between both freedom of trade and the necessary regulatory framework thus responding to universal, legal principles and standards. Free trade requires rules of organization and the establishment of commercial companies, as does free competition or free movement of goods, the supervision of funds transfers and the enforcement of antitrust laws. Furthermore, Algeria has acceded to various international conventions such as the Berne Convention for the Protection of Literary and Artistic ownership, the Paris Convention for the Protection of Industrial Property, among others. Adapting rules to both local and international economic environment is marked by a profusion of texts. Rules governing the critical investment sectors should be noted as follows:

Commercial activities

The legislative and regulatory framework to exercise commercial activities includes:

- Law No. 04-08 of 14 August 2004, amended and completed[14], on conditions for conducting business that provides inter alia, the basic rules on registration with the trade register;
- Law n ° 04-02 of 23 June 2004 laying down the rules applicable to commercial practices in order to regulate the professions and business activities that require special regulation;
- Executive Decree No. 03-453 of 1 December 2003 on trade registration.

The conditions of registration with the trade registry, and those relating to exercising commercial activities and foreign merchant status are described in more detail in Chapter 4 of this Guide.

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13 See Chapter 19.
14 Ordinance 10-01 of 26 august 2010 and Law n° 13-06 of August 14, 2004.

Foreign trade

The regulatory framework of foreign trade has undergone transformations that have gradually oriented the Algerian economy towards greater openness.

In 1991, the abolition of state monopoly on foreign trade led to:

- the abolition of administrative procedures regulating foreign trade (AGI, licenses, program imports and exports) and to,
- Customs tariffs revisions.

The dismantling of state monopoly on foreign trade was finally consecrated in 1994, under the structural adjustment program, allowing the free convertibility of the Algerian dinar for commercial transactions and free access to the currency for all economic operators.

Competition and market transparency

The Ordinance was enacted in 2003 (Ord. No. 03-03, July 19, 2003), repealing Ordinance No. 95-06 of January 25, 1995. This new text sets the conditions for competition on the market, prevents and penalizes restrictive practices and control economic concentrations. In June 2008, a new law on competition amended and supplemented the afore-mentioned 2003 order. This Law applies to production, distribution and services.

On prices, the new Law provides for the abolition of prices controls on goods and services that are freely determined by competition. This Ordinance allows, to this effect, the Competition Council to exercise its powers fully.

Apart from the above rules and Commercial Code and Civil Code[15], Algerian business law is framed by specific and / or related legislation for each area of activity, such as foreign direct investment in Algeria, the establishment of foreign traders, exchange regulations, insurance, etc. These laws will be discussed in subsequent chapters.

15 The respective governing texts are Ordinance No. 75-59 of September 26, 1975 on the Commercial Code, as amended and supplemented, and Ordinance 75-58 of September 26, 1975 on the Civil Code.

CHAPTER 2

FOREIGN INVESTMENT IN ALGERIA

2.1 Legal framework

2.1.1 Definition of investment

The scheme applicable to investments made in economic activities involving the manufacturing of goods and services is governed by the provisions of the Law n° 16-09 dated on 3 August 2016 relating to Investment Promotion[16] (in this Chapter referred to as the "Law"). This law encompasses both domestic and foreign investments and the activities falling within its scope are those including the manufacturing of goods and services, while excluding the resale of such goods and services in the same condition.

Under this Law, the following matters are considered as investments:

- Acquisitions of assets which fall within the framework of the setting-up of new activities or those which are likely to expand manufacturing capacity and to improve or upgrade the production tool;
- Taking stake in companies' share capital (in the form of contributions in kind or in cash);

Goods which are subject to Call Option exercised by the lessee using international leasing, are considered as investments, provided that they are brought in like-new condition into the national territory.

Activity sectors that are eligible under the provisions relating to the Development of Investment, such as cultural activities are numerous. The cultural activities, including film production and book publishing have been declared eligible since 2010[17].

2.1.2 Freedom of investment and Algerian partnerships

2.1.2.1 Freedom to invest

The Article 3 of the above mentioned Law provides that investments shall be made in accordance with the laws and regulations in force, in particular those relating to environmental protection, regulated activities and professions as well as those that are generally related to economic activities.

The word "regulated activities" refers to all activities governed by specific rules that are organized and set out by the laws and regulations. In accordance with the Executive Decree 15-234 dated on 29 August 2015 laying down the conditions and procedures for exercising

16 The Law n° 16-09 repeals Ordinance n° 01-03 relating to investment development, except for three (3) articles.

17 These new sectors have been stated to be eligible under provisions of Ordinance, pursuant to the Finance Law for the year 2010.

regulated activities and professions that are subject to registration with Trade Register, any activity or profession subject to registration with trade register, and requiring, by its nature or purpose, that some particular conditions must be fulfilled in order to authorize its performance, is considered as regulated activity or profession. Furthermore, public health and environment are also considered as regulated activities or professions with regard to their specific features and whose performance is likely to be directly prejudicial to public order concerns or interests, property and personal security as well as to the preservation of natural resources and public goods that make out the national heritage.

2.1.2.2 Partnership

The Finance Law for 2016 laid down the rules of foreign investment monitoring. These rules broadly defined partnership as a single procedure for any foreign investment to be achieved. Pursuant to Article 66 of the above Finance Law, "the performance by foreign investors of activities dealing with the manufacturing of goods and services and importation for resale in state activities, must be subject to the incorporation of an Algerian law company in which 51% at least of share capital is held by resident national shareholders".

Concerning banking activities, the rule of partnership is also required since the promulgation of Ordinance N.10-04 of August 26, 2010 amending and completing Ordinance No.°03-12 of August 26, 2003 on Currency and Credit. According to this Ordinance the foreign shareholding in banks can be permitted only in the frame of a partnership where national resident ownership represents at least 51% of the capital.

Here again national ownership can be constituted by the addition of several shareholders. In this particular sector, the State holds a share in the capital of banks and financial institutions with private capital. Thus, the State is represented in the social organs, without any voting right.

The new regulations governing foreign investment implementation with respect to shareholding may be applied to foreign investments prior to their enactment in specific cases as provided for by the legislator. In fact, any change to registration with Trade Register, as provided for in Article 66 of the above mentioned Law, will result in the company's compliance with the rules governing share capital distribution as previously stated.

However, this obligation shall not apply to changes that entail:

- Change to the company's share capital (increase or decrease) that doesn't result in a change to the proportions of the share capital distribution, as indicated above.
- Transfer or exchange of qualifying shares between former and new directors, as set forth in Article 619 of the Commercial Code, provided that the values of such shares shall not exceed 1% of the company's share capital.
- Removal of any activity or addition of any related activity;
- Change to activity as a result of modification in the classification of economic activities;
- Appointment of company's Director or Officers
- Change to company's registered office address.

Rules governing capital distribution are also laid down and are applied to partnership operations between Public Economic Enterprises (EPE) and resident national shareholding. Thus, Article

62 of the Finance law for 2016 contemplated that "in the event of capital opened up to resident national shareholding, the Economic Public Enterprises (EPE) are required to hold at least 34% of shares or equities ".

2.1.2.3 Right of First Refusal of the State

The State and Public Economic Enterprises (EPE) have a Right of First Refusal on all transfers dealing with foreign holdings or in favor of foreign shareholders (Article 30 of the Law).

This right extends to transfers equal to, or in excess of 10%, which are made outside the Algerian territory by companies holding equities or shares in Algerian companies having already benefited from advantages or facilities following their incorporation. These companies are required to notify the Council for State Participation (CPE) of such transfers.

Failing to comply with such notification procedure as stated above or in case of any objection reasonably made by the Council for State Participation (CPE) within one (1) month from the receipt of such transfer notice, the State shall be entitled to a Right of First Refusal on any share capital portion corresponding to share capital which is subject to foreign transfer, but shall not exceed transferee's share in the capital of the Algerian company.

* With regard to transfers made within the national territory:

The State may waive its Right of First Refusal. Therefore, any transfer shall be subject, under penalty of nullity, to application for a waiver of Right of First refusal issued by the relevant departments of the Ministry in Charge of Industry.

Therefore, it lies within the Notary entitled to execute the Deed of Transfer, to submit the application for waiver with such the relevant Departments. The price and conditions for share transfers must be set out in the Deed of Transfer. However, in case Right of First Refusal is exercised, the transfer pricing shall be determined on the basis of a relevant expertise.

The waiver shall be granted to the Notary within a maximum period of three months from the date on which the application is filed. The State shall maintain its Right of First Refusal, within a one-year period, if it considers that the offer price is insufficient.

Failure by the relevant Departments to reply within the period of three months shall be regarded as a waiver of the Right of First Refusal, except where the transaction amount exceeds that one which has been enacted by virtue of an Order issued by the Minister in charge of Industry. The same applies in case such transaction involves any company's shares of equities performing any of the regulated activities set out by such Order which defines the procedures for seeking expertise as well as the Certificate model. However, the implementation instruments are still pending.

With regard to total or partial transfers outside the country of equities or shares of companies holding interests in any Algerian company:

Procedures for shares or equities transfers, equal to, or in excess of 10% of foreign company holding interests in any Algerian company, when it has already benefited from advantages or facilities following their setting-up, are subject to the preliminary legal information process of the Council for State Participation (CPE).

However, companies which have not benefited from any advantage shall not be subject to preliminary information process of the CPE. As far as sovereignty is concerned, the Algerian

State or Public Enterprises will preserve their rights to redeem the equities or shares of the subsidiary company involved with direct or indirect transfer.

Procedure for exercising the Right of First Refusal will be set out through regulatory texts.

2.1.3 Guarantees - Protections - Agreements concluded by Algeria

The Investment Law lays down the principle of providing equitable treatment standard in investment together with protection and guarantees, in compliance with the provisions of International Law.

As regards equality of treatment, this principle it set out by Article 14, paragraph 1, which provides that " subject to bilateral, regional and multilateral agreements entered into by the Algerian State, foreign natural and legal persons shall receive fair and equitable treatment in respect of the rights and obligations attached to their investments".

Algeria has already entered into 45 bilateral Agreements aiming at protecting investments, besides other multilateral agreements related to the same subject-matter.

Countries	Date of signature	Date of ratification	Validity Period	Official Algerian Gazette Ref
South Africa	09/242000	07/23/2001	10 years	N°41-2001
Germany	03/11/1996	10/07/2000	10 years	N°58-2000
Argentina	10/04/2000	11/13/2001	10 years	N°69-2001
Austria	06/17/2003	10/10/2004	10 years	N°65-2004
Bahrain	06/11/2000	02/08/2003	10 years	N°10-2003
Bulgaria	10/25/1998	04/07/2002	15 years	N°25-2002
China	10/20/1996	11/25/2002	10 years	N°77-2002
Swiss Federal Council	11/30/2004	06/23/2005	15 years	N°45-2005
Korea	10/12/1999	07/23/2001	20 years	N°40-2001
Egypt	03/29/1997	10/11/1998	10 years	N°76-1998
United Arab Emirates	04/24/2001	06/22/2002	20 years	N°45-2002
United States of America	06/22/1990	10/17/1990	20 years	N°45-1990
Ethiopia	05/27/2002	03/17/2003	10 years	N°19-2003
Finland	01/13/2005	12/11/2006	20 years	N°06-469
France	02/13/1993	01/02/1994	10 years	N°01-1994
Indonesia	03/21/2000	06/22/2002	10 years	N°45-2002
Iran	10/19/2003	02/26/2005	10 years	N°15-2005
Italy	05/18/1991	10/05/1991	10 years	N°46-1991
Kuwait	09/30/2001	10/23/2003	20 years	N°66-003
Libya	08/06/2001	05/05/2003	10 years	N°33-2003
Malaysia	01/27/2000	07/23/2001	10 years	N°42-2001
Mali	07/11/1996	12/27/1998	10 years	N°97-1998
Mauritania	01/06/2008	11/05/2008	10 years	N°65-2008

Mozambique	12/12/1998	07/23/2001	10 years	N°40-2001
Niger	03/16/1998	08/22/2000	10 years	N°52-2000
Nigeria	01/14/2002	03/03/2003	10 years	N°16-2003
Arab countries	07/10/1995	10/07/1995	05 years	N°59-1995
Poland	09/24/2015	05/28/2005	10 years	N°37-2005
Portugal	09/15/2004	05/28/2005	10 years	N°37-2005
Qatar	10/24/1996	06/23/1997	10 years	N°43-1997
Hellenic Republic	02/20/2000	07/23/2001	10 years	N°41-2001
Czech Republic	09/22/2000	04/07/2002	10 years	N°25-2002
Romania	06/28/1994	10/22/1994	10 years	N°69-1994
Kingdom of Spain	12/23/1994	03/25/1995	10 years	N°23-199
Denmark	01/25/1999	12/30/2003	10 years	N°02-2004
Jordan	08/01/1996	04/05/1997	10 years	N°20-1997
Kingdom of Sweden	02/15/2003	12/29/2004	20 years	N°84-2004
Russia	03/10/2006	04/03/2006	10 years	N°21-2006
Serbia	02/13/2012	09/30/2013	10 years	N°13-334
Sudan	10/24/2001	03/17/2003	10 years	N°20-2003
Switzerland	11/30/2004	06/23/2005	15 years	N°45-2005
Sultanate of Oman	04/09/2000	06/22/2002	10 years	N°44-2002
Syria	09/14/1997	12/27/1998	10 years	N°97-1998
Belgium-Luxembourg Economic Union	04/24/1991	10/05/1991	10 years	N°46-1991
Arab Maghreb Union	07/23/1990	12/22/1990		N°06-1991
Tunisia	02/16/2006	11/14/2006	10 years	N°73-2006
Yemen	11/25/1999	07/23/2001	10 years	N°42-2001

It should be noted primarily that a general provision has been set out, stipulating that once approved, foreign investment scheme shall be deemed intangible.

Under Article 22 of the Law, revisions or repeals likely to occur in the future, do not apply to investments that have been implemented, unless expressly requested from the Investor.

Under Article 23 of the Law, requisition through administrative means is only possible if provided by law. However, it gives right to fair and equitable compensation.

Another protection of special interest to foreign investors (i.e. protection that they have striven to request since the 1970s) is the referral to arbitration of any dispute arising between them and the Algerian State.

The general principle consists in conferring jurisdiction on local courts, since disputes relating to investments will arise within the territory of the host country and knowing that Algerian rules on jurisdictions automatically appoint the Algerian Courts. However, since the Legislative Decree N° 93-09 of April 25, 1993 was enacted, the Algerian State was henceforth authorized to include arbitration clauses in its international agreements (whether through ad hoc arbitration or institutional arbitration). Prior to the enactment of such Decree, Algeria has

acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10 June 1958 (Law n° 88-18 dated on 18 July 1988).

Subsequent to an Arbitration Law (actually, the first law on international arbitration since Independence), Algeria has ratified the Convention on the Settlement of Investment disputes between States and Nationals of Other States (ICSID) dated on 18 June 1965 (Ordinance N° 95-04 dated on January 21, 1995) as well as the Convention on the creation of the Multilateral Investment Guarantee Agency (MIGA) in September 1986 which came into effect in 1988 (Ordinance No. 95-05 dated on January 21, 1995).

2.1.4 Transfer of Capital

2.1.4.1 Principle

Article 25 of the Law provides that: " Investments made by contributing to capital in cash payments imported through banking channels and denominated in a freely convertible currency, regularly quoted by the Bank of Algeria and assigned to the latter, and which amount is equal to or in excess of, minimum thresholds determined according to the overall project cost, under the terms and arrangements provided by law, shall benefit from the transfer guarantee of the capital invested and any income generated " .

This guarantee also extends to actual net proceeds from the disposal or liquidation of foreign investments, even if this amount is in excess of the capital invested.

Reinvestments in capital of profits and dividends reported to be transferrable, pursuant to the applicable laws and regulations in force, are approved as external contributions.

Accordingly, external contributions in kind made in accordance with regulation in force, shall benefit from the transfer guarantee provided for in Article 25 of the Law, subject to an assessment made in compliance with the rules and procedure for Companies' incorporation.

The situation is much clearer since the adoption of the Bank of Algeria Regulation N° 05-03 dated on 6 June 2005 relating to foreign investments.

This regulation defines the procedure for transferring dividends, profits and actual net proceeds from the disposal or liquidation of foreign investments made under provisions of the Law on Investment, whereas a prior transfer authorization was supposed to be granted by the Bank of Algeria, in compliance with Regulation No. 2000-03. This prerogative, as provided for by Regulation n° 05-03, was conferred to banks and accredited establishments which, since its adoption, were bound by the obligation to " promptly carry out the transfer of dividends, profits and proceeds from the transfer of foreign investments along with foreign Director's fees and remunerations " .

The Regulation n° 05-03 provides that profits and dividends accrued from mixed investments (nationals and foreigners) in eligible activities, are transferable at a value equal to foreign contribution in company's share capital (duly ascertained).

As regards the disposal and liquidation of investment, the transfer shall be made at a value equal to the transfer price or net liquidation surplus accruing to foreign investor.

Concerning supervision procedure, the Bank of Algeria reserves the right to undertake ex-post control of transfers made by primary banks.

2.1.4.2 Transfer procedure

The Instruction n° 01-09 dated on 15 February 2009 relating to the package of required documents to be submitted in support of the application for the transfer of income and proceeds from disposal of foreign investments, defines the contents for the record of transferring profits, dividends, Directors' fees and remunerations, actual net proceeds from the disposal or liquidation of foreign investments. For each kind of transfer, this Instruction provides for a list of the supporting documents.

Additionally, with regard to the transfer of the proceeds from the disposal or liquidation of non-residents shares, in whole or in part, the Instruction also provides that transfer should be made at the market value of the assets transferred, exclusive of taxes. Furthermore, this Instruction prohibits the transfer of advance payments on profits or dividends to any shareholder, and confirms that activities dealing with the resale of goods in the same condition are not eligible to transfer, unless significant efforts of investment are made.

Note: The Article 25 of the Law provides that in order to benefit from the transfer guarantee of invested capital and income accrued thereof, the total amount of each investment project must be equal to, or in excess of, minimum thresholds which should be based on the overall project cost, in compliance with the terms and arrangements provided by law.

2.1.4.3 Investment financing

Except for capital, investment financing cannot be made through foreign loans.

In this context, the Executive Decree n°13-320 dated on 26 September 2013 provides an exception which lays down the arrangements for the resort to necessary financing for achieving direct foreign investments or in partnership and authorizes the resort to foreign investment by way of partners current account contribution, but under some conditions.

Furthermore, the resort to external financing necessary for Algerian companies to achieve strategic investments will be permitted by the Government, on a case-by-case basis.

2.1.5 Advantages likely to be granted to investors

The Law provides for advantages likely to be granted to investors, including:

- Advantages being common to all eligible investments
- Additional advantages for privileged activities and/or employment-generating activities;
- Exceptional advantages for projects of special interest for the national economy.

In order to benefit from such advantages, investments must be registered prior to their implementation with the National Agency for Investment Development (ANDI) (Art. 4 of the Law).

Therefore, investments registered with the ANDI shall automatically benefit from the advantages provided for by the Law.

However, the actual consumption of advantages in respect of investment implementation is subject to:

- Registration with Trade Register
- Holding tax ID number
- Actual taxation scheme

As regards operational advantages provided for by the law, they shall be granted upon commencement of investment operations ascertained in minutes drawn up by the relevant tax offices having jurisdiction, at the investor's initiative.

Regarding investment which amount is equal to, or in excess of 5 billion dinars, the granting of common benefits is subject to prior approval of the National Investment Council (CNI).

The Finance Law for 2015 introduced inter alia additional exemptions likely to be granted, as the case may be, which consist in:

- Exemption from customs duties or having equivalent effect taxes and any other taxation and VAT exemption for research and development related equipment, whether locally acquired or imported, upon the creation of a Research & Development Department.
- Handling by the Treasury of bank interests accruing from investments made by companies in the industrial sector and intended for technology acquisition and mastery so as to strengthen the level of industrial integration of their products and competitiveness.
- Exemption from (i) registration duties, (ii) land publicity tax and (iii) State remuneration for the execution of administrative deeds by the Administration of Real Estate as regards the concession of built and non- built property granted under Ordinance N° 08-04 relating to land concession, subject to investment declaration to be filed with ANDI.
- Five-year period temporary exemptions from tax on Corporate Income (IBS) or Global Income Tax (IRG) and/or Tax on Professional Activity (TAP), in respect of investments made in some activities included in the following industrial sectors:
  - Steelmaking and metallurgy
  - hydraulic binders,
  - Electrical and electrical household,
  - Industrial chemistry,
  - Mechanical and Automotive
  - Pharmaceutics,
  - Aerospace
  - Shipbuilding and repair
  - Advanced Technologies,
  - Food industry
  - Textiles and clothing, leather and related products,
  - Leather and derivatives.
  - Wood and furniture industry.

A 3% interest-rate exemption on bank loans was also instituted. The implementing measures with regard to such exemption shall be defined by regulation.

Activities excluded from Advantages

There are several kinds of exclusions:

- The list of enumerated activities is shown in Appendix 1 of the Executive Decree dated on 11 January 2007. All marketing and distribution activities are excluded from such list which provides for exceptions to such exclusions, as is the case for catering activity which is excluded but may be eligible to advantages, should it become a chain restaurant activity;
- Activities that are not subject to registration with Trade Register.

The following activities are also excluded from advantages:

- Activities which, under particular legislation, are outside the scope of the Ordinance;
- Activities which are subject to their own incentive scheme;
- Activities which, under legislation measure, cannot benefit from tax incentives.

Goods excluded from Advantages

In addition to activities that are excluded from ANDI advantages, the Executive Decree also provides a list of goods that are excluded from the scope of advantages.

Goods eligible to advantages are those pertaining to Class 2 contained in the Accounting and Financial System, including all investments other than goods specifically excluded.

Raw and building materials together with other types of stocks are excluded from ANDI advantages.

2.1.5.1. Advantages common to eligible investments

In addition to tax, incidental tax & customs incentives provided for by common law, the eligible investments will benefit from advantages in respect of investment implementation.

Advantages granted in respect of the implementation phase of investment:

These advantages include:

- Exemption from customs duties for goods not excluded, imported and directly involved in the implementation of the investment.
- VAT exemption for goods and services not excluded, imported or acquired locally entering directly in the implementation of the investment.
- Exemption from conveyance duty due and land publicity tax on any purchases of real property made in respect of the relevant investment.
- Exemption from registration duties, land publicity tax and State remuneration for the execution of administrative deeds by the Administration of Real Estate as regards the concession of built and non-built property intended for implementing investment projects within the minimal period of concession.
- 90% deduction on the amount of the annual rental fee set by the Real Estate Services, within the investment period.
- Exemption from property tax on immovable property involved in the investment for a ten-year duration as of the date of acquisition;
- Exemption from registration duties on deeds relating to Articles of Incorporation and relevant capital increases.

As regards investments implemented in "Southern" and "High Plateaux" areas and such other areas whose development requires State's special contribution, they will benefit from the following incentives, in respect of achievement and in addition to the common advantages stated above:

- The total or partial handling by the State, after the Agency's assessment, of expenditures arising from infrastructure works that are necessary to the implementation of investment.
- The symbolic dinar per square meter for a ten-year period and 50% of the amount of the State fee beyond this period for investments located in areas within the High Plateaux and such other areas whose development requires State's special contribution.
- The symbolic dinar per square meter for a fifteen-year period and 50% of the amount of the State fee beyond this period for investment projects implemented in the Provinces of the Great Algerian South.

Advantages granted during investment operating phase:

The following advantages are granted for a maximum duration of three (03) years, as of the starting date of investment operating:

- Exemption from Tax on Corporate Income (IBS);
- Exemption from Tax on Professional Activity (TAP);
- 50% deduction on the amount of the annual rental fee set by the Real Estate Services.

The duration of theses operating advantages will be extended from three (03) to ten (10) years in case investments are implemented in "Southern" and "High-Plateaux" areas and such other areas whose development requires State's special contribution.

2.1.5.2 Additional advantages for privileged activities and/or employment-generating activities

Advantages that are common to investments provided by the Law, are exclusive of particular tax and financial incentives provided for the legislation in force, towards tourism, industrial and agricultural activities.

In case of a coexistence of advantages of same nature provided for the legislation in force, with those provided for by the Law, the investor will be eligible only to the most advantageous incentives. Therefore, these incentives will not apply cumulatively.

The duration of common operating advantages is extended from three (3) to five (5) years as regards investments resulting in the creation of more than a hundred (100) permanent jobs, during the period starting from registration to the completion of the first year of operating phase, at the latest.

2.1.5.3 Exceptional advantages for investments of special interest for the national economy

As regards investments of special interest for the national economy, the investor is asked to apply for an agreement with ANDI in order to benefit from certain exceptional advantages. This agreement is entered into by Agency, after National Investment Council's approval.

With regard to such investments, the Law provides for a non-exhaustive list of incentives, including:

- Extension up to ten (10) years of the duration of the operating advantages (common advantages) as provided for by the Law;
- Granting of exemptions or reductions on customs duties, taxes and other tax charges.
- Granting of subsidies, aids and financial assistance as well as other facilities in respect of the implementation of the investment within the agreed period.

The National Investment Council (CNI) is empowered to grant for a period not exceeding five (05) years, exemptions or reductions on duties, taxes and charges, including the Value Added Tax (VAT) applied to the price of goods produced within the framework of the emerging industrial activities.

2.2 Implementation of Advantages

2.2.1 Advantages during the implementation phase

These advantages take effect as from the date of company registration with the National Trade Registry Office and from the date of its notification, if company is already registered.

It should be noted that in case investment is not carried out before a one year period, the decision conferring the benefits is rendered null and void.

Pursuant to the Executive Decree, the activity is deemed to have been started:

a) When obtaining (i) Relevant permits for regulated activities (ii) approval of impact assessment for activities subject to legislation related to classified installations; (iii) registration with trade register for the remaining activities, in case of investment related to creation;

b) Upon first acquisition of assets benefiting from tax incentives in respect of investments devoted to expansion, renovating and restructuring.

The VAT exemption certificate related to the acquisition of goods and services is issued upon presentation of the following documents to the relevant tax offices having jurisdiction:

- Trade Register,
- Tax Identification card;
- Decision relating to the granting of advantages and the list of goods and services benefiting from tax advantages.

The VAT exemption certificate is delivered on location by the relevant tax offices.

The investor will provide this certificate either to local suppliers of goods or services or to customs departments, if goods are imported.

Customs duties exemption shall apply upon presentation of VAT exemption certificate.

2.2.2 Advantages during the operating phase

Following the implementation phase of the investment and so that the investor can further qualify for benefits at the active business phase, it must formally establish the onset of production by going through a document issued by tax services and social (CNAS) to set the count of the number of jobs created.

The document also:

- establishes, with the exception of start-up investments, the percentage of exemption granted under benefits for operating investments which qualify according to the pro rata rule,
- identifies possible breaches of undertakings. It should be noted that the findings are based on compliance by the investor with those undertakings, the conditions of application related to the list of exempt goods and services and the compliance of the investment with its stated objective.

The undertakings are deemed fulfilled once the level of investment provides the means to produce or render services.

Onset of operations is understood, as defined by the order, as the production of goods intended for sale or supply of services billed as an investment which led to the partial or total acquisition of production means on the list of goods and services necessary to exercise the activity reported. The document attesting to the onset of operations is designed to establish that the investor has fulfilled his/her commitment to purchase the declared goods and services at least to the extent enabling activity in accordance with the professional standards under which it is operating and that the investment began operating.

To this end, the said document is established by tax services after they have visited the site.

A formal request for the attestation document is mandatory for all investment projects receiving benefits. Failure on the part of the investor to request the document can lead to the cancellation of the decision to grant incentives after formal notice has been given to the investor by registered letter. The attestation document may be requested at the discretion of the investor at the onset of production whether partial or total.

In the case of a partial onset of operations, the investor failing to request the document attesting to the partial onset of operations is subject to the common corporate tax regime until the attestation of total onset into production has been established.

If the investor requests the document attesting to the partial onset of production, he/she enjoys tax benefits from the request date and for a consented period. In this case this period of benefits cannot be extended by the entry into full operation.

2.2.3 Obligation to reinvest profits

Following articles 2 and 51 of financial law for 2016, taxpayers who benefited from exemptions or tax reductions on corporate profits (IBS) and the tax on professional activity (TAP), given in the operational phase in the framework of support schemes in investment must reinvest 30% of profits related to these exemptions or reductions within four (4) years from the closing date of the exercise, about the results were subject to preferential treatment.

The reinvestment must be made in respect of each year or as many consecutive years. If combined exercises, the above period is counted from the date of the first exercise.

In case of non-compliance, the profits realized by the limitation period as at 31 December 2015, which have not been subject of an investment, must be reinvested to the extent of 30% within a period that cannot be exceed the date of 31 December 2016.

For reinvestment value corresponding to the dividends already distributed, the related amount is deducted from the dividends to be distributed.

Within this period, the adjustments and penalties provided by the regulation in force will be applied to taxpayers that have not reinvested the related profits.

Failure to comply with the reinvestment obligation entails the repayment of the tax benefit, to which will be added penalties.

It should be noted that exceptions to the reinvestment obligation are provided by the inter-ministerial decree of 28 November 2016 laying down the procedures for applying the provisions of Articles 2 and 51 of the Finance Act for 2016 relating to the reinvestment obligation, namely:

- In the case of a partnership between foreign operators and domestic companies, the reinvestment obligation does not apply when the benefits granted have been injected in full into the price of finished goods and services produced by the company,
- In the case of a deficit recorded during a fiscal year, the company is no longer required to reinvest.

2.3 Institutions governing investment promotion

2.3.1 The National Investment Council (CNI)

The council[18] is a body created by the ministry for investment development and placed under the authority of the Head of the Government who presides over it. Its mandate is to issue proposals and studies, but it also has genuine decisional power.

Its main tasks are as follows:

With regard to its mandate requiring it to issue proposals and studies, the CNI:

- proposes a strategy and sets the priorities for developing investment;
- proposes adapting investment incentives to reflect observed changes;
- proposes any decision and measure necessary for implementing investment support and promotional mechanisms to the Government;
- studies proposals pertaining to the establishment of new benefits.
- decisions the Council makes, beyond the new responsibilities as a result of the Supplementary Finance Law[19], include:
- approval of the list of activities and assets that do not qualify for benefits, as well as their modification and update;
- approval of the criteria used to identify the projects bearing special importance for the national economy;
- establishing the list of expenditures likely to be charged to the fund devoted to investment support and promotion;
- determining the zones likely to benefit from the special regime provided for in the Ordinance of July 15, 2006.

In addition, CNI estimates the necessary budgets to cover the national investment promotion program, fosters the creation of adapted institutions and financial instruments etc. and generally speaking, deals with any issue pertaining to investments.

All ministers with portfolios involving economic issues are members of the CNI, for a total of

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18 Executive Decree No. 01-281 of 24 September 2001 defines the composition, organization and activities of the CNI.

19 Under the provisions of the Supplementary Finance Law for 2009 and related measures, foreign investment projects should be submitted to the CNI, for consideration and approval, as should any Algerian investment project exceeding 500 million DZD. See point 2.1.2.

nine (9) members. The Chairman of the Board and the Director General of ANDI attend CNI meetings, but only as observers.

It should be noted that the CNI is not an independent administrative body and that its decisions and/or recommendations are not addressed directly to the investor, but are meant for the authorities in charge of the implementation of the legal texts pertaining to the promotion of investments, meaning, first and foremost, ANDI.

2.3.2 The National Investment Development Agency (ANDI)

ANDI is an administrative public agency endowed with a legal status and financial autonomy. It has been placed under the authority of the minister in charge of promoting investments.

ANDI's mission has seven (7) components: to provide information (a), to facilitate (b), to promote investment (c), to provide assistance (d), to participate in the land property management intended for implementing investments (e), to manage benefits (f) and, generally speaking, to provide a follow-up (g).

a) With regard to information, it is worth noting that ANDI provides investors with referral and information services, puts together information systems and sets up data banks.

b) With regard to facilitation, ANDI establishes a decentralized one-stop service (Guichet unique décentralisé, GUD) identifies obstacles to the implementation of investments and endeavors to make proposals to streamline procedures and regulations in connection with the implementation of the investment.

c) With regard to the promotion of the investment, ANDI ensures that business contacts between non-resident investors and Algerian operators are established and takes actions to disseminate information so as to promote the overall investment climate in Algeria. To this effect, ANDI has created a partnership database20 for all operators wishing to invest in Algeria or proposing a partnership.

d) Its assistance mandate consists of organizing a service to welcome, supporting and accompanying investors, and establishing a unique individual service to assist non-resident investors in fulfilling the necessary formalities.

e) Its participation in land property management translates into providing information to investors regarding the availability of land and land portfolio management.

f) With regard to the management of the benefits, ANDI is required to identify those projects that bear special importance for the national economy, to verify eligibility to the incentives, to render a decision pertaining to the incentives, to confirm the cancellations of decisions and/or the withdrawals of incentives (total or partial).

g) Finally, through its general follow-up mission, ANDI is not only in charge of developing a service for observing and listening, but it must also provide statistical services, collect data pertaining to the progress of projects in close collaboration with investors, and finally it must ensure that investors abide by the undertakings made in connection with the investment protection treaties (bilateral and multilateral).

h) Ensures that investors abide by their undertakings during the exemption phase.

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20 Refer to ANDI website: www.andi.dz

2.3.3 One-stop service (le Guichet Unique)

This is a very important institution in that it must carry out the formalities of incorporation of companies and enable the implementation of investment projects.

The one-stop service is a decentralized institution (GUD), as it is established at the level of the Wilaya or group of Wilayas. Local representatives of ANDI, as well as the representatives of the CNRC, the fiscal authorities, the administration in charge of state-owned land and property, the customs administration, the urban planning department, the national planning and environmental department, the labor department and the APC representative of the area where the one-stop service is being established all sit on its board. Decree No. 06-356 gives the representatives of all the aforementioned institutions a specific mandate in connection with the nature of the administrative authorities they represent.

Special attention has been given to non-resident investors on the part of the authorities. First, the director of GUD is the sole and direct representative for non-resident investors. Secondly, the director of GUD must accompany the investor, establish, deliver and certify that the investment declaration has been filed and that the decision to grant incentives has been rendered. Thirdly, the director must take over the cases examined by GUD members and ensure their successful completion, once they are channeled to the relevant departments. As all documents issued by GUD have probative force, all administrative authorities are required to abide by them.

Actually, Forty-Eight decentralized services (GUD) have been established throughout the national territory.

Pursuant to articles 27 and 36 of the Law, from 2017 onwards, the one-stop shops will be replaced by four (4) Centers containing all the services required services facilities linked for the setting up of companies, their support, Their development and the realization of projects:

- the Center in charge of incentives management, which is responsible for managing, with the exception of those entrusted to the ANDI, the various advantages and incentives set up for the investment by the regulation in force;
- the Center for carrying out the formalities, which is responsible for providing the services related to the formalities constituting, the undertakings and the implementation of the projects;
- the Center for Business incorporation support, to assist and support the incorporation and development of companies; the Center of territorial promotion, responsible for promoting local opportunities and potential.

The decisions of the members of these Centers shall be binding on the administrations to which they belong.

The terms of reference, organization and operation of these Centers shall be established by regulation.

CHAPTER 3

LEGAL FORMS OF INCORPORATION IN ALGERIA

3.1 Commercial companies

3.1.1 Common elements for all commercial companies

Among the common features listed below, it should be recalled all companies incorporated after the Supplementary Finance Law for 2009 are under obligation to have a local resident shareholding of 51%[21].

- Incorporation of the company
- Corporate name

A corporate name already registered by another company or enterprise with the Trade Register may not be chosen. A certificate attesting to the non-registration of the corporate name (attestation de denomination), valid for six months, must be delivered to the new company by the National Trade Registry. The corporate name must be followed by the corporate form.

Corporate object:

The company is free to choose its object, subject to compliance with set conditions in the case of activities subject to specific regulations. The corporate object shall include all commercial activities that the company intends to conduct, based on the activity codes listed in the Nomenclature Algérienne des Activités Economiques (Economic Activity List). The corporate object shall be clearly defined in the articles of association of the company to be drafted by a notary in Algeria. These nationally recognized activity codes will be registered in the company's trade register. The registration of regulated activity codes is subject to securing the required license, permit or authorization[22].

When the corporate object under consideration does not correspond to any activity code listed in the Economic Activity List (NAE), a request may be presented to the authorities of the National Trade Registry so that an activity code may be created.

Contributions:

- Cash contributions: the funds generated by cash contributions are deposited with a notary or a financial institution. In the case of non-resident shareholders or partners, the funds are deposited in the name of the company being formed in an Algerian bank in a pending account opened in a foreign currency.

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21 For more details, see the Chapter 2 of this guide.
22 See point 4.2, Regulated activities, chapter 4.

- Contributions in kind: one or more expert evaluators of the in-kind contributions are designated by judicial decision at the request of one or all of the founders. They serve to appraise the value of the contributions in kind. Their report is attached to the Articles of Association.
- Labor equity in the case of partnerships.

Note: the amount of capital is determined by the Commercial Code or by specific legislation. The legal form of company determines whether a minimum is imposed or not.

The articles of association:

The Articles of Association are signed by all shareholders or partners, either in person, or through a proxy with special power of attorney, and must be drawn up in a notarized deed. The first board members or managing directors and the statutory auditor, when designation is mandatory[23], are designated in the Articles of Association or during the statutory shareholders' meeting established by a notarized deed or by a private agreement filed with a notary and registered and published.

Required documents for the incorporation shall be provided to the public notary in charge of registration of the company.

Documents usually required by notaries for the incorporation of the company must be made available to the notary chosen by the shareholders.

The company as a legal entity:

Registration[24] of the company with the trade registry is mandatory and confers upon the company its legal status with all the related rights and obligations for the company itself, a corporation and the shareholders and directors who are individuals.

Accountability:

The board members or managing directors are accountable, individually or jointly, as the case may be, vis-à-vis the company or third parties, for violations of legal provisions, violations of the Articles of Association or managerial misconduct.

Auditing the company:

Companies, as per their legal form, are required to appoint one or several statutory auditors. Generally speaking, their permanent mission includes auditing, without interfering in the management of the company in any way, the books and assets of the company and to control the veracity and accuracy of corporate financial statements.

They also verify the veracity and accuracy of the information contained in the report of the board of directors or the managing board, as the case may be, and in the documents addressed to shareholders, regarding the financial standing and the accounts of the company.

They certify the truthfulness and accuracy of the inventory, of the corporate income statement and the balance sheet.

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23 Under the provisions of the 2010 Finance Law, sole proprietorship limited liability companies and companies whose turn - ver is under 10 million dinars (10,000,000 DZD) are not under obligation to have accounts certified by a statutory auditor. However, the auditor's report is still a part of the list of documents required for the establishment of the written application of transfer of dividends.

24 For more details about the list of documents required, see below the point 4.1, Chapter 4.

The statutory auditors make sure that the principle of shareholders' equality was respected.

They may, at any time of the year, conduct the verifications and audits that they deem necessary.

They may also convene an urgency shareholders' meeting.

According to article 66 of the 2011 Finance Law, the obligation of appointment is clearly stated for the LLC. The general assembly of the LLC must appoint, for three fiscal years, one or several statutory auditors selected from the registered members of the national professional association.

In anticipation of the appointment by the General Meeting of statutory auditors, the board of directors, the management board, the manager or the relevant organ of the company should elaborate specifications within a maximum period of one (1) month after closing of the last year of Statutory auditors' mandate, in accordance with the provisions of the Executive Decree N° 11-32 of 27th January 2011 relating to the appointment of auditors.

Failure of appointment of auditors by the general assembly, or in case of impediment or refusal by one or several appointed auditors, a procedure of appointment or replacement takes place through an Ordinance of the president of the court of the LLC headquarters.

The companies whose turnover is under 10,000,000 AD are not required to have their accounts certified by an auditor.

3.1.2 The features of each commercial company-type

3.1.2.1 The joint stock company (JSC)

The joint stock company is governed by Article 592 and the following Articles of the Commercial Code, which defines such companies as "companies whose capital is divided into shares and which is constituted between shareholders who bear losses only in proportion to their contribution." The company is required to designate a statutory auditor.

The company may be formed by conducting a public offering.

Only the rules governing joint stock companies which do not conduct public offerings will be mentioned in this publication.

- Number of shareholders

The number of shareholders cannot be less than seven (07), except in the case of State-owned corporations.

- Share capital

The share capital of the JSC that does not conduct a public offering must amount to at least one (1) million Algerian dinars and must be fully paid in.

At least one-fourth of the par value of shares subscribed to in cash must be paid in upon subscription. The remainder may be paid in one or more installments, depending on the Board of Directors or the Supervisory Board's decision, within 5 years following the company's registration with the Trade Registry. In-kind contributions must be fully paid in upon subscription for related shares.

- Management of a joint stock company

One of two systems of management may be chosen by the founding shareholders of the joint stock company:

- Management with a board of directors and a chairman.
- Management with a supervisory board and a managing board.

a) Management with a board of directors and a chairman.

- The board of directors

The board of directors is made up of at least three, but no more than twelve, members.

- *Appointment:* The directors are elected by the founding shareholders' meeting or by the ordinary general assembly. The length of their term is determined by the Articles of Association but cannot exceed six years.

An individual may not serve simultaneously on more than five boards of directors of joint stock companies headquartered in Algeria.

There are no nationality requirements.

A legal entity may be named director, provided that it designates an individual as a permanent representative, subject to the same conditions and obligations. The designation as representative incurs the same civil and criminal liabilities as those of a director.

A director shall not be awarded with an employment contract from the company after his/her appointment as director.

On the other hand, a salaried worker may only be appointed director if his employment contract preceded his appointment as director by at least one year and pertains to an actual job.

- *Qualifying shares:* The minimum amount of shares held by each director is set by the Articles of Association, but the total number of shares held by the directors together must amount to at least (20%) of share capital.

These shares in total serve as a guarantee for all of management's actions, even those performed in an exclusively personal manner by one of the directors. They are inalienable.

If on the day of his/her appointment, a director does not own the required amount of shares, or if during his term, they cease to do so, they will be deemed to have automatically resigned if they do not regularize their status within three months.

- *Dismissal:* The directors may be dismissed at any time by the ordinary general assembly of shareholders.

- *Powers:* The board of directors is entrusted with the broadest possible powers to act on behalf of the company in all circumstances; the board exercises these powers within the limits of the corporate object and subject to the powers specifically reserved to the shareholders' meetings. The provisions of the Articles of Association limiting the powers of the board of directors are not valid with regard to third parties.

- *Regulated agreements:* Directors of the company are forbidden to contract loans from the company in any form whatsoever, to secure an overdraft from it, as a current account or otherwise, and to have the company guarantee or secure their commitments toward third parties.

With the exception of normal transactions with clients pertaining to corporate operations, agreements concluded between the company and one of its directors, either directly or indirectly, must be subject to prior authorization by the board of directors following the statutory auditor's report on pain of cancellation.

A similar provision applies to agreements between the company and another enterprise if one of the directors is the owner, partner, manager, administrator or director of the said enterprise. The director who finds himself in a situation such as the one described above is required to declare it to the board of directors.

The statutory auditors submit to the shareholders' meeting a special report on the agreements thus authorized by the board. The director or directors in question may not take part in the vote and the shares that they hold will not be taken into account when calculating the quorum and the majority.

- *Compensation:* The shareholders' meeting awards a director's fee in the form of a fixed annual sum to the directors as attendance fees for their activities and may also, in the event of a dividend distribution, provide for payment of a share of profits, as long as it does not exceed one tenth of distributable income, after deducting reserves and deferred amounts. The amounts are distributed among directors by the board of directors.

The board of directors may also award exceptional compensation to directors for missions or assignments with which they were entrusted, provided that the operation is put to a vote at the shareholders' meeting.

More generally speaking, the board of directors may authorize the refund of travel expenses and other expenses incurred by the directors in furtherance of the company's interests.

- *Quorum and majority:* The board of directors only deliberates validly if at least half its members are present. The Articles of Association set the majority required to make decisions. Without the sufficient number of directors present, the board's decisions are made by the majority of members present, and the chairman may have the casting vote in case of a deadlock.

- The chairman of the board

- *Appointment:* The board of directors elects a chairman among board members who must be an individual for the appointment to be considered valid. The board sets his/her compensation. The chairman, who is eligible for reelection, is appointed for a length of time that may not exceed that of his term as director.

- *Dismissal:* The board of directors may dismiss the chairman at any time. Any provision to the contrary is considered of no force or effect.

- *Powers:* The chairman of the board of directors assumes overall management of the company under his responsibility. He represents the corporation in its relationships with third parties.

Subject to the powers specifically assigned by law to shareholders' meetings, as well as the powers reserved especially to the board of directors by law, the chairman is vested with the broadest possible powers to act in all circumstances on the company's behalf.

The provisions of the Articles of Association or the decisions of the board of directors limiting his powers are non-invocable with regard to third parties.

b) Management made up of a supervisory board and a managing board

- Managing board

- *Appointment:* The joint stock company is governed by a managing board consisting of three to five members, who fulfill their duties under the control of a supervisory board. The Articles

of Association set the length of the managing board's term within limits ranging between two and six years. In the absence of such specifications, the term's length is four years.

Members of the managing board, who must be individuals, are appointed by the supervisory board, which appoints a member of the managing board as chairman.

- *Dismissal:* The members of the managing board may be dismissed by the shareholders' meeting upon the request of the supervisory board.

- *Powers:* The managing board is entrusted with the broadest possible powers to act on behalf of the company in all circumstances, within the limits of the corporate object and the powers specifically granted to the supervisory board and the shareholders' meetings by law.

The provisions of the Articles of Association limiting the powers of the executive board are non-invocable with regard to third parties.

- *Accountability:* In case of a court-ordered settlement or bankruptcy, the members of the managing board may be held accountable for the liabilities of the enterprise.

- *Regulated agreements:* Any agreement concluded between a company and a member of the managing board, or between a corporation and an enterprise, if one of the members of the managing board is the owner, partner, manager, director or chief executive of the said enterprise is subject to prior authorization by the supervisory board.

Members of the managing board, other than legal persons, are prohibited from contracting any type of loans from the corporation or to have the corporation guarantee or secure any personal commitments toward third parties.

The chairman of the supervisory board notifies the statutory auditors of all authorized agreements and submits the agreements to the shareholders' meeting for approval.

The statutory auditors present a special report on those agreements to the shareholders' meeting which then rules on the report.

- *Compensation:* The instrument of appointment sets the method and amount of compensation of the members of the managing board.

- *Quorum and majority:* The managing board deliberates and makes decisions under the terms defined by the Articles of Association.

- *Powers of the chairman:* The duties of the chairman of the managing board do not give the incumbent broader executive powers than those of the other members of the managing board.

- The supervisory board

- *Appointment:* The supervisory board is made up of a minimum of seven members and a maximum of twelve members, who can either be individuals or legal entities, but represented by individuals. They are elected by the statutory shareholders' meeting or by the ordinary shareholders' meeting for a maximum period of six years and are eligible for re-election, unless provided otherwise by the Articles of Association. No member of the supervisory board can be part of the managing board.

- *Qualifying shares:* Their number and method of calculation are identical to those provided for the board of directors.

- *Dismissal:* The members of the supervisory board may be dismissed at any time by the ordinary shareholders' meeting.

- *Powers:* The supervisory board exercises permanent control over the corporation. The Articles of Association may require the prior authorization of the supervisory board for the conclusion of any transaction listed by the Articles, including all transfers. The board uses the controls it deems necessary and may request any document.

- *Regulated agreements:* The provisions relative to the members of the managing board also apply to the members of the supervisory board. The responsibilities and liabilities are also identical.

- *Compensation:* The ordinary shareholders' meeting may award a fixed amount to members of the supervisory board as compensation for their activities.

The supervisory board may make exceptional compensation payments for missions or assignments entrusted to its members.

- *Quorum and majority:* The supervisory board only deliberates validly if at least half its members are present. Unless there is a contrary statutory provision, the board's decisions are made by the majority of members present or represented, and the chairman may have the casting vote in case of a deadlock

- *Chairmanship:* The supervisory board elects a chairman among its members who has the responsibility of convening the board and presiding over the deliberations. The length of the chairman's term is equal to that of the supervisory board.

1) Shareholders' rights

- The right to information

The law determines the list of documents and other information which must be communicated or made available to the shareholders by the board of directors or the managing board.

- Terms and conditions for exercising voting rights

The Articles of Association may limit the number of voting rights that each shareholder may use during the meetings, provided that the limit is imposed on all shares regardless of category.

Shareholder decisions are made during meetings convened by the board of directors or the managing board, 35 days before the meeting.

2) Extraordinary shareholders' meeting

The extraordinary shareholders' meeting alone has the power to amend the Articles of Association in all their provisions; any clause stating otherwise is considered null. The meeting only deliberates validly if the shareholders present or represented possess at least half the shares with voting rights for a first convocation and one quarter of such shares for a second convocation.

The meeting requires a two-thirds majority of votes cast to rule.

3) Ordinary shareholders' meeting

The meeting only deliberates validly on first convocation if the shareholders present or represented possess at least a quarter of the shares with voting rights. In the case of a second convocation, no quorum is required.

The meeting requires a majority of votes cast to rule.

Shareholders meet at least once a year, within six months after the end of the fiscal year, to approve corporate financial statements. The report of the board of directors or the managing board, the income statement, the balance sheet and the summary report, as well as the report of the statutory auditor are presented at the meeting.

Within a month after their approval by the shareholders' meeting, the corporate financial statements mentioned in the paragraph above are filed with the National Trade Registry (Centre National du Registre de Commerce, CNRC). The filing is considered to be an official announcement.

4) Financial rights

The shareholders are entitled to dividends, reserves and liquidation surplus.

5) Terms and conditions for the transfer of shares

- *Substantive requirements:* except in the case of inheritance, or transfer, either to a spouse, a parent, a grandparent or a descendant, the transfer of registered shares of any type, may be subject to the corporation's approval by a clause in the Articles of Association, regardless of the method of transfer.

If an approval clause is contained in the Articles of Association, a request is presented to the company. Approval results from notification of approval or, in the absence of such notification, from a two-month silence on the company's part from the date of the request.

- *Formal requirements:* according to Algerian practices, transfers of registered shares are officially recorded. The transfers are valid with regard to the company and third parties only after the company has been notified, or has approved, the transfers by official deed.

Transfers are subject to registration fees of 2.5%, and one-fifth (1/5) of the sales price must be deposited with a notary for a period of approximately six weeks as a guarantee of taxes potentially owed to the Algerian Treasury by the seller.

- Changes in share capital

Capital increases

Capital is increased, either by issuing new shares by resolution of the extraordinary shareholders' meeting, or by raising the par value of existing shares, if resolved by unanimous consent of shareholders.

Increases are made either:

- in cash;
- through compensation with debts in liquid funds owed to, and payable by, the company;
- by the incorporation of reserves, earnings or issue premiums;
- by contributions in kind;
- by the conversion of bonds, preferred or not.

The board of directors does not have the power to decide to increase capital, but may be entrusted with all powers to that effect by the general assembly.

The law sets the concrete terms and conditions for carrying out the increase.

Shareholders have a preemptive subscription right, but may waive it individually.

Capital reductions

A reduction of capital may be authorized by an extraordinary shareholders' meeting, which may delegate all powers to undertake a reduction of capital to the board of directors or the managing board, as the case may be, subject to respecting the principle of shareholder equal treatment.

When the shareholders' meeting approves a capital reduction plan that is not motivated by losses, the representatives of bondholders and creditors whose rights predate the filing of the minutes of the shareholders' meeting with the National Trade Registry may oppose the capital reduction plan within thirty days following the filing date.

Loss of three quarters of share capital

If, due to losses recorded in the financial statements, the net assets of the company fall under one quarter of share capital, the board of directors or the managing board is required to convene, within four months following the approval of the statements in which the losses appeared, an extraordinary shareholders' meeting to rule, if need be, on the early dissolution of the company.

If the dissolution is not declared, the company is required, at the end of the second fiscal year following the fiscal year during which the losses were acknowledged and subject to the provisions above, to reduce its capital by an amount that is at least equal to the losses that could not be charged to reserves, if, within that period, net assets have not been restored to an amount equal to at least one fourth of the share capital.

- **Change in status of the joint stock company**

Transformation

Any joint stock company may transform itself into a different type of company if, at the time of its transformation, it has been in existence for at least two years and has drawn up a balance sheet for its first two fiscal years that has been approved by shareholders.

The decision to transform the company is made once the statutory auditors have certified that net assets are at least equal to the share capital.

The transformation into a general partnership requires the unanimous approval of all partners.

The transformation into a limited partnership or into a limited partnership with shares is resolved under the terms provided for by the Articles of Association with regard to amendments and with the approval of all the partners who agree to be active partners.

The transformation into a limited liability company is decided under the terms provided for with regard to modifying the Articles of Association of that type of company.

Mergers and spin-offs

Even if it is in the process of being liquidated, a joint stock company (JSC) may be absorbed by another company or participate in the creation of a new company by way of merger.

The company may contribute its assets to existing companies or participate in the creation of new entities with these companies, by way of merger or spin-off.

Finally the company may contribute its assets to new companies by way of spin-off.

The above operations may be carried out between companies of different types. They are

resolved, by each of the companies in question, in accordance with the conditions required for the amendment of their Articles of Association.

If the operation involves the creation of new companies, each of these companies shall be established according to the rules applicable to the type of company that was chosen.

Dissolution

Except in various cases of court-ordered dissolution, the dissolution of the company results from the end of its statutory term or from a decision made at an extraordinary shareholders' meeting.

- **Auditing the joint stock company**

The annual shareholders' meeting must designate, for three fiscal years, one or several statutory auditors chosen among registered members of the national professional association.

Generally speaking, their permanent mission includes auditing, without interfering in the management of the company in any way, the books and assets of the company and to control the veracity and accuracy of corporate financial statements. They also verify the veracity and accuracy of the information contained in the report of the board of directors or the managing board, as the case may be, and in the documents addressed to shareholders, regarding the financial standing and the accounts of the company.

They certify the truthfulness and accuracy of the inventory, of the corporate income statement and the balance sheet.

The statutory auditors make sure that the principle of shareholder equality was respected.

They may, at any time of the year, conduct the verifications and audits that they deem necessary.

They may also convene an emergency shareholders' meeting.

3.1.2.2 The Limited Liability Company (LLC- SARL)

The limited liability company is governed by Article 564 and following Articles of the Commercial Code. It is formed by two or more partners who shall be only liable for losses in proportion to their contributions.

- Number of partners: the company may have a single partner when it is established as a sole proprietorship limited liability company (see SPLLC below). The number of partners may not exceed (50) fifty. If the company reaches a point where there are more than fifty (50) partners, it must be transformed into a joint stock company within one year. Failure to do so will lead to the dissolution of the company, unless the number of partners is brought down to fifty (50) or less during the said period.
- Share capital

The share capital of the LLC is no longer limited to a minimum threshold of 100,000 AD. Now, it is up to the partners to set freely by agreement (Article 566); it is divided in shares whose nominal value is fixed between the partners. The share capital may be provided in the form of cash contributions or contributions in kind or contributions in industry. Shares must be paid in at least one fifth of their values. The liberation of surplus acts in one or several times by decision of the manager, within a period not exceeding five (5) years after the registration of the trade register.

In-industrial contribution is allowed since 2016. The valuation of such contribution and share in company dividends shall be fixed within articles of Association. In-industrial contribution did not figures in the share capital structure.

- **Management**

- *Appointment:* the managing director(s), who must necessarily be individuals, may be chosen from among the partners or third parties. They are appointed in the Articles of Association or through a general meeting, by a majority of partners representing more than half of the share capital.

- *Dismissal:* the managing director can be dismissed by a decision of the partners representing more than half of the share capital. If the dismissal is decided without just cause, it may give rise to a compensation for suffered prejudice. Moreover, the manager can be dismissed by the courts for just cause at the request of any partner.

- *Powers:*

  1. In the relationship between partners: the powers of the managing director(s) are determined by the Articles of Association. Unless there are statutory limitations, the managing director may conduct any managerial act in furtherance of the interest of the company. In cases where there are several managing directors, the latter separately hold the power to represent the company, each having the right to oppose any transaction before its conclusion however.

  2. In its relations with third parties: the manager is entrusted with the broadest possible powers to act on the company's behalf in all circumstances, subject to the powers specifically attributed by law to the partners. The Company is bound even by those acts of the managing director that do not come under the corporate purpose, unless it proves that the third party knew that the act did not come under said purpose or that it could not fail to know this, given the circumstances, while the sole publication of the articles of Association cannot be sufficient to constitute such proof.

The statutory clauses limiting the powers of the managing directors are non-invocable with regard to third parties.

In cases where there are several managing directors, opposition by one managing director to the actions of another managing director is without effect with regard to third parties, unless it can be established that they were aware of it.

- Regulated agreements: the law does not specifically prohibit agreements concluded between the company and the managing director, but criminally punishes the managing who uses corporate assets in bad faith to further personal goals or to favor another company in which he has a stake, directly or indirectly. If, in the aftermath of its bankruptcy, the company is found to have insufficient assets, the court, at the request of the trustee in bankruptcy, may decide that the company's debts will be borne by the managing directors up to an amount determined by the court, whether or not the managers are partners or salaried employees. To free themselves of their liability, the managers and partners involved must prove that they applied to the management of corporate affairs all the industry and diligence of a paid agent.

- **Shareholder rights**

- Right to information

Any partner has the right to review and obtain copies of a certain number of documents, accounting documents in particular, which he may examine with the help of an expert.

- Terms and conditions for exercising voting rights:

- By assembly: the decisions of the partners are made by an assembly, by convocation of the managing director or one or more of the partners representing more than one fourth of the share capital, fifteen days prior to the assembly.

A partner may be represented, but only by another partner or a spouse, except if the Articles of Association specifically designate another person.

- By written consultation: the law authorizes the written consultation of partners if the Articles of Association provide for it.

- **The annual general meeting to approve the financial statements**

Decisions are adopted by one or more partners representing more than half of the share capital.

The report on corporate operations over the fiscal year, the inventory, the general operating account, the income statement and the balance sheet, as prepared by the managing directors, are submitted to the approval of the partners convened in assembly within six months following the end of the fiscal year.

The terms and conditions for the filing and publication of the corporate financial statements are the same as those applying to joint stock companies.

- **Extraordinary assembly**

Amendments to the Articles of Association are decided by a majority of the partners representing three quarters of the share capital. For specific amendments, the decisions of the extraordinary assemblies must be preceded by a report on the situation of the company drawn up by an accredited expert, except in the case of a transfer of shares to a third party.

- Financial rights

Partners of the LLC have an equal right to the dividends. The terms and conditions for the payment of the dividends voted by the general assembly are also set by the assembly, or failing that, by the managing director(s).

The payment of dividends must be done within a maximum of nine months after the end of the fiscal year. An extension of the deadline may be granted by a court decision.

Stipulating an interest, whether fixed or not, to the benefit of the partners is prohibited however.

- **Terms and conditions for the transfer of shares:**

- Substantive requirements: shares are registered and are freely transmissible by succession and freely transferable between partners, spouses, parents, grandparents and descendants, unless the Articles of Association contain an approval clause.

They may only be transferred to third parties not connected to the company with the consent of the majority of the partners representing at least three quarters of the share capital.

If the company refuses to consent to the transfer, the partners are required, within three months after the refusal, to acquire or have someone acquire the shares at a price set by an accredited expert designated either by the parties or, if the parties fail to agree, by court order issued by the president of the tribunal at the request of the most diligent party.

The company may also decide, with the consent of the selling partner and within the same three-month period, to reduce its capital by an amount equal to the value of the shares of the selling partner and to buy back these shares at a price determined under the terms and conditions mentioned above.

- Formal requirements: the transfer of shares can only be recorded by official deed. The transfer is only valid with regard to the company or third parties after the official deed has been drawn up, or upon acceptance by, the company.

The transfer is subject to registration fees (2.5%) and one fifth of the sales price must be deposited with a notary for a period of approximately six weeks as a guarantee for taxes potentially owed by the seller to the Algerian Treasury.

- **Changes in share capital**
- *Capital Increases*

The share capital may be increased or reduced by common agreement at a meeting of partners under the terms and conditions required to modify the Articles of Association.

Capital increases may be achieved through the subscription of shares either in cash or in kind. The costs of increasing capital shall be amortized by the end of the fifth fiscal year following the year during which the costs were incurred at the latest.

Reductions in capital

Capital reductions are authorized by an extraordinary meeting of the partners and may not violate the principle of equality between partners.

The reduction may not necessarily be motivated by losses. In all cases, it must be approved by the statutory auditor. The company's creditors may then oppose the reduction, within one month after the filing of the resolution. A court ruling either rejects the objection or orders the refund of the company's debts or the establishment of guarantees, if offered by the company and deemed sufficient.

Companies are prohibited from buying back their own shares. However, the assembly which decided on a capital reduction not motivated by losses may authorize the manager to buy a set number of shares in order to void them.

Losses of three quarters of share capital:

Managing directors are required to consult partners so that they may rule on whether to dissolve the company or not. In all cases, the decision of the partners is published in a newspaper authorized to publish legal announcements in the Wilaya where the company is headquartered, filed with the clerk of the court where the said headquarters are located and registered with the Trade Register.

- **Change in status of the limited liability company**
- Transformation:

A company with more than 50 partners must be transformed into a joint stock company within one year, or face dissolution.

The decision to transform a limited liability company into a different type of company must be reached by the majority vote required for extraordinary general assemblies and must be preceded by a report from an expert, with the exception of transformations into general partnerships, which require the unanimous agreement of all partners.

- Mergers and spin-offs

Even if it is in the process of being liquidated, the LLC may be absorbed by another company or participate in the creation of a new company by way of merger.

The company may also contribute its assets to existing companies or participate in the creation of new companies with these companies, by way of merger or spin-off.

Finally the company may contribute its assets to new companies through a spin-off.

The above operations may be carried out between different types of companies.

They are decided by each of the companies in question, in accordance with the terms and conditions required for the modification of their Articles of Association.

If the operation involves the creation of new companies, each of these companies shall be established according to the rules associated with the legal type of company that was chosen.

- **Dissolution**

With the exception of court-ordered dissolutions, the dissolution of the company results from the end of its statutory term or from a decision of the partners.

- Auditing the limited liability company

The annual general meeting must designate, for three fiscal years, one or more statutory auditors chosen among registered members of the national professional association.

Generally speaking, their permanent mission includes auditing, without interfering in the management of the company in any way, the books and assets of the company and to control the truthfulness and correctness of corporate financial statements. They also verify the truthfulness and correctness of the information contained in the report of the managing director and in documents addressed to partners, regarding the financial standing and the accounts of the company.

They certify the truthfulness and correctness of the inventory, of the corporate income statement and the balance sheet.

The statutory auditors make sure that the principle of equality between partners was respected.

They may, at any time of the year, conduct the verifications and audits that they deem necessary.

They may also convene a general meeting in case of urgency.

Since 2011[25], companies whose turnover is less than 10 million DZD are not more required to have their accounts certified by an auditor. However, in practice, the account certification in required prior to any dividends transfer.

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25 Article 66 FL 2011.

3.1.2.3 The sole proprietorship limited liability company (SPLLC)

Algerian law has, by order No. 96-27 of December 9, 1996, sanctioned the principle of the sole proprietorship limited liability company.

The law amended Article 564 and the following Articles of the Commercial Code pertaining to the limited liability company accordingly.

When the limited liability company is owned by a single person, it is called a "sole proprietorship limited liability company (SPLLC or EURL)."

The legal principles and the terms and conditions of operation underlying the SPLLC and the LLC are therefore the same, except for the following points:

- The partner: an individual may only be the sole partner of one limited liability company. A limited liability company may not have a SPLLC as its sole partner.
- The sole partner exercises the powers assigned to the partners' assembly and may not delegate these powers. His decisions, made in lieu of the assembly, are recorded in a Register.
- After receiving the statutory auditors' report, he approves the accounting records[26] within six (6) months following the closing of the fiscal year.
- The manager: the sole partner may be the manager of the company, when the partner is an individual. He may also designate a third party as managing director.

3.1.2.4 Limited partnership (LP)

Articles 563 bis et seq of the Commercial Code govern LPs. Although hardly ever used in Algeria, this legal corporate form brings together entrepreneurs willing to risk their personal assets as general or active partners, provided that they have the opportunity of making sizeable profits, whereas investors, as limited partners, act to limit their liability while partaking in profits.

The LP has two types of partners: general or active partners and limited partners. General partners are members of a partnership with the status of trader and unlimited liability, even collective liability when there are several partners. As for the limited partners, they do not enjoy the status of trader and are only liable for corporate debts to the extent of their contribution. The minimal number of partners is two - one general partner and a limited partner.

The Commercial Code does not set a minimal requirement for the amount of share capital. The general partners have the possibility of making all kinds of contributions (in kind, in cash, in the form of services), whereas the limited partners are not authorized to make services contributions. The share capital is divided in shares which are transferable with the consent of all partners. However, the Articles of Association of the LP may include provisions stipulating that the shares belonging to the limited partners be freely transferable among partners. The Articles of Association may also decide that these shares may only be transferable to third parties with the consent of all general partners and a majority of limited partners.

The manager: The manager may be chosen among the general partners or from outside the firm. Limited partners may not become manager to the extent that they are not qualified to get involved in the management of the firm. In the opposite case, their liability would no longer

26 The 2010 Finance Law removes the requirement for certification by a statutory auditor of accounts for an SPLLC.

be a limited liability, but they would be liable for all managerial actions collectively with the general partners. This does not mean that limited partners must passively stand by and watch the firm being managed, as they may exercise control over the firm's management and take part in group decisions, which must be made in accordance with the stipulations of the Articles of Association.

Often, the LP results from the transformation of a general partnership (GP) when upon the death of one of the partners, the heir, for one reason or another, is unable to acquire the status of trader (legal infancy, practice of a profession). The heir not wishing to be indefinitely exposed to corporate debts, the partners of the GP agree to transform the latter into a LP, in which they become general partners, whereas the heir becomes a limited partner. In that case, the limited partner is only liable for corporate debts to the extent of his contribution, which is generally inherited from the deceased.

3.1.2.5 Limited partnership with shares (LPS)

Articles 715 ter et seq of the Commercial Code govern LPSs. The creation of this type of company is considered when general partners, founders of the partnership, give themselves excessive managerial powers to thwart hostile takeover bids. Indeed, third parties are not tempted to acquire companies in which power is held by the general partners, whilst most of the share capital belongs to the limited partners.

The LPS capital is divided into shares. There are two categories of partners. The first type entails one or more general partners who have the same status as the partners of a GP. They are authorized to all kinds of capital contributions, including services contributions. Their shares are not represented by negotiable instruments. They automatically have trader status and are personally, indefinitely and collectively liable for the corporate debts.

The second type entails limited partners whose number may not be less than three (3). They have the same status than the shareholders of a joint stock company (JSC). As a result, their contribution may be made in cash or in kind. They do not have trader status and their liability is limited to the amount of their contributions. The shares that they hold are freely traded and their treatment is similar to that of the shares issued by the JSC, with the possibility of including an approval clause in the provisions of the Articles of Association.

The rules applying to the JSC with regard to minimal capital requirements and initial public offerings apply to LPSs as well.

The rules pertaining to the management of a LPS are simple. This type of company is not required to have structured corporate entities such as a board of directors or a CEO. One or more managers will be chosen from among the general partners or from outside the company. Except if provided for in the Articles of Association, the manager or managers are appointed during the ordinary general assembly with the approval of the general partners. Generally speaking, the manager can be dismissed under the terms and conditions provided for in the Articles of Association, although the limited partners always have the possibility of agreeing to keep the manager irrevocably in place. However, the general partners are excluded from general meetings, except when they hold shares in addition to their partnership shares. The extraordinary general assembly (EGA) is not authorized to amend the Articles of Association without the unanimous approval of the general partners, unless a clause to the contrary is contained in the Articles of Association. The general partners are also excluded from the

supervisory board, made up of at least three shareholders appointed by the ordinary general meeting, as the objective of the supervisory board is to ensure permanent control over the company's management.

3.1.2.6 Undeclared partnership

Articles 795 bis et seq of the Commercial Code govern undeclared partnerships. Three main features characterize these partnerships: their status is undisclosed, undeclared and based on an intangible principle of liability for debts.

It is an undeclared firm in that it does not have the status of a legal entity. The fact that the partners are not required to register the company with the Trade register is justified by the partners' desire to keep third parties unaware of the existence of this company, as secrecy is the key to the success of their common enterprise.

Moreover, it is a secret partnership since the participants may not act as partners in a manner visible to third parties.

The Commercial Code expressly deals with the remaining aspects of the matter so that the general provisions making up the preliminary chapter pertaining to commercial companies do not apply to it, whether it is the terms and conditions provided for in the law with regard to residence, headquarters, corporate object or formalities of incorporation. Title I pertaining to the rules of operation of the various commercial companies is not destined to it either. The third feature is that the undeclared partnership rests on the principle of personal liability for debt commitment. Each partner contracts in effect with the third party in his own name, and is solely engaged even if, without the consent of other shareholders, he revealed their names to third parties.

3.2 The Group/Joint Venture

Articles 796 et seq. of the Commercial Code govern groups/JVs. This is a special structure which is not truly a commercial company and which does not allow establishment in Algeria in itself. However, it is often used by foreign companies to operate in Algeria provided that they associate with resident legal entities. The obligation to have local majority ownership, here again, exists.

3.2.1 The goal of the group/JV

Two or more legal persons may create, for a determined period of time, a grouping in order to implement all the means or resources likely to facilitate or develop the economic activities of its members, and to improve or increase the results of those activities.

The group thus represents a collaborative structure between existing companies which preserve their legal independence.

The goal of the group is not to generate profits by itself, but to facilitate the economic activities of its members, or even improve or increase the results stemming from those activities.

3.2.2 Transparency of the group's activities

If the activity stemming from its creation generates a profit, it must be shared among members. The group may not generate earnings by itself. Moreover, from a taxation

standpoint, the group is said to be transparent. This means that members are taxed separately from the group on their share of the group's overall profits.

3.2.3 Legal status of the group/JV

The group is endowed with legal status from the moment it is registered with the Trade registry.

3.2.4 Contractual freedom

The group essentially rests on the principle of contractual freedom. The mandatory rules of corporate law are not intended to apply.

Essentially, it is thus the joint venture agreement which determines the group's organization and the conditions under which the decisions are made by the general meeting of members.

Again it is the contract, or, in its absence, the general meeting, which lays out the management of the group and appoints the manager(s) whose assignments, powers and conditions of dismissal it determines.

Moreover, the contract sets the terms and conditions for auditing the grouping's management and accounts and may depart from the principle of dissolution of the group due to the disability, personal bankruptcy or ban from managing a legal person of one of its members.

In principle, but not exclusively, the group contract contains the following elements:

- The name of the group;
- The name, corporate name, legal form, residential address or address of the headquarters; the registration number with the Trade registry of each member of the grouping;
- The length of time for which the grouping is established;
- The goal of the grouping;
- The address of the grouping's headquarters.

All modifications made to the contract are established and published under the same terms and conditions as the contract itself.

Members of the grouping are not required to make contributions. In this case, the grouping will not have share capital. The ownership rights of its members may not be represented by negotiable instruments.

3.2.5 Liability

The grouping operates like a partnership. Its members are indefinitely and mutually bound for its debts. In other words, any creditor may, after an unsuccessful attempt at reimbursement by the grouping, hold any member of the grouping liable.

In dealing with third parties, a manager commits the grouping by any action falling within its object, the clauses limiting his powers being unenforceable.

3.2.6 Practical use of groupings and temporary JV

In practice, the grouping is used by foreign companies which, in order to win a contract to carry out a project in Algeria, must join forces with other foreign or local companies.

Thus the grouping is frequently used to jointly carry out major Algerian projects, usually subject to the rules pertaining to public tendering.

The joint-venture or consortium with no legal personality differs from the grouping in that it is not a legal entity. This structure is used only when two or more companies agree to a third party for jointly and severally signing and performing a contract. It does not have a status and is not registered in the Trade Register.

As previously mentioned, a foreign company performing a contract in Algeria through the establishment of a grouping may not claim to exist in Algeria through the said grouping.

Indeed, the company must also establish itself as an independent structure by either using a company incorporated under Algerian law, a branch or a permanent establishment, in order to claim existence in Algeria recognized by Algerian authorities, whether this existence is legal or merely fiscal.

3.3 Other types of establishments in Algeria

3.3.1 The liaison office

The legal and tax systems of liaison offices are governed by the decree darted on 9th November 2015 defining the conditions and modalities of opening and operating non-commercial liaison offices.

3.3.1.1 The principle

According to the dispositions of articles 4 and 9 of the aforementioned Decree, a liaison office may not engage in profit-making activities nor have any local income. Its operating costs, including compensation and social security and tax contributions paid for its personnel, and any others charges are borne by the parent company. They must be paid in Algerian dinars generated exclusively by the exchange of convertible currencies imported beforehand.

3.3.1.2 The accreditation of the liaison office

The accreditation of the liaison office is issued by the Ministry of Commerce for a renewable period of two years.

Accreditation is subject to the:

- Presentation by the liaison office manager of a thirty thousand 30.000 USD, before a commercial bank;
- Opening of a CEDAC account (Convertible Algerian Dinars Account) before the same bank and the payment of a currency amount corresponding to a minimum amount of five thousand (5,000) US dollars;
- Payment, before the relevant tax officer, registration fees, for the against-value, in convertible currency, of one million five hundred thousand dinars (1,500,000 DZD);
- A commitment by the legal representative, of the foreign company, relating to the compliance with laws and regulations in force in Algeria, notably not to exert direct or indirect economic activities in the Algerian territory and a submit a list of required documents provided by the new Decree.

The renewal applications of the liaison office' agreement should be made within a maximum period of two months before the expiration date of the agreement. The following should be attached to the request application:

- The receipt justifying payment, before the territorially competent tax officer, registration fees corresponding to the against-value in convertible currency of one million five hundred thousand dinars (1,500,000 DZD);
- Notarized lease contract or title justifying existence of the local covering the period of validity of the liaison office agreement;
- Certificate justifying the tax position vis-à-vis the tax administration, delivered by the recipient of the relevant tax officer.

3.3.1.3 Operations and obligations of the liaison office

The liaison office must keep its books in conformity with current regulations concerning the costs and charges pertaining to the operation of a liaison office.

The costs and charges linked to operating liaison offices, including employees salaries and the related social security and tax expenses and all other costs incurred as part of the office's activities in Algeria are payable by checks drawn from the CEDAC account. In order to meet small expenses, the liaison office may keep petty cash coming exclusively from withdrawals from the CEDAC account.

An apparent indication of the corporate name of the foreign company, followed by the mentioned "liaison office" should be displayed in the building housing the liaison office.

3.3.1.4 Advisability of resorting to a liaison office

When it was enacted, the Inter-ministerial Directive of July 30, 1986, which pertains to the financial obligations of foreign businesses or groups of businesses accredited by the Ministry of Commerce, represented a notable exception to Act No. 78-02 of February 11, 1978, amended and pertaining to the State monopoly on Algeria's external trade.

In the past, a certain number of enterprises have used liaison offices to develop their activities in Algeria.

Act No. 78-02 was repealed and there are no longer any obstacles to the establishment in Algeria of a foreign enterprise under the legal form deemed most suitable by the enterprise to fulfill its own needs.

As a result, liaison offices are no longer as appealing as they may once have been when such offices represented the only form of establishment in Algeria for foreign businesses.

With regard to the legal framework governing liaison offices mentioned above, it seems that foreign enterprises cannot resort to liaison offices to confirm their presence in Algeria.

Liaison offices may not conduct any commercial acts on a regular and autonomous basis and that their method of operation is, barring exceptions, unsuited to the requirements of a foreign business' development strategy in Algeria.

According to the provisions of the decree 9 November 2015 mentioned above, are not eligible to open a liaison office in Algeria;

- Individual persons;

- Agencies, branches, commercial representation or any other establishment belonging to a company based abroad;
- Companies carrying, in particular, consulting activities, declaring customs, except services whose the presence in Algeria is deemed essential;
- Legal entity engaged in activities not subject to registration of the commercial register.

However, foreign businesses selling their products to Algerian importers and intending to develop and promote their sales networks in Algeria may find it advantageous to open a liaison office. Liaison offices enable foreign firms to have a presence in Algeria, to promote their activities and products while making direct sales from abroad. The advantages are both tax-related, as direct sales allow foreign companies to avoid multi-stage taxation, namely with regard to the tax on professional activities (see chapter 11, point 11.2.1.1.2), and legal activities, as direct sales allow foreign companies to avoid establishing a firm incorporated under Algerian law. Moreover, liaison offices help lessen operating costs (salaries, storage, customs clearance charges for merchandise etc.) stemming from the establishment and operation of a subsidiary.

3.3.2 The branch registered with the trade registry

The establishment of a branch is considered a foreign investment. So it is subject to rules of Law 16-09, and the lack of separate legal personality does not allow the establishment of partnership, a foreign company may no longer open a branch since[27].

Under the terms of current legislation, any commercial enterprise incorporated under Algerian law may open a branch office. An establishment of this type in Algeria is required to register with the Trade Register. Registration with the Trade Register allows the branch to conduct a commercial activity in Algeria, to develop a client base following the same rules as any Algerian trader or commercial firm.

3.3.3 The permanent establishment

The concept of permanent establishment includes the concept of establishment which is strictly connected to the application of double taxation treaties signed by Algeria[28] (see item 17.3.2) and a more general concept of establishment defining the presence of foreign firms in Algeria as the period during which a contract is being carried out.

It is merely a tax entity and the foreign company has no legal existence. It is, however, recognized as a tangible entity in Algeria by the authorities and therefore acquires certain rights (to a bank account, to hire personnel) and obligations (obligation to pay taxes).

The company exists through the contract it carries out in Algeria. This contract must be domiciled with the tax authorities. Consequently, a firm may not establish a presence in Algeria without having a contract to carry out in Algeria.

The establishment makes it possible to carry out temporary operations in Algeria without heavy operational infrastructure and to freely repatriate a portion of the revenues (transferable under contract) stemming from activities conducted in Algeria.

Although a foreign firm can conduct its activities through a permanent establishment, in practice, it can still encounter difficulties stemming from the fact that it is not registered with the Trade Registry.

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27 In practice, exceptions can be granted for specific activity fields.
28 See Chapter 17.

CHAPTER 4

EXERCISING COMMERCIAL ACTIVITIES

4.1 The Trade Register

This is a document that is maintained by the National Trade Register Agency (CNRC).

The Trade Register certificate represents an official document enabling any individual or legal person to conduct commercial activities. It is an absolute proof of validity with regard to third parties until it is disputed.

The validity of the trade register could be subject temporarily limited for some activities.

In 2015, the principle of homogeneity and / or compatibility of economic activities subject to registration in the trade register were introduced. The accumulation registration of more than one sector of activity in the same trade register is now prohibited. Exceptions may be granted, in particular, for reasons of commercial utility and supply centers or isolated or underserved communities through distribution network where the accumulation of certain activities from retail distribution and the service sector may be authorized to be mentioned in the same trade register.

Registration with the Trade Register is required for any individual or legal entity in order to conduct commercial activities. Any person who regularly conducts commercial activities without being registered with the Trade Registry is guilty of a violation punishable by law.

Registration with the Trade Registry confers the status of merchant upon any individual or legal entity. The applicant is subject to all consequences associated with that status. Among other things, the person must indicate the registration number received on billheads, order bills, tariffs and prospectuses, as well as on any correspondence pertaining to its enterprise.

Certain activities are excluded from the scope of application of Act No. 04-08, such as:

- Agricultural activities.
- Arts and crafts
- Non-commercial associations.
- Non-profit cooperatives.
- Liberal professions.
- Public institutions in charge of managing public services, with the exception of State-owned industrial and commercial enterprises.

Any commercial company subject to registration with the Trade Registry is required to publish the legal notices provided for in the legislation and the regulation in effect.

The object of the publication of legal notices for legal persons is to inform third parties of the

Articles of Association of the company, of transformations, modifications, as well as operations pertaining to share capital, collateral, lease management contracts, sales of business assets, financial accounts and notices.

Commercial activities are registered according to references in a list of commercial activities subject to registration with the Trade Registry. This one classified the activities sectors as follow:

- Production of goods;
- Artisanal production company;
- wholesale distribution;
- Import for resale in the state;
- Retail distribution (sedentary and non-sedentary);
- Services ;
- Export.

In cases of multiple registrations, registration with the Trade Registry is done by reference to the basic incorporating activity or primary establishment and to reference to secondary establishments. "Basic activity" designates the activity appearing in the first registration with the Trade Registry. "Secondary activity" refers to the extension of the basic activity or exercised in the area of jurisdiction of the wilaya where the person is established and/or other wilayas.

The economic activities declared secondary are summarily registered with the Trade Registry by referring to the main establishment.

In 2015, the electronic means was introduced as registration way in the Trade Registry. Indeed, under the terms of Executive Decree No. 15-111 on Mai, 03 2015 (Official Journal No. 24) fixing the registration procedures, modification and cancellation of the trade registry, from now it is possible to make the registration in the trade register agency and the transmission of documents by electronically, according to the technical processes of signature and electronic certification. The trade registry may be issued in electronic format.

4.2 Regulated activities

Regulated activities and professions subject to registration with the Trade Registry obey special rules defined by the laws and regulations specifically governing them.

According to the disposition of the Executive Decree 15-234 of 29 August 2015 laying down the conditions and procedures for exercising regulated activities and professions subject to registration in the Trade registry, is considered as regulated activity or profession any activity or occupation subject to entry in the trade registry and applicant, by its nature or purpose, meeting specific conditions to allow its exercise.

Are thus considered regulated activities or professions under their specificities and the exercise is likely to prejudice directly the concerns or interests related to public order, property and personal safety, natural wealth preservation and public goods component of the national heritage, public health or environment.

4.3 The status of foreign traders

4.3.1 The professional card previously called trade cards

Except provisions relating to conditions of registration of trade of any person or entity, Executive Decree No. 06-454 of December 11, 2006 defines the terms and conditions for issuing a professional card to foreigners carrying on a commercial or industrial activity, or exercising a craft or a profession, as well as to the members of the board of directors or supervisory boards of commercial companies or managing directors under their statutory administration and management.

The model and the contents of the professional card and the documents to be included in the application have been published in regulations.

4.3.1.1 Conditions for obtaining the professional card

The procurement of a professional card by any person of foreign nationality must be justified by one of the following:

- Registration with the Trade Register to carry on a commercial activity (which confers the status of trader upon the applicant, as is the case for managing directors or members of the boards of directors and supervisory boards of commercial companies for instance).
- Registration with the crafts and Trade Register to practice a craft; or
- Registration with the professional association or organization governing the profession for the practice of a profession.

4.3.1.2 Establishing/Renewal of the professional card

The application for obtaining or renewing a professional card is submitted on a printed form that the applicant must obtain from and return to the regulation and general affairs department of the Wilaya where the executive's residence or the company's commercial premises or headquarters are located in the case of executives of commercial companies.

The professional card is issued by the wali of the wilaya of location of the beneficiary or the location of the commercial or the registered office of the company the leading members of commercial companies.

In practice, the minimum time to obtain the business card is attached to three (03) months from the date of issue.

The foreigner wishing to obtain a professional card should apply for the card sixty (60) days at the latest after registration with the Trade Registry, or the crafts and trades Registry, or with the Council of the professional organization governing the profession.

The renewal application must be presented sixty (60) days before the expiration date of the card at the latest.

The professional card is confiscated from the holder if, for example, the holder has been declared bankrupt, or if he or she has ceased to carry on the activities for which the professional card was issued.

4.3.1.3 Period of validity of the professional card

The period of validity of the professional card is set at two years and is renewable. The renewal application must be presented sixty (60) days before the expiration date of the card at the latest.

The holder of the professional card must return it to the administrative authorities that issued the card, when he or she definitely leaves the national territory.

4.3.2 The foreign resident card

In addition to the provisions summarized below, the provisions of the aforementioned Executive Decree No. 06-454 dated on December 11, 2006, stipulate that foreigners are required to apply for a foreign resident card within ninety (90) days after obtaining a professional card. This disposition is not applicable for foreign directors, members of supervisory boards and the managing directors of commercial companies.

The person directly concerned must be present to fulfill the requirements and fill in the necessary forms to obtain a residency card.

Article 17 of the same Decree stipulates that foreigners fulfilling the legal requirements to stay on the national territory but who are required to have a professional card must comply with the provisions of this new law within a period of one (1) year following its publication in the Official Gazette of the People's Democratic Republic of Algeria.

CHAPTER 5

FOREIGN TRADE

5.1 Legal Framework concerning Imports and Exports

5.1.1 Control Measures of Imports and Exports

A government's flagship measure was introduced by the Law No. 15-15 dated on July, 15, 2015, which amends and supplements the provisions of the Ordinance No. 03-04 of July 19th 2003 related to general rules applicable to the importation and export of goods operations.

At the outset, it should be noted that contrary provisions in the administration of import and export licensing requirements are repealed.

The conditions and procedures for application of the licensing requirements are established by regulation through the Executive Decree No. 15-306 of December 6th 2015.

5.1.1.1 Justifications of restrictions on the free movement of goods:

If the free movement of goods (import and export transactions of goods) remains the principle, quantitative and / or qualitative restrictions measures and / or import or export goods control measures can be applied.

A non-exhaustive list of justifications for these restrictions is given in the Article 6 bis of the Law:

- Conserve exhaustible natural resources in conjunction with the application of these restrictions on production or consumption;
- Ensure to the domestic processing industry essential quantities of raw materials produced in the domestic market and in accordance with the principles provided by the international agreements to which Algeria takes part;
- Implement key measures to the acquisition or distribution of products in anticipation of a shortage;
- Safeguard the external financial balances and market equilibrium.

5.1.1.2 General regime of import and export licenses:

For this purpose, import or export products licenses can be instituted. It is meant by license "any administrative requirement demanding as a precondition, the submission of documents for clearance of goods in addition to those required for customs purposes." Note that it will not be required for minor changes in value, quantity or weight in relation to what is indicated on the license. The rate of these differences will be fixed in the license according to the nature of the product[29].

29 Article 6 of mentioned law.

The licenses are called automatic when they are granted following an application and they do not have the purpose or effect of exercising the effects of restrictions on imports or exports. The license application may be submitted on any working day before customs clearance. The license is valid for ten (10) days but can be maintained if the circumstances require it.

Non-automatic licenses are defined negatively, is a non-automatic license which does not meet the definition of automatic licensing. These should not cause effects restriction or distortion in addition to those caused by the imposition of the restriction. Their scope and duration must meet the principle of necessity and proportionality. The validity of the non-automatic licensing, to be reasonable, is thirty (30) days, which may be extended for another 30 days.

Operations pertaining to the import and export of products are subject to foreign exchange controls[30] which subject these operations to certain prerequisites, such as banking domiciliation[31].

Imported products must comply with specifications pertaining to the quality and security of the products, particularly Law No. 09-03 of February 25, 2009 pertaining to consumer protection and fraud prevention[32], Executive Decree No 13-378 of November 9th 2013 determining conditions and ways relating to consumer information, also disposition of Law No.16-04 of June 14th and 19th 2016 modifying and completing Law No. 04-04 of June 23, 2004, pertaining to standardization, and Order of June 15, 2002 establishing the terms and conditions of the application of Article 22 of the Customs Code pertaining to importing counterfeit goods.

According to Law 16-04, the definition of standardisation was revised and determined as follows: "Standardisation is the activity to establish, in the face of real or potential problems, provisions intended for common and repeated use, aimed at obtaining the optimum degree of order in a given context". "The standard is now a document approved by the competent standardisation organisation, which provides, for common and repeated uses, rules, guidelines or characteristics for particular products or processes and production with which compliance is not mandatory. It may also deal, in whole or in part, wth terminology, symbols, packaging, marking or labeling requirements for a given product, process or production method.

The Standardization Body is now entitled to become a national member of the corresponding international and regional organizations.

5.1.2 Protective Trade Measures

The domestic production may benefit from tariff protection in the form of ad valorem customs duties, as well as trade protection measures. These measures are safeguard measures, compensatory measures and anti-dumping measures.

5.1.2.1 Safeguards

The safeguard measures apply to products imported in such large quantities as to threaten segments of the domestic producers of similar or directly competing products. Safeguard measures are defined by law, are subject to the partial or total suspension of license and / or obligations and come in the form of quantitative restrictions on imports or a rise in tariffs.

No safeguard can be implemented without an inquiry conducted by the relevant departments

30 Ordinance 03-11 of 26 August 2003, concerning currency and credit.

31 See Currency Regulations, Chapter 6.

32 Note the creation of a national council for the protection of consumers, including credit, consideration and determination of the role of consumer associations, the establishment of an anti-fraud system, the guarantee obligations and after sales services, the obligations of conformity of products and the obligation to inform the consumer.

of the ministry in charge of foreign trade in collaboration with the competent departments of the ministries involved.

A ministerial decree was published on February 3, 2007 in application of the provisions of article 03 of Executive Decree No. 05-220, which rules on the terms, conditions and procedures for organizing the inquiry into the implementation of provisional and definitive safeguards.

The application to implement this measure may be presented by any concerned party to the authorities in charge of the inquiry (the relevant department of the ministry in charge of foreign trade), which decides to either accept or reject the application within thirty (30) days.

5.1.2.2 Countervailing Measures

Countervailing duties aiming to offset any subsidy awarded to the production, imports or transportation of a product whose export to Algeria is likely to adversely affect a segment of domestic production have been introduced.

Countervailing duties are specific duties collected like customs duties.

Countervailing measures may only be levied following an inquiry conducted by the competent departments of the ministry in charge of foreign trade. A countervailing right may not be applied only after an investigation by the relevant departments of the Ministry of Foreign Trade.

A ministerial decree was published on February 3, 2007 in application of the provisions of Article 03 of Executive Decree No. 05-221, ruling on the terms, conditions and procedures for organizing the inquiry regarding the application of countervailing measures.

The amount of the subsidy that may give rise to the application of countervailing duties is calculated in terms of the advantage given to the beneficiary during the period under review. That period is usually the beneficiary's last complete fiscal period, but could be any other period of at least six (6) months preceding the inquiry for which financial data and other relevant data are available.

5.1.2.3 Anti-Dumping Measures

Anti-dumping duties are introduced for any product whose export price to Algeria is lower than its normal value or that of a similar product whose imports adversely affect or could adversely affect a segment of domestic production.

Anti-dumping duties are specific duties collected like customs duties.

The ministerial Decree of February 3, 2007 provided further detail into the implementation of Article 03 of Executive Decree No. 05-222 dated on June 22, 2005.

The Decree sets the terms, conditions and procedures for organizing the inquiry into the application of provisional and definitive anti-dumping duties.

Decree 05-222 of June 22, 2005 stipulates that there is dumping when a product is introduced on the domestic market at a price lower than the normal value of a similar product. The difference between the export price and the normal price of a similar product is the dumping margin.

The inquiry is only opened if the authorities in charge of the inquiry have determined, after evaluating the degree of support or opposition to an inquiry, as expressed by national producers of the similar product, that the request for an inquiry was supported by domestic

producers whose aggregate production represents more than 50% of all similar production of the national production sector expressing its support or opposition to the request.

However, the authorities in charge of the inquiry may give themselves the mandate of investigating with regard to the application of antidumping duties.

5.2 Obligations of Commercial Companies

Pursuant to the Executive Decree No. 05-458 of November 30th, 2005 as amended and supplemented, commercial companies involved in import activities must fulfill the following three conditions:

- Possess appropriate warehousing and distribution infrastructure.
- Possess means of transportation adapted to the specific nature of their activities.
- Possess means of controlling quality and conformity, as well as means of ensuring the sanitary and phytosanitary control of imported foodstuffs and products.

In addition to that, following exchange control regulation, the accredited intermediary banks have an obligation to ensure, however, the regularity:

- the foreign trade operations on goods in relation to the laws and regulations applicable thereto,
- contract terms,
- rules and international practice.

5.3 The applicable rules in customs matters

5.3.1 Customs Regulations

The liberalization of foreign trade in Algeria began in the early 1990s.

Today, most products can be freely imported in accordance with the previously stated conditions. The Customs code as a result of the Law No. 79-07 of July 21st 1979 extensively amended and supplemented since, is available on the website of the Directorate General of Customs :http://www.douane.gov.dz/applications/ code/

Regarding tariffs, the level of protection has considerably diminished. This trend has been confirmed with the effective application since September 2005 of the Association Agreement with the European Union (EU) and since 1 January, 2009 with the Great Arab Free Trade Zone.

A negative list of products excluded from the customs duties exemption on importation from the GAFTA is updated regularly. At February 1st, 2013 this list included 1,260 products.

According to provision of Executive Order 13-85 dated on 6 February 2013 amending and completing the Executive Order 10-89 fixed the procedures for monitoring imports on exempted customs duties under the free trade agreements.

The application of exempted customs duties has been expanded and concerns also the individuals and stipulate: «Any legal or natural person carrying a production and / or commercial activity, in accordance with the laws and regulations in force, must, before any import operation, apply for exemption from customs duties. »

Within the framework of the GZALE, goods manufactured in the franchise zone do not benefit from duty-free treatment. The relevant services of the Customs Department are the only ones authorized to verify the veracity and admissibility of the documents proving the origin of the products. It should be emphasized here that the provisional Additional Duty.

It is worth noting here, that the DAP offset the impact on government finance caused by the reduction of customs duties and the abolition of the administrative value and the special additional tax (taxe spécifique additionnelle, TSA). Since 2001, the DAP rate diminished at the rate of 12% per year.

In fact there are three types of customs duties are now in effect, with respective rates of 5%, 15% and 30%, along with a 0%_customs duty (complete exemption).

5.3.2 Clearance procedures:

Schematically, the customs clearance procedure takes place in four phases: the conduct and customs implementation, establishment of declaration in details, its control and audit and finally the liquidation and payment of duties and taxes.

For the customs statement, it must be detailed and supporting accompanying documentation must be included. The detailed statement is signed by the declaring (owner of the goods) or through a customs agent appointed by him. It serves as a support to customs and foreign trade control and the exchange regulations; it is also the basis for the collection of duties and taxes and collects statistical data.

It should be noted that the simplified customs clearance procedures are provided by the Executive Decree n ° 13-321 of September 26th, 2013 as estimated statements, simplified or global. All of these statements must be settled through supplementary statements, which form with the initial statement a whole single and inseparable.

The benefit of simplified procedures is granted under an agreement between the Customs and the concerned operator. The agreement contains in particular, given the simplified procedure, the goods to which it relates, its duration (s) office (s) selected (s) for customs clearance, as well as the operator's obligations. Initial statements shall meet the requirements and paperwork that may be payable on control of foreign trade and foreign exchange.

Furthermore, in the same idea of customs simplifications, it should be mentioned the approved economic operator status. This concept was introduced by the Finance Law 2010[33] within the Article 89ter of the Customs Code which provides that the customs authorities may grant the status of authorized economic operator to benefit from facilitation measures in the framework of customs clearance procedures. The Executive Decree No. 12-93 of the Government of March 1st, 2012 has clarified the terms and conditions of the benefit of AEO status in the annex I consists of a standard specifications of authorized economic operators.

5.3.2.1. The customs agent and the customs Statement

In accordance with the customs code, all operators in connection with customs irrespective of their field of intervention or activity are subject to the proxy procedure.

The POA allows the operator:

- Designate the customs office where the principal is authorized to act,

33 Article 38 of 2010 Finance Law.

- List the powers delegated to his representative,
- Name the agent.

The principal must be registered by the relevant customs collector.

For each customs transaction, a copy of the POA will be attached to any Customs transaction (accounting, application for temporary admission, etc.). Finally, the agent may be a customs agent or employee of the company. However, under new provisions introduced in the Supplementary Finance Law for 2009, imports operations may be undertaken by proxy. Under this Law, with regard to banking formalities for imports and border control of the compliance of imported products, the presence of the owner of the trade register or manager of the importing company is required. In a note setting out the procedure for this measure, the Finance Ministry adds that an employee with a power of attorney from the legal representative may perform such procedures provided that they have been duly reported to social security.

According to the Decree No.10-288 of November 2010, relating to persons authorized to operate customs clearance of retail goods, only the commissioners in customs, the owners of the goods who obtained an authorization of clearance and the carriers are authorized to declare the retail goods.

The commissioner in customs is approved by the customs administration. He can be an individual or a legal entity, but this latter must appoint an individual among the legal representatives, to perform the customs formality. Among other conditions, the approval is submitted to a nationality condition, the Algerian nationality for the individuals as well as for the representatives of the legal entity. The owners of the goods and the carriers have to obtain an authorization of clearance from the same administration.

The carrier is authorized to declare the retail goods in absence of the owner who obtained the authorization, and when there is no commissioner in customs in the district linked to a border customs office. The application method of this disposition was fixed by a decree from the minister in charge of finance.

5.3.2.2. The accompanying supporting documents

Documents in compliance with the regulatory terms and conditions for access to foreign trade

- A copy of the Trade Register and tax registration card (magnetic card since 1 January, 2009) with fiscal identification number (FIN).
- Data regarding the transaction consists of:
  - the final invoices or commercial contracts,
  - the documents pertaining to transportation, insurance and other charges,
  - the note detailing the customs value.

Foreign exchange control documents

- Banking domiciliation visa of the final invoice or the commercial contract in the case of capital transfers;
- Indication of the chosen method of payment (cash, credit line, actual currencies, without payment).

Control of foreign trade documents
- prior authorization to import;
- technical, compliance, metrology control certificate or visa.

The customs clearance of the equipment is subject to the importer's ability to submit the said documents. It would be advisable to refer to the various customs systems in effect.

5.3.2.3. The customs value

The three central data for all customs statement and clearance are therefore all the kind, value and origin.Determination of the country of origin of goods is essential for:
- Calculate the applicable fees;
- Know the formalities relating to the control of foreign trade;
- Establish the foreign trade statistics;
- Apply, where appropriate, specific regulations.

A reporting system of elements relating to the customs value (DEV) was established in Algeria. Its purpose is the creation of a database for customs valuation; the only computer input of this statement will make available SIGAD (integrated information system and automated management) all information relating to the customs value.

For this, and to make the operation of the DEV more efficient and in the interests of reducing reproduction costs of this statement, it was decided to limit the DEV to the only computer input.

Indeed, the establishment of the DEV is obligatory for all Customs Tariff from January 1st 2009.

5.3.3 Customs procedures

The customs statement is the act by which we assign a customs regime for goods. According to the legislation in force, customs procedures under which goods may be placed are:
- The release for consumption;
- The deposit of customs
- transit;
- Transhipment;
- Warehouses;
- Exercised plants;
- Temporary importation;
- Replenishment duty;
- Returned goods
- The final export;
- The temporary export
- Re-export;
- Shipbuilding

5.3.3.1 Bonded Warehouses Regimes

A distinction should be made between three types of bonded warehouses:

- The public warehouse,
- The private warehouse,
- The industrial warehouse.

It is in these three types of warehouses that the goods under customs surveillance is stored.

Decisions relating to approval of public and private warehouses are taken by the Director General of Customs in support of a regulatory dossier instructed by the head of Customs Inspection Division and the Regional Director of Customs of the relevant districts. The records of approval shall be in accordance with regulatory standards (layout, equipment, security). General submissions are backed by financial guarantees or mortgages (customs permits) upon presentation of standard documents.

Purpose of warehouses:

- Storage,
- Transfer to public warehouses,
- Reduction of locked-up capital,
- Abolition of storage charges,
- Possibility of developing subcontracting activities,
- Warehousing of supply stocks.

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- The temporary export
- Re-export;
- Shipbuilding

5.3.4.1 The temporary admission regime

This applies to equipment tied to the production and execution of works carried out as part of performance contracts.

It facilitates international trade and commercial prospecting. It also makes it possible to use and rent material for work, production and transportation.

The implementation of this regime is conditional to a prior authorization by the customs service. It is the customs service that sets the duties and taxes suspension rate as per the related regulation[34]. The duration of the temporary admission regime depends on the term of the contract.

Merchandise earmarked for consumption and merchandise whose exact nature cannot be identified by the customs service is not eligible for the temporary admission system.

5.3.4.2 Special temporary admission for inward processing

This option exists to allow imports of raw materials (or semi-manufactured goods) needed by the company for production meant for re-export once processing has been completed.

Customs administration grants a temporary admission authorization and sets the time limit of the adopted system which must coincide with the time necessary to carry out the process.

Note that admission for processing eligible under this system is only granted occasionally and not systematically.

The drawback regime:

It is a customs procedure, provided by Finance Law for 2013 which, when exporting goods, allow obtaining a full or partial refund of duties and customs taxes that concern either the goods exported or used in their production.

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34 Refer to article 25 FL 2013.

An application text will explain the procedure for implementing of this regime.

5.3.5 Measures to protect intellectual property rights

Counterfeit merchandise violating an intellectual property right such as:

- A brand or a trademark,
- A registered industrial design,
- Copyright or neighboring rights,
- A patent.

Importations and exportations of the above-mentioned merchandise and merchandise passed off as Algerian-made goods are prohibited.

To this end, customs authorities are taking the necessary measures to allow the destruction of merchandise recognized as counterfeit, and all other measures preventing involved parties from deriving an economic profit from the operation, by prohibiting the re-exportation of counterfeit merchandise.

5.3.6 The Euro-Mediterranean agreement establishing an association between the European Union and Algeria

This agreement was ratified by Algeria on April 27, 2005, after its adoption by the Algerian Parliament on April 26, 2005.

The agreement aims to set general conditions for the gradual liberalization of trade in goods, services and capital.

It should be noted that the formal process of evaluation of the Agreement has been initiated.

Provisions of the agreement[35]

- Tariff preferences

They pertain to both customs duties and equivalent goods and services taxes (DAP), according to the projected concession scheme and the type of the imported merchandise.

The industrial products that will be completely exempt from customs duties and equivalent taxes are included in a list of 2076 tariff lines pertaining to raw materials and other goods earmarked for operations.

- Regulations concerning origin

Only Algerian or EU merchandise may benefit from the preferential tariffs provided for in the agreement. In this regard, the EUR1 form (movement certificate) constitutes proof of origin.

In order to be considered as being of Algerian or EU origin, the merchandise must fulfill conditions and criteria set by Protocol No. 6 of the Association Agreement.

- The system of quotas

The tariff rate quota is a system limiting merchandise that can benefit from commercial preferences. It makes it possible to limit quantities that will be admitted with a total or partial reduction of customs duties and equivalent taxes.

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35 See above developments relating to the Executive Decree no.10-89, 10 March 2010, laying down the procedures for monitoring imports exempted from customs duties under free trade agreements, paragraph no.5.3.1.

Preferences will be granted on a "first come, first served" basis which consists of allowing customs clearance under preferential conditions until the quota terms have been reached. Imports arriving after the quota has been reached are allowed in with the payment of duties and taxes.

Except for the application of the provisions of Article 44 of the Agreement, which pertain to the adequate and effective protection of intellectual, industrial and commercial property rights, community merchandise imported directly (direct transportation) from the EU, from September 1, 2005, must be declared, whether the merchandise is subject to quotas or not.

1) Merchandise not subject to quotas:

- They must be declared under the permanent importation regime with a clearance code bearing the number 1025.
- The origin of the merchandise must be within the EU (codes of 25 countries or EU code = 599).
- The EUR1 form or movement certificate indicating the EU origin must be attached.

The source must also be from the EU (direct transportation rule). In the case of transit by Tunisia or Morocco, proof that the merchandise has always remained under customs surveillance (Protocol 6; Art. 14) is required.

2) Merchandise subject to quotas:

- In addition to the terms mentioned above, the advantages provided for will only be granted on the basis of the availability of quotas. It is the quota management system that is intended for centralizing data and assigning daily available quantities according to time-stamping (in other words, according to the order in which the declarations are recorded each day).
- With regard to exports, in order to be able to benefit from preferential access to the EU market provided for in the Agreement (Article 8, as well as Protocols 1, 3 and 5), Algerian merchandise exported towards the European Union must be accompanied by an EUR1 form (aka movement certificate or certificate of origin).
- Exporting firms may contact chambers of commerce and industry in order to obtain EUR1 forms and all other related documents.
- The EUR1 form is issued by the customs services in cases where the merchandise subject to a certificate is considered as a product originating from Algeria. This certificate is stamped by the customs bureau in charge of export operations management, once merchandise has been exported or exports have been confirmed.

Also, it is important that the beneficiary or with the following documents:

- a tax assessment cleared or Schedule or legal suspension of payments;
- a certified copy of the update certificate with the National Fund for Social Insurance for Employees (CNAS) and / or the national social security fund for self-employed (CASNOS) or a certificate proving the situation vis à-vis the national fund of social insurance for employees (CNAS) and / or the national social security fund non-employees (CASNOS).
- Have a fiscal identification number (FIN)

Customs channels

The green channel is the only means of obtaining a quick customs clearance. Nearly all the goods, products and equipment covered by the Association Agreement may benefit from this system. However, it will be necessary to wait for instructions originating from the General Customs Directorate addressed to the relevant authorities and determining the list of products, as well as their tariffs.

CHAPTER 6

FOREIGN EXCHANGE REGULATIONS

6.1 Contextual elements

Foreign exchange regulation no longer represents – with the exception of certain aspects linked to the management of the financial account of the balance of payments – an obstacle for investors and business operators.

From 1994 on, the convertibility of the Dinar for current account transactions led to the implementation of the commercial convertibility of the local currency, stemming from the liberalization of import payments. In 1994 this commercial convertibility led the Bank of Algeria to fix the exchange rate according to the supply and demand for the Dinar on the foreign exchange market.

In 1996, fixing was replaced by an interbank market in which the Bank of Algeria intervened to satisfy or authorize foreign currency requests exclusively earmarked for payments or transfers made as current transactions (goods and services imports, labor and investment income, etc.) within the framework of the convertibility of the Dinar.

During a second phase, the convertibility of the Dinar for current account transactions was extended to health care, training and travel. For all expenditures pertaining to these sectors, residents of Algerian nationality are authorized to withdraw the necessary foreign currencies and transfer them abroad in exchange for payment of the equivalent amount in Dinars within the annual limit allowed and upon presentation of supporting documents.

The adoption by Algeria in 1997 of Article VIII of the IMF's Articles of Agreement made the convertibility of the Dinar for current account transactions irreversible. IMF member countries that have adhered to this provision undertake not to implement restrictions on payments and transfers in connection with international current account transactions.

Under the current system, this convertibility pertains only to the current balance of payments. Financial account convertibility (formerly capital account convertibility), or the liberalization of capital movements, is still not completely open, except for capital flowing into Algeria (direct foreign investment or portfolio investments of non-residents).

However, the legal and regulatory provisions currently in effect (the Money and Credit Ordinance and Rule No. 2002-01 of the Bank of Algeria) already allow resident economic operators to solicit the transfer of funds to finance activities abroad in complement with activities involving the production of goods and services in Algeria, provided that an authorization from the Money and Credit Council has been secured and with the obligation of repatriating surplus income and/or earnings.

Thus, with the general convertibility of the Dinar, the guarantee that income and gains from the possible sale of foreign investments will be transferred, and exchange rate stability have helped promote a favorable environment for foreign investment.

6.2 The role of commercial banks

The system under which foreign exchange controls are currently exercised stems from a micro-management approach to overseas transactions.

Each operation involving the inflow or outflow of currencies is scrutinized individually.

The idea being that in order to combat fraud, it is necessary to prevent operators, whether Algerian or foreign, from transferring or acquiring currencies without declaring them and thus without prior authorization.

This approach delays the processing of overseas transactions. Nonetheless, the authorities in charge of foreign exchange controls are leaning increasingly towards relaxing the system by delegating the processing of these transactions to accredited intermediaries, in this case commercial banks that can carry out the transactions at their branches without requesting the permission of the Bank of Algeria.

These intermediary commercial banks should forward every month to the Bank of Algeria (General Department of Foreign Exchange), not later than 15th of the month following the month in reference, under magnetic media and paper, a summary of the executed transfers, broken down by mode of settlement.

A summary of the executed transfers, broken down by mode of settlement

Since the publication of Instruction No. 02-15of 22 July 2015 and since 1 st August 2015, the level of external commitments signed by banks and financial institutions shall not at any time exceed one (1) times their capital as defined by regulations in force.

For external sheet commitments in respect of import operations, means all signed commitments relating to the importation, net of deposits in dinars and provisions made for these operations.

6.3 The principle of the free movement of capital in a commercial context

The governing principle is based on the freedom of movement of capital to fund an economic activity and repatriate the return on investments. However, this freedom is subject to strict controls. Its implementation by the foreign exchange control services is no longer "bureaucratic" however, as the Bank of Algeria adopted new measures in 2005 to facilitate the transfer of dividends, income and gains from the sale of foreign investments, attendance fees and percentage of profits. Transfer applications are no longer investigated by the Bank of Algeria since the right to process these applications was delegated to accredited commercial banks.

The legislator hardened the penalties concerning exchange legislation and capital inflow or outflow from and to foreign countries[36] as follows:

- The means used to fraud are confiscated;
- The notion of infringement of the exchange regulations is formally extended to the purchase

36 Ordinance No. 10-3 of August 26, 2010, amending and supplementing Ordinance No. 96-22 of July 9,1996 concerning the suppression of foreign exchange regulations offenses and capital inflow or outflow from and to foreign countries.

and sale, exportation of any means of payment, securities, or debt securities drawn up in foreign currency, as well as exportation or importation of any means of payment, securities or debt securities drawn up in national currency, when these operations infringe the laws and regulation enforced;

- Review of the competency rules of the national settlement committee (between 500,000 AD and 20,000,000 AD)[37] and local committees (under 500,000 AD);
- Exclusion from the benefits of the transaction for those having already benefitted from a settlement or for recidivists;
- The settlement procedure doesn't constitute an obstacle to the starting of a lawsuit when the value of the corpus offense is 1,000,000 AD or more, when the fraud is in connection with foreign trade and amounting to 500,000 AD or more, in other cases;
- Abolition of the article submitting prosecution to a complaint from the finance minister or the governor of the Bank of Algeria, or their representatives.

6.4 Foreign currency accounts

Article 1 of Regulation No. 09-01 of February 17, 2009 issued by the Bank of Algeria, states that "resident or non-resident individuals of foreign nationality and non-resident legal entities are allowed to open a foreign currency account in a freely convertible foreign currency with an accredited bank."

Accounts may be resident accounts or CEDAC accounts or non-resident accounts or internal non-resident (INR) accounts[38].

- *Resident accounts*

Regulation 90-02 of the Bank of Algeria regarding the conditions on the opening and operation of foreign currency accounts by resident legal entities also provides them with the possibility of opening multiple foreign currency accounts. An account may also be opened for each currency. Regulations now extend to non-residents.

However, an account opened in a specific currency may receive payments or transfers of any amount denominated in another currency.

- Operation of foreign currency accounts

Although all Algerian residents are theoretically authorized to acquire or hold different means of payment denominated in a freely convertible foreign currency in Algeria, they must be acquired, negotiated and deposited with Algerian banks.

Foreign currency accounts opened by private firms incorporated under Algerian law are credited with sums representing transfers from abroad or from other foreign currency accounts, from a payment of any other instrument of payment denominated in a foreign currency or the income generated by the export of goods or services performed by the holder.

- Use of foreign currency accounts

Within the limit of the available balance, the holder of a foreign currency account may order any withdrawal to:

- make any payment in Algeria;

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37 Formerly 50,000,000 AD.
38 See Chapter 9, point 9.7.2.

- acquire in foreign currency, in Algeria or abroad, any equipment, supplies, tools, products and material used in support of the company's object or their activity;
- pay for any service acquired abroad, any salary of foreign personnel, fees, duties, licenses or patents;
- make any transfer or payment from abroad other than those mentioned here, under cover of an authorization of the Bank of Algeria.

These accounts may operate only in connection with the holder's activities.

Regulation No. 07-01 of February 3, 2007, pertaining to rules which apply to regular transactions with foreign counterparts and involving foreign currency accounts, and which took effect on May 13, 2007, abrogated regulation 95-07 of December 23, 1995 pertaining to foreign exchange controls and provided specifics with regard to some concepts.

This regulation aims to define the principle of convertibility of the national currency for regular international transactions and the rules applicable in the area of transfers to and from abroad linked to those transactions, as well as the rights and obligations of foreign trade operators and intermediaries with accreditations in this field.

The regulation stipulates that the payments and transfers made in connection with regular international transactions are free. They are conducted by the accredited intermediaries.

By payments and transfers made in connection with international transactions, the regulation refers to:

- Payments and transfers made in connection with foreign trade transactions on goods, services, namely technical assistance, and regular transactions linked to production,
- Payments made as interest on loans and net income from other investments, and loan repayments.

Directive No. 02-07 of May 31, 2007 of the Bank of Algeria relating to operations made in connection with regular transactions involving foreign counterparts amended and supplemented by Directive No. 03-07 of June 11, 2007 provided details regarding what items fall within the scope of application of regular transactions defined by the regulation.

The Directive listed several transactions categorized under nine headings:

- Foreign trade transactions on goods,
- Transactions linked to transportation,
- Insurance and reinsurance transactions,
- Financial transactions,
- Travels,
- Technical assistance and operations linked to production,
- Transactions linked to communications,
- Income,
- Other regular transactions.

6.5 The imports system

6.5.1 Domiciliation

Under the current regulation, banking domiciliation operations must be processed according to the following principles:

Any contract for the goods and services imports payable by currency transfer is subject to domiciliation by an accredited intermediary. Domiciliation of all imports operations is essential prior to their implementation, financial settlement and customs clearance.

Banks, administrations, public and private producers registered in the Trade Registry, traders, wholesalers registered in the Trade Registry, dealers and wholesalers approved by the Money and Credit Council are subject to this system.

A domiciliation tax is due to imports of goods or merchandise, but also imports of services due to:

- 10,000 DZD for any application to open a file debit transaction to import goods or merchandise.
- 3% of the amount of clearance for imports of services. Imports of services performed in connection with reinsurance transactions are exempt from this tax 50 (Article 62 of the Finance Law 2012).

Capital goods and raw materials that are not purchased for resale are specifically excluded from this requirement, subject to a commitment each time the goods are imported not to sell the goods.

The domiciliation of imports consists:

- For the importer: of choosing, before the transaction, an accredited intermediary bank with whom the importer undertakes to conduct all banking transactions and formalities provided for by the foreign trade and foreign exchange regulation.
- For the banker: of taking care or having someone take care of the transaction and formalities provided for in the regulation on behalf of the importer.

In terms of commitments, the banking domiciliation of an import must be considered a "simple administrative formality" which serves as technical support for foreign exchange and foreign trade controls conducted by the banking system and the national customs authorities.

The transaction being settled by debiting an account and thus by written order of the client, the bank remains responsible for the regular settlement of the import dossier, which, since the adoption of Regulation No. 07-01 of February 3, 2007 pertaining to the rules applicable to regular transactions with foreign counterparts and with foreign currency accounts, is conducted within three (03) months or one (01) month after the last payment, whether by cash payment contracts or deferred payment contracts.

Domiciling imports of small equipment and other merchandise imported for personal use is granted respectively to health care professionals and legally constituted agricultural cooperatives.

The acceptance of the domiciliation file by the accredited intermediary depends on:

- The financial coverage and the guarantees of solvency provided by the client;

- The client's capacity to conduct the operation under the best conditions and in conformity with the rules and customs of international trade;
- The legality of the operation with regard to foreign exchange and external trade regulations.

6.5.2 Elements or information contained in the commercial contract

Prerequisites for a domiciliation request are as follows:

- A valid contract,
- Pro forma invoice,
- Firm purchase order or letter,
- Definite confirmation of purchase,
- An exchange of correspondence that includes all the necessary signs to clearly demonstrate that a contract has effectively been concluded.

Then, more specifically for commercial contracts, the following must be included:

- Identities of the co-contracting partners,
- Country of origin and source country of the merchandise,
- Type of merchandise and of the services performed,
- Quantity, quality and technical specifications,
- Sales price of the goods and services in the currency used in the invoice and the payment of the contract,
- Time required to deliver the goods and perform the services,
- Contract clauses regarding the assumption of risk and other incidental expenses.
- terms of payment.

6.5.3 Payment of imports

Under current legislation, the payment of imports for sale in the state is carried out by documentary credit or Documentary remittance or free transfer.

The concerned companies are under an obligation, to domicile the import operation. This is an obligation whatever payment method. Services imports are excluded from the requirement of documentary credit.

The requirement of documentary credit and prior domiciliation (see earlier) shall apply to imports of goods worth over 100,000 DZD FOB, initiated by the operators of private law. Services imports, imports of goods valued at less or initiated for example by ministries or the government, may still be paid by transfer[39].

Opening documentary credit accounts must be made through accredited correspondents by Algerian banks. Because of the commitment bank, this payment method requires a credit authorization granted at the discretion of the bank.

In line with changes detailed in the Supplementary Finance Law for 2009, a new note of the Bank of Algeria[40] includes the conditions and exceptions under which the invoices for imports of goods and/or services may result in transfer. Imports invoices for goods and/or services that

39 Further details in a second note dated 11 August 2009 issued by the Finance Ministry and the Bank of Algeria.
40 Note issued by the Bank of Algeria, no. 180/DGC/2009 dated 13 October 2009.

have not been settled 360 days after the customs clearance date for goods and the billing date for services, irrespective of the payment method in use, may no longer be paid by transfer unless:

- The settlement period has been explicitly stated in the contract or financial agreement and the declaration of external debt been made in accordance with the regulations in force,
- By court decision.

In principle, imports are paid in Algerian Dinars for the equivalent of their value in the foreign currency in which they are denominated. Payments are made by the bank of domiciliation.

In these cases, imports must be covered by appropriate credits and benefit from export credit facilities upon leaving the country of the supplier. The financing is arranged and structured by the Algerian bank of domiciliation.

Imports may, as a matter of exception, be settled by amounts withdrawn from foreign currency accounts. In that case they are not subject to the requirements mentioned above with regard to the financing.

Accredited intermediary banks execute any transfer earmarked for abroad ordered by the operator, provided that they receive the documents certifying shipment of the merchandise and the definitive invoices related to the transaction. The importer must supply the bank with a "D-10" customs clearance document. Contributions in kind in the form of equipment are no longer authorized as this falls under the statutory prohibition to import used goods.

As for the import of services, the transfer is done on the basis of invoices certified by the resident importer, accompanied by service, contractual and transfer certifications, issued by the DGE.

Imports are no longer subject to the prior transfer authorization of the Bank of Algeria by virtue of the 2007 regulation pertaining to services listed on the aforementioned order No. 02-07 of 31 May. With the exception of services listed as current transactions, the operator, through their commercial bank, should request approval from the Bank of Algeria prior to the domiciliation of the services contract.

6.6 The exports system

The domiciliation requirements for non-hydrocarbon exports are governed by Regulation No. 07-01 of 3 February, 2007 of the Bank of Algeria.

The export of merchandise where all sales are final or on consignment and the export of services abroad are subject to mandatory prior domiciliation.

According to procedure, the exporter, prior to exporting, must choose a bank with the capacity to act as an accredited intermediary with whom the exporter undertakes to conduct the banking operations and formalities provided for in the regulation.

When carrying out an export transaction, the accredited intermediary bank domiciliates the goods and services contracts with one of its branches.

In addition, the exporter has a domiciliation file opened by submitting the original and two duplicates of the commercial contract, or any other document intended for that purpose, to an accredited intermediary bank. After the usual verification formalities, a copy bearing the number of the domiciliation file and the stamp of the bank is handed back to the exporter.

Where payment of export shall be payable within a period exceeding 180 days, the export can take place only after authorization of the competent authorities of the Bank of Algeria.

Henceforth, the exporter may repatriate the income from the export within a period not exceeding 360 days from the date of shipment for the goods or the date of completion for the services. Indeed, the Bank of Algeria has recently promulgated Regulation No. 16-04 of 17 November 2016 amending and completing disposition of Regulation No. 07-01 of 03 February 2007 relating to applicable rules to current transactions with foreign currency accounts, which extend the repatriation of export earnings to 360 days, instead of 180 days, which is constitute as a maximum that an exporter might grant to non-resident customer. The time limit for payment should be expressly stated in the commercial contract.

In any event, the repatriation of the export proceeds should be done on the day of payment.

Subject to the foregoing, in accordance with the provisions of this Regulation, the export should be supported in advance by export credit insurance, contracted with the national organization competent for the export, when the settlement period granted by the operator/ exporter to the non-resident customer is between 180 and/or exceeds 360 days.

In this case, the operator / exporter could claim advances payment in dinars on income export from the Commercial Bank.

Finally, an instruction from the Bank of Algeria will specify the conditions for the application of exports of durable consumer goods or equipment whose settlement exceeds 360 days.

The obligation to repatriate relates to the amount billed and ancillary contract costs when they are not incorporated in the selling price. The amount repatriated includes indemnities and possible contractual penalties.

Export operations may be eligible, under certain conditions, to a specific tax treatment.

CHAPTER 7

CONTRACT LAW

7.1 General principles

Contract and obligations law is governed by Book II of the Civil Code, "Des Obligations et des Contrats". From 1975, the year of its enactment until today, the Algerian Civil Code has undergone several reforms; a sign that the law-makers are adapting to changing society, economic development policy and market economy. The latest reform dates back to13 May, 2007 - 07-05 Act ruling on the provisions relating to the lease contracts.

Contract law essentially revolves around the principle of binding force of contract, the relative effect of agreements, contractual liability and the recognized right of the parties to release themselves from their obligations for good cause.

Algerian contract law is subdivided according to the classic distinction between domestic contracts and international contracts. The latter contracts may be subject to another law than Algerian law and disputes stemming from them fall either within the jurisdiction of Algerian courts, or of foreign courts or, more and more frequently (notably since 1993), of international arbitration according to the consent of the parties.

According to the new Article 18 of the Civil Code:

"Contractual obligations are governed by the covenants of the parties whenever the latter have a real relationship with the contracting parties or the contract".

If this is not the case, the law of the common domicile or common nationality shall apply.

If this is not the case, the law of the place in which the contract is executed shall apply."

Algerian law also makes the distinction between contracts signed under private law and contracts signed under administrative law. The former is based on strict equality between the parties and on the fact that the parties are private persons. The latter is either signed between two public persons or between a public person and a private person. Administrative law applies here and disputes stemming from the contract are referred to administrative courts. The administration party to an administrative contract with a private person has the possibility of inserting so-called "one-sided" or exorbitant clauses departing from ordinary law, in other words clauses which reflect the preeminence of the administration with regard to individuals. A concession is an example of an administrative contract.

It is also important to make a distinction between consensual contracts and formal contracts. Consensual contracts are established by the mere exchange of consent, whereas formal contracts are only recognized as valid when they are certified by a competent authority, usually a notary. Under the terms and conditions of Article 324 bis 3 of the Civil Code "acts in solemn form are recorded by the public officer in the presence of two attesting witnesses, as failure to do so results in nullity." Thus a firm's contract of formation is a formal act (Civil Code, Article 418).

With regard to the formation of the contract, it should be noted that formal and basic requirements must be met. The basic requirements: consent, power to enter into a contractual

agreement, lawful purpose and cause, and the formal requirements such as the written form, are the standard features of civil law; official deeds as well as private agreements must be in writing. Written documentation represents the most indisputable form of proof. Act No. 05-10 of June 20, 2005 which modifies the Civil Code stipulates that "writing in electronic form is admissible as evidence in the same way that writing on paper is, provided that that the person who issues it, be duly identified and that it is drawn up and maintained under conditions which guarantee its integrity" (Article 323 ter, Civil Code).

Though recognized in the Civil Code, witness evidence is seldom used in business relations. Article 333, paragraph 1 of the Civil Code states that "(…) proof of a legal act or proof of the extinction of an obligation cannot be given by witnesses if its value exceeds 100,000 DZD or is undetermined".

7.2 The effects of the contract

Article 106 of the Civil Code states that the "contract dictates the law between the contracting parties". This provision represents the legal foundation for the obligation to perform the contract, in that the parties must strictly fulfill their obligations while respecting the principle of good faith. The contractor is held liable by what is expressed in the contract, both by law and by what "is deemed necessary, by usage and equity, as a result of this agreement as per the nature of the obligation." (Article 107, paragraph 2).

However, the principle of autonomy gives the parties the possibility of modifying the content of the contract, even of revoking it, provided that the revocation is not unilateral. The revision of the contract is allowed, on the condition that an event changing the circumstances of the contract and inflicting excessive losses on the obligor occurred (Article 107, paragraph 3).

The principle of contract amendments is very important in international business relations, especially when it comes to preserving the future of contractual relationships. In this regard, the judge may, after considering the interest of all parties concerned, reduce, to a reasonable extent, the obligation that has become excessively costly and thus reestablish the contractual balance.

7.3 Contractual liability and breach of contract

The conditions and terms of liability are subordinate to the existence of a default and of actual damage. However, before taking proceedings, it is deemed that the obligee has issued a formal notice beforehand. The formal notice represents a warning from the obligee to the obligor which aims to force the latter to perform the contract. The formal notice is not subject to formal procedures (Article 180), but logically it is only worth resorting to if performance of the contract is still possible.

Non-execution of the contract results from the failure to fulfill the obligation, as provided for in Article 119 of the Civil Code. It may be total (failure to deliver goods) or partial (late delivery). In such contracts entered into by Algerian and foreign partners, failure to fulfill the obligation is not assessed with respect to the traditional obligation of means or the obligation of results. Failure to fulfill the obligation is assessed with respect to the obligation of guarantee. Sometimes, this guarantee is so broad that even a force majeure event does not exempt the obligor from his contractual obligation. Such contracts are extremely rare however. In practice, all contracts include both obligations of means and obligations of results; in some cases, an

obligation is simply considered an obligation of means, whereas in other cases it is considered an obligation of result. When it is simply an obligation of means, the burden of proof falls on the obligee, whereas in the case of obligations of result the burden of proof falls on the obligor. However, it must be noted that in the latter case, even if the obligor has not committed any wrongful act, whenever the promised result has not been achieved, the obligor must compensate the obligee to the extent of the damage suffered by the obligee as a result. In the case of a force majeure event, of an involvement of a third party, or if the obligee contributed, through his own fault, to the non-execution of contract, the obligor is relieved from liability in the first two instances, whereas in the third instance his liability is proportioned to the share of the obligee's responsibility in the breach of contract.

1. As for damages, causal relation between the breach of contract and the damages suffered has to be established. Whenever a total or partial breach of contract occurs, or there is default on contract performance, damages justifying compensation is the logical outcome. Article 182 of the Civil Code regulates the system of compensation; in principle compensation completely covers damages, which comprises two elements: losses suffered (damnum emergens) and loss of profits (lucrum cessans). Paying compensation for damages, however, is not always conclusive. Consequential damages are not taken into consideration. Article 182 states that compensation must pertain to damages that are a "normal consequence of the failure to fulfill the obligation or lateness in doing so". Moreover, only those damages that the obligee could not have avoided may be compensated and only predictable damages are subject to compensation, unless the obligor has committed a gross negligence or fraud. Algerian law provides for two types of compensation: compensation in kind, or its equivalent (in other words, monetary) in cases where compensation in kind is impossible (Article 176 of the Civil Code).

2. Conventional compensation also exists. A distinction should be made between several situations. There is the case where the parties agree on limitation of liability clauses. There are cases, increasingly rare, where the contract contains an exemption of liability clause provided that the obligor has not committed gross negligence or fraud (Article 178 of the Civil Code). On the other hand, the most frequently occurring case has to do with contracts containing penalty clauses. The parties themselves set the compensation, without a third party's intervention (namely judges). However, when the amount of compensation is determined to be excessive in relation to the damages suffered, the judge may intervene to reduce it. Judges tend to do so if the main obligation has been partially fulfilled (Article 184, paragraph 2). This is a public order provision and parties may not convene otherwise by contract.

3. Failure to perform the contract is not simply resolved by the implementation of the obligor's liability and compensation for damages suffered by the obligee. The obligee may file petition to have the contract cancelled. This act has extreme consequences as it is retroactive to the date when the contract was entered into, nullifying all the effects that have occurred since. The judge is often asked to rule on the termination of the contract. However, the termination is only implemented when it has been proven that the breach of contract is the result of a default of at least one of the contracting parties. Moreover, in order for the termination to fully apply, execution must be impossible due to external factors.

The judicial termination is not automatic however. According to the terms of Article 119, paragraph 2 of the Civil Code, the judge may grant an extension to the obligor, just as he may

reject the petition for termination, if he deems that the failure to fulfill the obligation is not important in relation to the promises that were made with regard to performance. When the termination is ruled by courts, there is no need to issue a formal notice. Once the termination has been ruled, the contractual link is retroactively ended.

4. Next to the judicial termination is the unilateral termination of the contract provided for in Article 120. The obligee must send a formal notice to the obligor. That is not however to believe that the unilateral termination excludes the intervention of a judge. The judge may intervene at the request of the obligor to ensure that the conditions for a termination have actually been met and that parties clearly agree that failure to meet any obligation by either party may be regarded as a termination for good cause.

5. The last case pertains to the plea for non-fulfillment, that is, cases where one of the parties has not fulfilled his obligation by invoking that the other party did not fulfill his. According to the terms of Article 123 of the Civil Code, in bilateral contracts, if corresponding obligations can be required, each of the contracting parties may refuse to carry out his obligation if the other party does not fulfill his. "Exceptio non adimpleti contractus" may not be implemented without conditions precedent however. More specifically, this presupposes that a perfect congruence exists respectively between the contractual obligations required of the obligor and the obligations of the obligee. On the other hand, it matters very little whether the performance is substantial or marginal, just as delivery of a formal notice prior to an exception for non-performance is irrelevant. However, the effects of the exception for non-performance are not definitive. They are temporary, in the sense that the contractual obligations are only suspended.

CHAPTER 8

COMPETITION LAW

8.1 Definition and scope of application

In its article 01, Ordinance No. 03-03 of July 19, 2003[41], pertaining to competition, aims at setting the conditions of market competition, preventing any restriction of competition and controlling concentrations, in order to stimulate economic efficiency, and to improve consumers' welfare.

According to the aforementioned Ordinance completed and amended, the scope of application covers the following activities:

- Agricultural production and cattle breeding, delivery of goods, especially operated by importers of goods for resale, brokers, agents, wholesale butchers, production, services, crafts, fishing , public legal entities, associations, and corporate profession.
- Public markets, starting from the publication of the call for tender until the definitive attribution of the market.

In this regard, it should be noted that the implementation of these provisions must not hinder the fulfillment of public service missions or the exercise of public powers.

8.2 Pricing freedom

According to article 4 of the Ordinance "pricing of goods and services are freely determined by competition mechanisms, in accordance with the rules of free and loyal competition" article 4 paragraph 1). The principle of free pricing is confirmed.

This freedom is exercised in accordance with the current provisions of the regulations as well as with the rules of fairness and transparency, particularly when they concern the price structure of productive activities, distribution, services, and import of goods for resale, profit margins for production and distribution of goods and services, and transparency of commercial practices.

This liberty of prices nevertheless knows temperaments, as established by the Article 5 of the Ordinance. Indeed, margins and prices of goods and services or homogeneous families of goods and services may be determined, capped or approved by regulation. These measures will be taken on a proposal of the concerned sectors, the main reasons are:

- Stabilizing price levels for basic goods and services, or wide consumption in the event of significant market disruption;
- And the fight against speculation in all its forms and the preservation of consumer purchasing power.

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41 Amending and supplementing by law No. 08-12 of June25, 2008 and by law No. 10-05 of August 15, 2010.

The legislator plans that these measures may also be taken in case of non-justified and excessive price increase, when it is provoked by a serious disturbance of the market, a calamity, and durable difficulties of supply in a given sector, a particular geographic area or a natural monopolistic situations. These measures are defined here as temporary measures.

8.3 Unfair contract terms

In order to guarantee strict equality between economic agents and consumers, it has become necessary to legislate on this matter by adopting precise and restrictive rules through the Executive Decree No. 06-306 of September 10th, 2006[42] made under the Article 30 of the Law No. 04-02 of June 23rd 2004 laying down the applicable rules to commercial practices.

Legislators acted in three stages: first they drew up a list of examples containing the essential components of contracts (8.3.1), then they defined unfair contract terms (8.3.2), before finally establishing an institution devoted in to tracing unfair contract terms and eradicating them from commercial relations (8.3.3).

8.3.1 The essential components of commercial contracts

In every contract between an economic agent and a consumer, a certain number of contract terms must absolutely be included:

- The specificity of the goods and/or services;
- The nature of the goods and/or services;
- The terms and conditions of payment;
- The terms and conditions of delivery;
- The delivery deadline;
- The penalties for late payment and/or delivery;
- Guarantee and conformity arrangements of the goods and/or services;
- Terms and conditions for dispute resolutions;
- Contract termination procedures.

These contract clauses are to be considered fundamental and definitive, as is the obligation to inform, which rests with the economic agent, who is "required to inform consumers of the general and specific terms and conditions pertaining to the sale of goods and/or the performance of services and to allow consumers sufficient time to examine and agree to the contract." (Article 4 of Executive Decree n° 06-306 dated on September 10, 2006)

8.3.2 Contract terms deemed unfair

Twelve (12) types of contract terms are deemed unfair. They are as follows:

1) Those by which economic agents restrict the content of the contract to eliminate the contract terms protecting the consumer;

2) Those that unilaterally modify the contract;

3) Those that render the cancellation of the contract by the consumer dependent on the latter paying an indemnity to the economic agent;

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42 Modified and completed by executive decree N°08-44 dated on February 3rd 2008

4) Those exempting the economic agent from compensating the consumer when the agent does not fulfill his obligations;

5) Those that remove all possible remedies available to the consumer;

6) Those that impose new terms on the consumer after the contract has been signed;

7) Those that provide for the withholding of money paid by the consumer when the latter does not carry out the contract;

8) Those that do not require the economic agent to pay a compensation to the consumer when the former does not fulfill his obligations;

9) Those imposing unwarranted constraints on the consumer;

10) Those requiring that the consumer reimburse fees and expenses, as part of the forced execution of the contract, without requiring the same from the economic agent;

11) Those authorizing economic agents to free themselves of their obligations;

12) Those placing obligations that are the responsibility of the economic agent on the consumer.

8.3.3 The establishment of a controlling institution

The Unfair Contract Terms Commission is a commission presided by a representative of the minister in charge of commerce. This institution only has a consultative role. Its three main tasks are as follows:

- Track down the unfair contract terms contained in the contracts between economic agents and consumers;
- Conduct studies and develop expertise pertaining to the terms and conditions of the performance of contracts involving consumers;
- Initiate any action within the scope of its jurisdiction.

The Unfair Contract Terms Commission may be petitioned by any administration, professional association or consumer protection association with regard to the application of the Decree. The Commission makes its opinions and recommendations public. It prepares a report of activities each year for the ministry in charge of trade, destined to be published (entirely or in excerpts).

8.4 Prohibited restrictive practices

8.4.1 Agreements

The article 6 of the Ordinance No. 03-03 mentioned above prohibits concerted practices and actions, express or tacit conventions and agreements, which have the object or effect of restricting or distorting free competition within a single market or a market segment, in particular when:

1) restrict market access;

2) limit or control the production and as well as opportunities and investments;

3) share markets or sources of supply;

4) preclude pricing by market forces by artificially favoring price increases or reductions;

5) apply, with regard to business partners dissimilar conditions to equivalent transactions thereby placing them at a competitive disadvantage in the competition;

6) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which have no connection with the subject of such contracts;

7) allow the granting of a contract in favor of the perpetrators of these restrictive practices;

8) give a company exclusive rights in the exercise of an activity which falls within the scope of the order field (on competition).

8.4.2 The abuse of dominant position

Under the Article 7 of the Ordinance, the law prohibits all abuse of dominant or monopolistic position in a market or market segment tends to induce the same effects as those developed in the Article 6 regarding the agreements (with namely the limitation of market access ...).

8.4.3 The exemptions to restrictive practices

Articles 8 and 9 of the Ordinance introduce a possible exemption for practices that could be considered restrictive of competition.

The Article 8 provides an exemption offhand. The Competition Council can indeed observe, upon request of interested companies, there is no need for it to intervene in respect of agreements and dominant position. In this regard, the Decree No. 05-175 of May 12th 2005 has set the terms for obtaining negative clearance to the agreements and dominant position in the market.

The Article 9 provides exemptions if the restrictive practices

- Result from the application of a statute or a statutory instrument made thereunder;
- Justify that they provide technical or economic progress;
- Contribute to improving employment;
- Allow to small and average companies to strengthen their competitive position on the market.

It is important to note that these exceptions only apply if the practices in question have been authorized by the Competition Council.

8.4.4 Other non-restrictive practices concerned by the exemptions

Exclusive: Is prohibited under the Article 10 of the Ordinance any act and / or contract whatever their nature and purpose, giving a company exclusivity in the exercise of an activity which falls within the scope of implementation of this ordinance, which has the purpose or effect of restricting or distorting free competition.

Economic Dependence: Is prohibited operation following the article 11 of the abusive prescription of dependency in which is for him a business customer or supplier if it is likely to affect the game of free competition. Such abuse may consist in a refusal to sell without a legitimate reason, concomitant or discriminatory sale, the conditional sale on the acquisition of a minimum quantity etc.

Excessively low pricing: the Article 12 prohibits in the same conditions that are previously laid down, the practice of excessively low pricing since it affects the game of free competition. These exceptional measures are taken by decree for a maximum period of six (6) months after the opinion of the Competition Council.

The set of restrictive practices developed within the 8.4 are useless (unless exempted in accordance with Articles 8 and 9) and are called restrictive practices.

8.5 Regulation of economic concentrations

There is economic concentration in three cases:

- Two or more companies formerly independent from one another merge,
- One or more legal entities gain control of all (or parts) of one or more companies,
- An enterprise performs all the functions of an autonomous economic entity in a sustainable way.

Economic concentrations as such, are not prohibited. It is up to the Competitive Council, notified by the firms in the process of concentrating, to determine whether they are hindering competition or not. The authors of the concentration operation should refrain from measures rendering irreversible concentration before the decision of the Competition Council. As soon as the concentration threshold exceeds 40% of the sales or purchases made in a market, the Competitive Council has the power to investigate.

Concentrations normally prohibited under regulations may be authorized:

- when public interests so warrants, the government may allow the merger rejected by the Competition Council without consultation or at the request of the parties concerned;
- when the concentration of business results from the application of a law or regulation (Article 21 bis, the order as amended by Law No. 08-12);
- where the concentrations may be justified, particularly when they contribute to improving competitiveness, creating jobs or allow small and medium-sized enterprises to consolidate their competitive position on the market, they are not subject to the 40% threshold.

An official note issued by the Ministry of Commerce on 6 October 2008, provides some details about certain concentrations: "The following are exempt from the 40% threshold obligation: operators conducting concentrations representing technical, economic and social progress for the community and the national economy subject to approval from the board of the competition." It defines the purpose - to encourage the creation of successful businesses that can attract major investments with high added value and create wealth and jobs.

The Competitive Council may, according to the level of concentration reached by the operators:

- either prescribe measures that will soften the effects of the concentration on competition,
- or reject the concentration.

In the latter case, except when the concentration is justified under Article 21 (see previously), the decision by the Competition Council can be an action for annulment before the Council of State (Conseil d 'Etat).

8.6 Rules applicable to commercial practices

The Law No.04-02 of June 23, 2004, amended and supplemented by Law No.10-06 of August 15, 2010 fixes rules applicable to the subject, organizes transparency and fairness of commercial practices, defines what constitutes an offence and sets penalties for violators.

In a parallel way with the Ordinance pertaining to competition, amended and supplemented, the Law No.10-06 of August 15, 2010, extends the scope of application of the Law No.04-02 of June 23, 2004 setting the measures applicable to commercial practices. It extends it to activities of agricultural production and cattle raising, activities of supply, operated by importers of good for resale, agents, wholesale butchers, to activities of crafts and fishing, operated by any economic entity, whatever its legal nature is.

With regard to the transparency of commercial practices, the enterprise has the responsibility of informing consumers of the prices, tariffs, and terms and conditions of sale. It is also required to issue invoices. Delivery slips are admitted in lieu of invoices for repeat and regular commercial transactions. A monthly consolidated invoice must be prepared and refer to the delivery slips in question.

According to new provisions, "any sale of goods or services operated between economic agents who practice the aforementioned activities (by Law) must result into an invoice or any equivalent document". The seller or the provider of service, must deliver one of the documents, the purchaser must claim one of these documents.

As for the consumers, sales of goods or services must result into a bill (or a coupon justifying the transaction). These documents are delivered only if the consumers ask for them.

The price structures of goods and services, particularly those whose prices have been fixed, or whose prices have been limited, in conformity with the current legislation and rules, must be registered at the competent authorities, prior to their sale or provision of service.

According to regulations, some points have been fixed:

- Conditions and methods of price fixing must be filled by the different economic agents concerned.
- The model-type (-chap) of the index of the structure of the prices and the authorities authorized (beside of whom which the index card must be deposited).

The Executive Decree No. 15-153 of June 16th 2015 defined the thresholds for payments to be made by means of cashless payments through the banking and financial circuits as follows:

- Threshold set at five million dinars (5,000,000 AD) for the purchase of real estate.
- Threshold at one million AD (1 000 000 AD) for the purchase of rolling stock and new industrial equipment, new vehicles and motorcycles.
- Threshold at one million AD (1 000 000 AD) for services settlement (excluding financial companies

The public administrations, the public bodies, the companies managing a public utility as well as the public and private operators are must accept to operate transaction the regulation of the transactions, the invoices and the debts by the scriptural means of payment such as aimed by the Decree.

Concerning the fairness of commercial practices, Act No. 04-02 amended and supplemented lists five prohibited practices:

1. Illicit commercial practices,
2. Illicit pricing practices,
3. Fraudulent commercial practices,
4. Unfair commercial practices,
5. Abusive contractual practices.

Illicit commercial practices include those in which the actual cost price is not the purchase price per unit appearing on the invoice after adding duties and taxes, and, if applicable, transportation costs. In other words, the seller charges a price lower than cost price in his invoice.

Illicit pricing practices include selling goods or performing services for which prices are not set through the free interaction of market forces, but rather subject to regulation by public authorities. Thus, according to the Decree referred to, modified and completed, practices and schemes that are prohibited are the ones that permit:

- to make false statements on cost prices in order to influence on the prices and benefits of goods and services whose prices are subject to a ceiling;
- to hide illicit increase of the prices;
- not to reflect , on the sale prices, the decline noted in the production and importation costs, or distribution costs in order to maintain the increase of prices of concerned goods and services;
- not to deposit pricing structures provided in accordance with legislation and regulation in force;
- to favor opacity of prices and speculation on the market;
- to operate commercial transactions outside the legal distribution channels (art 23 of the aforementioned Law).

Fraudulent commercial practices include making or receiving secret payments and in producing false or fictional invoices.

Unfair commercial practices are those that contradict honest and fair practices and by which an enterprise damages the interests of one or more economic actors.

Abusive contractual practices include imposing on the consumer, conditions, commitments and obligations that are completely contrary to the protection rules to which consumers are entitled by law and which flagrantly disrupt the balance between contractual obligations.

8.7 The Competitive Council

The Title III of Ordinance No. 03-03 and Executive Decree No. 11-241[43] of July 10th 2011 determines the organization, functioning and powers of the Competition Council.

The Competitive Council is an administrative authority, autonomous, reporting to the Ministry of Commerce who enjoys legal personality and financial autonomy.

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43 Modified and completed by the Decree N°.15-79 of Mrach 8, 2015

In this regard, the presidential decree of January 15th 2013 appointing the Competition Council has allowed to install the Competition Council.

The Competition Council makes decisions, issues proposals, and provides advice on its own initiative or at the request of the Ministry of Commerce or any interested party. In this context, the Council may take any measure as such regulation, directive or circular. He can call any expert or hear any person likely to provide information.

It can also ask the departments responsible for economic surveys to solicit any investigation or expertise on matters within its competence. The Board also has jurisdiction to expedite any investigation, study or expertise falling within its domain.

The Competition Council gives opinions on questions concerning competition referred to it by the government. Local authorities, economic and financial institutions, businesses, professional and trade associations and consumer organizations are empowered to ask it for the same subjects.

In addition, it gives its opinion on any draft legislation or regulations related to the competition.

It is seized by any natural or legal person who is aggrieved by a restrictive practice by request addressed to the President of the Competition Council.

Its main decisional powers include the following:

- Issuing justified injunctions in order to put an end to practices that restrict competition,
- Issuing monetary sanctions (when the injunctions have no effect),
- Taking temporary measures aimed at the suspension of restrictive practices or to prevent an imminent prejudice liable to harm enterprises whose interests are affected by those practices.

In addition, the competent jurisdictions may ask for the council's opinion, after adversarial proceedings have taken place in their presence.

Decisions made by the Competition Council shall be referred for enforcement to the parties concerned by bailiff.

It should be noted that the Competition Council now has a web site available at the following address http://www.conseil-concurrence.dz/. The official bulletins of competition are included.

CHAPTER 9

THE FINANCIAL AND BANKING SYSTEM

9.1 The legal framework of banking activities

Banking activities are governed by the Ordinance 03-11 of August 26, 2003 pertaining to money and credit, modified and completed by Ordinance No.10-04 of August 26, 2010[44]. The 2003 Ordinance, follows the wake of the 1990 legislation (Law No. 90-10 of April 14, 1990 pertaining to money and credit)[45] and offers a new legal framework for conducting banking operations comparable to that of countries with liberal economies.

Ordinance 03-11 of August 26, 2003 pertaining to Money and Credit clarified certain provisions which were not explicit enough in the repealed Money and Credit Law and introduced new prescriptions with regard to the supervision of banks and financial institutions.

The Bank of Algeria, in conducting its mission, issues banknotes and coins which are legal tender on the national territory. It is the bank of banks, the financial agent of the State and manages foreign exchange reserves. It guarantees the smooth functioning of the banking and financial system, ensures the proper functioning of the payments system and acts as the general secretariat for the Banking Commission.

Under article 35 of the Ordinance on money and credit, the overall mission of the Bank of Algeria is to ensure the internal (prices) and external (exchange rate) stability of money. This entails drawing up and implementing monetary policy.

In addition to the traditional duties of any central bank, the Bank of Algeria is responsible for executing the decisions made in the form of regulations by the Money and Credit Council with regard to:

- Regulations of foreign exchange and capital movements with other countries,
- Conditions for the establishment of banks and financial institutions,
- Rules governing banking operations and relations between banks and customers[46],
- The establishment of management standards applicable to banks and financial institutions,
- Objectives pertaining to the evolution of different components of the money supply and the volume of credit.

Beyond the traditional missions, the new version of the banking legislation (Ordinance No.10-04) assigns to the Bank of Algeria the aim of promoting the most favorable conditions for a sustained development of economy. It must always monitor the price stability, carry out the balance of payments, as well as present the external financial position of Algeria. Thus, financial stability is one of its missions. Generally speaking, the new Ordinance gives more

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44 Ordinance No. 10-04 of 26 August 2010 changes the 2003 legislation mainly by strengthening the institutional framework, the supervision of banks and financial institutions, as well as the customer protection and the quality of banking services.

45 The law 90-10 constitutes the keystone of the new Algerian banking system. For a detailed study of the Algerian banking system see our guide to banking and financial system in Algeria.

46 Refer to Regulation no. 09-03 of 26 May 2009 fixing general rules on conditions applicable to banking operations.

importance to the role of the Bank of Algeria regarding functioning, monitoring, and security of the payment systems. Henceforth, it frames every aspect relating to that role, as for instance the power to dispatch an investigation plan.

The Bank of Algeria is endowed with three decision-making bodies and one monitoring body.

The decision-making bodies include the Governor, the Money and Credit Council, the Board of Directors.

Controls and supervision are ensured by a Board of Censors or disciplinary body, comprising two censors appointed by presidential Decree.

9.1.1 The provisions of the Ordinance on money and credit

9.1.1.1 Monitoring payment systems

The legislator of Ordinance No. 03-11 has resolutely chosen to modernize the banking system by broadening the mission of the Central Bank to include the functioning and monitoring of the payment systems (mass payments, large amount payments called RTGS, settlement-delivery-titles, etc.).

9.1.1.2 Adapting to international accounting standards

In addition to defining and disseminating accounting standards and rules, the Money and Credit Council, which is the accounting standardization body in the field of banking, has been entrusted with the mission of adapting to changing international standards in the field through the introduction of IAS-IFRS (International accounting standards) standards to the specific accounting framework that applies to banks and financial institutions.

9.1.1.3 Strengthening banking supervision

The supervision of banks has also been a point of focus. The established method of control gives exclusive competence to the banking commission, which is in charge of organizing the supervision of banks and financial institutions.

9.1.1.4 Minimum capital requirements

The Law stipulates that "Banks and financial institutions must have capital, fully paid up and in cash (…)."

The Bank of Algeria has amended regulations pertaining to minimum capital requirements by demanding, since 2004, the full payment of capital with the establishment of new thresholds, which have been set. The new regulation governing the matter, Regulation No. 08 04 of 23 December 2008, sets out the new minimum capital:

- 10 billion Dinars for the banks;
- 3.5 billion Dinars for financial institutions.

9.1.1.5 The status of financial institutions

The status of financial institutions was clarified to dispel any ambiguity concerning the nature of their activities and the operations they are authorized to carry out. Provisions of the banking

Ordinance specify that financial institutions cannot receive funds from the public, nor manage the means of payment, which means that they cannot offer customer services to clients by opening current accounts and issuing checkbooks. Their activity must be confined to credit in all its forms (standard credit, leasing, factoring, venture capital, etc.).

9.1.1.6 The equity investment system

Of note among the concerns addressed by the Law is the acquisition by banks and financial institutions of equity stakes in existing enterprises or enterprises in the process of being created, which was limited to 50% of owner's equity. The Ordinance did away with the 50% limit and entrusts the Money and Credit Council with the responsibility of establishing limits, but solely for banks this time. This means that financial institutions are no longer bound by these ceilings. Financial institutions no longer face limits and may now devote their resources to the extension of credit and to the acquisition of equity stakes in existing or future businesses, in other words, financial institutions are allowed to make equity capital investments in enterprises. This is the primary role of enterprises that have the legal status of financial institution and which derive their economic justification from it and are reinstated in order to invest in venture capital, investment capital, development capital and the management of investment funds, in addition to specific credit activities such as leasing, factoring, bonds and guarantees, among other things.

9.1.1.7 Organizations outside the banking legislation

The Law excludes some organizations from the banking legislation applied to banks. The excluded organizations are the Public Treasury and non-profit organizations. The Law provides for a system of waivers only for housing organizations. This means that all banking operations must be accredited by the monetary authorities or face penalties.

9.1.1.8 Group treasury operations

The banking legislation renews the provision that enabled companies belonging to the same group to conduct treasury operations (loans) amongst themselves. Theoretically based on the monopoly of banks and financial institutions, such operations find their justification in the notion of control. Thus what is called "inside banking," a procedure that opens up a number of possibilities in terms of organization and management provided that the companies belonging to the same group know how to use it, may represent a solution to their treasury problems.

The Ordinance related to money and credit hasn't questioned the possibility to do such operations, however, they must be viewed according to the regulations pertaining to foreign investors, particularly the regulation relating to the prohibition of any external debt for companies[47].

9.1.1.9 Regulated agreements and normal transactions

This authorization granting companies of a same group the right to conduct intra-group loan transactions is void when banks and financial institutions are involved. This is confirmed by Article 104 of the Ordinance which lays down the principle of total prohibition, with no

47 See the Chapter 2 of the present Guide.

exceptions, as far as permitting banks and financial institutions to extend credit to their managers, shareholders and firms belonging to the group. Local banks and especially foreign investors see this provision as restricting the development of activity of banks and their customers and have continued to seek its amendment, given that the provisions of Law No. 90-10 (repealed) provided for a limited funding to a group company to 20% of the bank's equity.

9.1.1.10 Withdrawal of the Public Treasury from the deposit insurance fund

Deposit insurance was reorganized as we are no longer dealing with joint stock companies but with funds. Moreover, the public interest aspect, which had led the legislator of the old Money and Credit Law to involve the Public Treasury in the financing of the deposit insurance fund for 50% of the amount paid by the banks, is no longer apparent.

9.1.1.11 The right to a bank account

After it's abolition from the legislation, Ordinance No.10-04 of August 26, 2010 modifying and completing Ordinance No.03-11 of August 26, 2003 relating to money and credit, reintroduces the principle that any customer whose demand for the opening of a bank deposit account has been rejected, and thus, doesn't have any account at his/her disposal, may refer to the Bank of Algeria to have a bank indicated in which he/she can open such an account, except if under an interdiction of checkbook or bank. This account is then limited to cash desk operations.

9.1.1.12 Strengthening of cooperation with foreign monetary authorities

This issue is addressed by the Law, making it possible to organize collaborative relationships and information exchanges with foreign monetary authorities.

9.1.2 Principles of the Algerian banking system laid down by Ordinance 03-11 pertaining to Money and Credit

The Ordinance pertaining to Money and Credit extends equal treatment to all banks and financial institutions irrespective of the nature, the status of the owner, or the origin of the capital providers (resident or non-resident). No discrimination or differentiation is permitted. They must all be accredited under the same conditions and be subject to the same prudential monitoring.

9.1.2.1 Privileges granted to banks and financial institutions

The Ordinance pertaining to Money and Credit granted banks and financial institutions some privileges in terms of guarantees and debt collection, which benefit from a waiver system with regard to common law.

As with the previous legislation, the Ordinance pertaining to Money and Credit grants banks and financial institutions the status of enterprise, with all the consequences it entails in terms of profitability and performance.

Safety standards force banks to assess the risks they take as part of the activity, quantitatively (ratios) and qualitatively (internal controls). Internal control, which was mandatory by the regulation of 2002-02 is even now mandatory according to Ordinance No.10-04: banks must set internal control mechanisms. The control of conformity is mandatory. The Control concerns conformity to legislations and regulations and to procedures too.

The Ordinance on Money and Credit has also introduced consultation and cooperation between the Central Bank and the authorities in charge of the economy. The procedural rules are specified in the Ordinance. A completely independent central bank model, in which the central bank manages the money supply alone, no longer exists.

9.1.2.2 Broad delegation of power to monetary authorities

The legislator's decision to delegate broad powers to the banking authorities stems from a desire to facilitate the implementation of practical measures, in line with the managerial needs of banks and financial institutions.

The delegation of powers appeared judicious, enabling monetary authorities to regulate the areas of interest to the banking profession through simple measures, and allowing the gradual modernization observed in the banking system over the past few years.

The rules adopted since 1990 by the Money and Credit Council in areas as varied as accounting, safety rules, foreign exchange controls, banking conditions, requirements for the establishment of bank branches, guarantees, methods of payment, etc., have all originated from this new approach.

9.1.2.3 Separation between the regulatory and supervisory authorities

The legislator introduced a separation between the regulatory authorities and the supervisory authorities by awarding them autonomy and independence to protect them from any interference. Note, however, that the legislator recognizes a regulatory power to the Banking Commission, limited to operating processes (base pattern, explanations) associated with the safety provisions adopted by the Money and Credit Council, which require technical details due to the complexity of their implementation by the banks and financial institutions.

9.2 The characteristics of the Algerian banking sector

This sector has one main characteristic – it is a growth sector. The development of the banking system increases with the total number of banks and financial institutions and with the number of full-service bank branches established in Algeria.

When the Money and Credit Law took effect in 1990, the banking sector was mainly made up of five public commercial banks, the National Fund for Savings (Caisse nationale d'épargne et de prévoyance, CNEP) and the Algerian Development Bank (Banque algérienne de développement, BAD), with a network of agencies that extended across the national territory.

In 1991, Al Baraka, a joint bank formed by the Saudi group of Della Al Baraka and the Algerian Bank of Agriculture and Rural Development (Banque algérienne de développement rural, BADR), was added to this public banking sector. From 1995 on, the banking sector saw the creation of numerous financial institutions, which was in keeping with aiding the banking sector and provided an answer to sometimes sectoral concerns.

Support for financing in the housing sector led to:

- The transformation of CNEP into the CNEP-Banque,
- The creation of the National Housing Fund (Caisse Nationale du Logement, CNL),
- The creation of the Mortgage Refinancing Corporation (Société de Refinancement Hypothécaire, SRH),
- The establishment of the Real Estate Credit Guarantee Fund (Caisse de Garantie des Crédits Immobiliers, CGCI),
- And the Real Estate Development Guarantee Fund (Fonds de Garantie de la Promotion Immobilière, FGPI).

In addition, support for the equipment sector (basic infrastructure) led to:

- The restructuring of the Algerian Development Bank (BAD), henceforth known as le Fond National d'Investissement – National Investment Fund),
- The creation of the Public Procurement Guarantee Fund (Caisse de Garantie des Marchés Publics, CGMP), in 1998,
- the National Equipment and Development Fund (Caisse Nationale d'Équipement et de Développement, CNED), in 2005.

In parallel to these public financial institutions, since 1995 a considerable number of private banks and financial institutions have been created, some with the support of non-resident (foreign) capital providers.

Note that in April 1990, the Money and Credit Law enabled the creation of national and international private equity banks and financial institutions, alone or in partnership.

The policy of economic openness advocated and sanctioned by several legal texts, including the Money and Credit Law, has motivated numerous internationally renowned banks to consider establishing a presence on Algerian territory in one form or another (partnership or branch).

During the first phase in 1991, representative offices were opened under the management of executives dispatched by their parent companies, including Citibank, Crédit Lyonnais, which later became Calyon, BNP-Paribas and Société Générale, in order to be in a better position to follow changes in the Algerian economy.

However, the tensions that marked the following decade on the political front led these institutions to momentarily put their banking projects on hold.

A definite renewal of interest on the part of these foreign banks would nonetheless surface at the beginning of 1997, when national promoters were authorized to create banks.

Union Bank was authorized in 1995, in a commercial banking capacity.

Below the list of banks authorized to January 2, 2017:

- Banque extérieure d'Algérie ;
- Banque nationale d'Algérie;
- Crédit populaire d'Algérie ;
- Banque de développement local ;
- Banque de l'agriculture et du développement rural ;
- Caisse nationale d'épargne et de prévoyance (Banque) ;

- Banque Al Baraka d'Algérie ;
- Citybank N.A Algeria ´ Succursale de banque ª ;
- Arab Banking Corporation-Algeria ;
- Natixis - d'Algérie ;
- Société générale Algérie ;
- Arab Bank PLC-Algeria ´ Succursale de banque ª ;
- BNP Paribas Al-Djazair ;
- Trust Bank-Algeria ;
- The Housing Bank For Trade and Finance-Algeria ;
- Gulf Bank Algérie ;
- Fransabank Al-Djazair ;
- Crédit agricole corporate et investissement Bank - Algérie;
- H.S.B.C-Algeria «Succursale de banque»;
- Al Salam Bank-Algeria

List of Financial Institutions authorized to January 2, 2017:

Financial institutions general purpose:

- Société de refinancement hypothécaire ;
- Société financière d'investissement, de participation et de placement - SPA - ´ Sofinance - SPA ª ;
- Arab Leasing Corporation ;
- Maghreb Leasing Algérie ;
- Cetelem Algérie ;
- Caisse nationale de mutualité agricole´ Etablissement financier ª ;
- Société nationale de Leasing - SPA ;
- Ijar Leasing Algerie - SPA ;
- El Djazair IJAR - SPA.

List of special purpose financial institutions:

- Le Fonds National D'investissement

The list of authorized liaison offices to January 2, 2017:

- British Arab Commercial Bank;
- Union des banques arabes et francaises;
- Credit industriel et commercial;
- Banco sabadel ;
- Monte Dei Paschi Di Siena (groupe MPS)

9.2.1 Diversification of the banking system

First, from an operational standpoint, Algeria has both full-service institutions, such as the large network banks (all public banks and some private banks, such as BNP Paribas El Djazaïr

and Société Générale Algérie) and institutions specializing in a certain type of product and a certain type of customer (leasing institutions, Mortgage Refinancing Corporation (Société de Refinancement Hypothécaire), etc.).

From an economic standpoint, the Algerian banking system comprises large-scale institutions, medium-sized and very small institutions. It also comprises institutions whose activities are strictly limited to banking operations and those that offer a wide and varied range of financial services.

Shareholding is often built around a core group considered as the reference shareholder.

With regard to the organization of the profession, the banking act requires that all institutions join the professional corporation, in this case the Association of Banks and Financial Institutions (Association des banques et établissements financiers, ABEF), created under the aegis of the Central Bank.

9.2.2 Modernization of the Algerian banking system

Long heralded as a primary element of banking reform, this modernization started to materialize, albeit very timidly, in 2005, with the introduction of the interbanking access card based on the EMV international standard and its popularization throughout the banking network and Algeria's postal system.

The year 2006 was marked by the effective start of the real time large amount payment system managed by the Central Bank in February and, beginning in May, of the electronic system of mass payment (checks, transfers, direct debit notices, bills of exchange, promissory notes and electronic money operations).

To conduct these two major operations aimed at modernizing the banking system, which began in 2002, the banks modernized their information and management systems.

9.3 Requirements for the formation and establishment of banks and financial institutions

The establishment of banks, financial institutions and branches of foreign banks in Algeria is governed by the Ordinance on Money and Credit and the rules enacted by the Money and Credit Council. The establishment of banks is easy and transparent. The prudential regulation is inspired from recommendations of the Basel committee: the banking practice in Algeria is in line with international current standards, as far as the definition of funds, rules for provisioning, prudential ratios, and reporting are concerned. The specificity of the banking activity, connected with ethics and systemic risks, justify the conditions imposed by bank founders and managers. Anyway, these conditions are in conformity with the recommendations of the Basel committee (Basel 1). Moreover, the banking activity in Algeria is not submitted to any of the restrictions prescribed by the General Agreement on Trade in services (GATS).

The establishment of financial institutions in Algeria is subject to two major, universally recognized conditions:

- The minimum capital required for these institutions,
- The respectability, good moral character and professionalism of the founding members and the executive managers of these institutions. The capacity of the institution to realize its objectives must be examined.

According to Ordinance No.10-04 of August 26, 2010 modifying and completing Ordinance No.03-11 of August 26, 2003 pertaining to money and credit, foreign banking participation can only be achieved if the resident national shareholding represents 51% of the share capital at least. Domestic shareholding may include several partners.

The State will detain a specific share in the capital of private banks and financial institutions, by which it is represented, without any voting right, in the corporate entities. The State has a right of refusal for any sale of shares or similar securities of a bank or a financial institution. Sales of shares or assimilated realized abroad are nil and of no effect. Modifications of the articles of association of bank and financial institution, which don't concern the corporate object, the capital or the shareholding, are submitted to the authorization of the governor.

Banks and financial institutions incorporated under Algerian law must be established in the form of a joint stock company (JSC) or branches.

The minimum required capital for banks and financial institutions is:

- 10 billion DZD for banks,
- 3.5 billion DZD for financial institutions.

Banks and financial institutions headquartered abroad are required to provide their branches with an amount of capital that is at least equal to the minimum capital requirements for banks and financial institutions incorporated under Algerian law belonging to the same category.

The minimum share capital so set must be fully paid up in cash upon subscription.

The start of activities for a bank or a financial institution is conditional to the acquisition of:

- In the first phase, the authorization of establishment issued by the Money and Credit Council,
- In the second phase, an accreditation by the Governor of the Bank of Algeria.

The establishment of branches of foreign financial institutions is subject to the same procedure as financial institutions incorporated under Algerian law.

The authorization application for both the establishment of a bank or financial institution and that of a branch of a foreign bank or financial institution, is based on a file comprising the following elements concerning:

- The quality and respectability of the shareholders and their contingent guarantors,
- The list of the principal managers,
- The financial and technical resources considered,
- The internal organization,
- The business plan over 5 years.

The 1992 regulation defines the conditions that must be met by founders, leaders and representatives of banks and financial institutions. They include:

- meeting legal requirements under the Ordinance on the currency money and credit and the commercial code,
- declaring the capacity to perform its functions so that neither the institution nor its customers, including applicants, lose money and have their interests protected.

The decision regarding the authorization application is communicated to the applicant two (02) months at the latest after a complete file has been submitted.

After the second rejection of the authorization application, an appeal may be submitted to the State Council.

The bank or financial institution and their branches, which have obtained the authorization is required to apply for accreditation from the Governor of the Bank of Algeria within a maximum period of twelve (12) months.

Before obtaining the accreditation, they are prohibited from conducting all banking operations.

The accreditation is granted by a decision from the Governor of the Bank of Algeria if the applicant meets all the formation or establishment requirements.

9.4 The financial market

An Algerian securities market was created by a 1993 Legislative Decree, amended and completed by Act No. 03-04 of 17 February, 2003 concerning the Securities Exchange.

The Algiers Stock Exchange whose operational entity is the Securities Management Corporation (Société de gestion des valeurs mobilières, SGBV) was launched in 1999. The regulatory authority is the Stock Exchange Organization and Surveillance Commission (Commission d'Organisation et de Surveillance des Opérations de Bourse, COSOB), which has been operational since 1996.

The modernization and dematerialization of securities have led market regulators to promote the creation of a central depositary of securities managed by a joint stock company called "Algérie Clearing," which was created in 2002 and became active in 2004 and whose shareholders are banks.

In addition to the legal provisions contained in the securities law, COSOB adopted substantial regulation to control the stock exchange and all its components (public offerings, the status of intermediaries in stock market transactions, the status of collective securities investment organizations-SICAV and FCP-the status of issuers, mandatory and periodical financial obligations, the central depositary, securities maintenance accounts, etc.).1. The market for equity securities consists of:

A Main market: for large enterprises: Four (04) companies are currently listed on the main market, namely:

- SAIDAL Group: activating in the pharmaceutical sector;
- EGH EL AURASSI: activating in the tourism sector;
- ALLIANCE INSURANCE: activating in the insurance sector;
- NCA-Rouiba: activating in the agri-food sector;
- BIOPHARM: activing in pharmaceutical sector

The stock exchange is open to both non-residents and residents. For foreign investors, the Bank of Algeria announced a rule (No. 2000-04 pertaining to the movement of capital related to the portfolio investments of non-residents), which allows them to freely purchase listed securities.

Article 4 of this rule guarantees the transfer of income (dividends and interests) produced by the portfolio investments of non-residents.

As a result of these measures, incentives were taken in different Finances Acts to develop the market and operations budgets. Thus, besides the fact that total income (IRG) or the tax on company profits (IBS), revenues and gains on disposal of shares and related securities made in a transaction as an introduction to the stock market are tax-exempt, these transactions are also exempted from registration fees.

9.5 The fight against money laundering

Since 2005, Algeria joined the fight against money laundering when Law No. 05-01[48], greatly influenced by FATF (Financial Action Task Force) recommendations, concerning the fight against money laundering and the funding of terrorism passed legislature.

The Law implemented a duty of disclosure clause in cases of suspicious transactions which could be linked to laundering money or financing terrorist actions or networks.

This declaration concerns all banks and financial institutions, insurance companies, foreign exchange offices, lotteries, lawyers, notaries, auditors, accountants, auctioneers, real estate developers and all those who provide advice which lead to the movement of capital as part of the practice of their profession.

The duty of disclosure must be transmitted to the Financial Data Treatment Cell (Cellule de traitement des renseignements financiers, CTRF), which is an independent organization created in 2002 and whose members are directly appointed by the president of the Republic.

Severe criminal and administrative sanctions are applied in cases of violation of this legislation.

9.6 Prudential regulations

Algerian prudential regulations are in compliance with the recommendations of Basel I. The transition to Basel II is not yet high on the agenda as it will require a significant upgrade of information systems in banks in order to assess their operational risk.

Prudential requirements thus pertain to maintaining a minimum level of capital relative to the weighed risk exposure, according to the guidelines of the Bank of Algeria. There are also requirements in terms of risk diversification and foreign exchange positions.

Banks and financial institutions are also required to abide by certain managerial rules, such as the permanent resources ratio and the prohibition of financing of a manager, a shareholder or any firm in which a member of management or a shareholder holds a stake.

Starting to 1st August 2015[49], the level of external liabilities by signing for the banks and financial institutions shall at no time exceed one (1) time their regulatory capital as defined by prudential regulations.

9.7 Banking services

The Bank of Algeria stipulate the measures to facilitate the provision of banking services to promote the financial inclusion by ensuring, particularly the establishment of counter of banks and financial institutions throughout the national territory.

All local banks, both public and private, offer banking products to which parties involved in the economy may be entitled in order to develop their activities.

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48 Ordinance 12-02 of 13 February 2012 amending law 05-01 of 6 February 2005 on the prevention and fight against money laundering and terrorist financing.

49 Instruction No. 02-15 of 22 July 2015 setting the level of external liabilities of banks and financial institutions

The difference between the banks essentially comes down to the quality of their services.

Whether they prefer dealing with private banks or public institutions, business operators can now choose their financial partner.

A distinction must be made between the bank's approach and the services that clients can request from them.

9.7.1 Banking approach

All the banks are now structured according to international models.

The agencies have specialized departments to satisfy the needs of entrepreneurs. Depending on the size of the agency, clients may deal with the director, a department head or an account manager assigned to specific companies. For larger or technically complex projects, contact with top management may be necessary.

In most cases, decisional power is limited and the issues (account openings, financing applications, etc.) are referred to upper management for approval.

The most important decisions are made at the level of the branch, regional delegation, local headquarters or head office abroad.

With the spread of electronic communications, decisions are usually made rapidly.

It is thus necessary to present a standardized dossier like those used by international banks complete with articles of incorporation, powers of attorney, balance sheets, financing plans, project descriptions, etc. Depending on the type of services requested, the branches have files detailing the required documentation.

Often specialized financial firms (leasing, long-term rentals, equipment financing) are subsidiaries of local banks. However, they extend these specific loans regardless of the banking domiciliation of the borrower. In this case as well, these institutions deal with classical cases.

Though it can facilitate contact, it is not always necessary to deal with the local subsidiary (if it exists) of the bank serving the customer abroad. Employee professionalism, service quality, the size of the local or international network (a key element when it comes to transfers or international trade operations) serve as better guarantees.

As in other countries, fees are charged for banking services. Fee schedules are usually made available to clients.

9.7.2 Banking products and services

Below is a list of the banking services most commonly provided.

1) Establishing a relationship

It starts with the opening of an account. All types of accounts are offered.

- Current account: denominated in dinars. Demand deposit account limited to legal persons or professionals. Debit position possible with authorization.

- Checking account: denominated in dinars. Demand deposit account limited to individuals. Only credit positions allowed.

- Currency account: denominated in foreign currencies. Interest-bearing deposit account. No check book is issued. Only credit positions allowed.

- Cedac account: denominated in convertible Dinar. Deposit account in the name of a foreign individual or legal entity.
- INR account: denominated in dinars. Demand deposit account. Limited to non-resident foreign physical or legal entities which have successfully bid for a government contract or a performance contract with an Algerian law company.
- Joint account: opened in the name of several individuals. Comes with an effective joint liability agreement.

2) Investments:

- Bank-issued medium-term notes: length varies with individual banks (usually between three (03) to forty-eight (48) months). Nominative or payable to the bearer. Negotiable. May be used as a guarantee.
- Term deposits: three (03) categories:
  - Dinar term deposits: usually deposits from 10,000 AD. Denominated in dinars. Offering yields according to the terms in effect at the time of the deposit,
  - Foreign Currency term deposits: limited to the holders of currency demand deposit accounts. Denominated in the currency of their account. Minimum length of 1 month. Yield based on the rates set by the Bank of Algeria when the deposit is made,
  - Cedac term deposits: Limited to the holders of Cedac accounts. Length varies between two (02) to six (06) months. The terms are set by the Bank of Algeria.
- Savings accounts: denominated in dinars. Open to any individual, adult or minor. Interest-bearing investment.

3) Bank credit

Three types of credit are available:

- Working capital credits: fund the normal activities of the business. They are adapted to the client's needs: overdraft, overdraft facilities, seasonal credit, commercial paper discounts.
- Commitment by signature: Indirect working capital credit: bank guarantees, guaranteed customs bonds, documentary letter of credit.
- Investment credits: fund the purchase of capital goods. Length varies from mid- to long-term depending on the specific type of project.

4) External trade transactions

The Finance law introduces the new measure to facilitate foreign trade procedures, the new provision provides the introduction of a new payment method on imports for sale.

In fact, in addition to the payment by letter of credit, the payment by documentary collection is now allowed.

- Nature: technically speaking, all banks process these transactions: documentary credits, documentary remittance, bank guarantees.
- Conditions: in order to conduct these transactions, the bank must fulfill two requirements:
  - The bank itself should receive a comprehensive authorization issued by the Bank of Algeria.

- Each branch must also be individually empowered to conduct these operations by the Bank of Algeria.

If you need to perform these operations, you need to ensure that your bank has a special license to act as an accredited intermediary.

5) Other services

- *Basic services:*

- Issuance of checkbooks,
- Statements of account,
- Bank checks,
- Counter checks,
- Transfers,
- Collection of checks and instruments in Algeria and abroad,
- Physical exchange.

- *Cash management: some banks offer remote banking services through the Internet, which allow:*

- Permanent access to detailed bank account statements, which can be downloaded,
- To conduct transfer operations, although transfers are limited to only accounts of the same institution. Interbank transfers are not yet operational,
- To benefit of long-distance services such as ordering checkbooks, requests for bank account details etc.

Payment card: several banks now offer domestic payment cards. However, the use of such cards is limited due to a lack of participating merchants. It is possible to withdraw money from automated cash machines, but these machines are not widespread in Algeria. Visa cards are distributed, but their use is limited for the same reason.

Sums at disposal: It is possible to have money wired from abroad either through a bank or through Western Union.

6) Specialized financing

- Leasing: through classic leasing means, leasing firms provide funding for the purchase of new capital goods.
- Long-term rental: provides funding and management of motor vehicle fleets to corporations.
- Vehicle financing: transaction based on classic criteria in this area:
  - for corporations, the file is reviewed.

CHAPTER 10

THE ALGERIAN ACCOUNTING SYSTEM

The accounting system in use in Algeria until 2009-end was defined by the "National Accounting Plan" published in the Official Journal of 9 May, 1975 (hereinafter "NAP 75").

In order to meet the needs and expectations created by the opening of markets experienced in Algeria over the past few years, a new "financial and accounting system" was formulated (abbreviated to AFS hereinafter). The new system is effective since January 01, 2010.

10.1 General background on the Algerian Accounting System

10.1.1 The existing accounting plan

As mentioned in the introduction, the accounting plan in effect until 2009-end and the main Algerian accounting standards, were, up till the present, defined in "NAP 75."

In the absence of any significant during 30 years, this system became quite unsuited to the practice of economic operations and business in Algeria, particularly in light of open markets and the influx of foreign investors.

Generally accepted criticism of "NAP 75" included the following:

- Accounts hard to understand (no appendices, no comparative data, continued use of historical valuations – barring statutory revaluations)
- Existence of sometimes significant "non-operating income" (grouping items of very different natures with little explanation for the most part).
- Inclusion of financial expenses in operating income (often reflected in cost, and thus on the value of capital assets and inventory).
- No formal obligation to prepare consolidated accounts (barring listed companies), nor sufficiently precise definitions of consolidation rules.

For many years, the Algerian accounting system was characterized by its low level of activity, even an absence of accounting standardization and interpretation bodies. The 1975 accounting system, which was not particularly detailed when it was unveiled, was thus unable to develop or grow in precision through practice. In the end, the system remained stagnant.

10.1.2 Revaluations

An overview of the Algerian accounting system wouldn't be complete if we don't rapidly consider the topic of reevaluation.

Algeria's national currency suffered a major devaluation between 1980 and 1990, which in some cases, lead to a significant distortion, of corporate balance sheets. To offset this situation, corporations were given several opportunities to conduct legal revaluations.

In many cases, the legal revaluations, conducted between 1980 and 1990, have had little impact on corporate accounts. They were conducted on an index base in most cases. The revaluation gap – presented in shareholders' equity – was either subject to tax exemptions or bridged progressively with funds taken from income to ensure tax neutrality.

New revaluation possibilities were introduced in 2007 in the Decree of July 4, 2007, based on December 31, 2006 balance sheets. There was no tax neutrality within the framework of the applicable legislation, as the revaluation gap was neither taxable nor depreciable in practice. It had to be included in the firm's capital to benefit from that advantage.

This revaluation did not rely on an index-based approach, but on evaluations prepared by external experts specializing in property values and reviewed by the corporations and their auditors.

While deadlines to conduct this revaluation were tight, a great many corporations showed an interest in it and thus revaluated their assets prior to the end of 2007.

10.1.3 The new financial and accounting system (FAS)

The "FAS" was devised by the Algerian National Accounting Council (CNCA), in close collaboration with the French National Accounting Council.

This system consists of several components:

- A set of accounting standards, much more detailed than before, strongly influenced by international financial reporting standards (IFRS).
- A modernized chart of accounts leaning heavily toward the "PCG" chart of accounts currently used in France, while maintaining some specific Algerian characteristics.
- The implementation of some principles or formal obligations, namely in terms of consolidation and accounting appendices.

Thus the "FAS" is not merely an "adaptation" of IFRS in Algeria, but has the potential to profoundly alter accounting practices, as well as corporate organization and the conduct of business.

The new system introduces new needs and possibilities.

- Introduction of "fair value" with recurring possibilities of revaluation.
- Greater "financial transparency" among corporations or corporate groups, with more emphasis on presenting an accurate picture of the financial reality in particular.
- Emphasis of the importance of internal and external audits.

10.2 The financial and accounting system

The accounting and financial system was adopted by legislation on November 25, 2007. A first implementation decree was issued in July 2008.

In July-end 2008, authorities postponed the implementation date for the new system, which came into force on 1 January 2010, when the National Accounting Plan 1975 was repealed.

The detailed text defining the new system was published in March 2009. First application conditions were specified in a publication issued in October 2009.

As of the date of this update (i.e. December 2009), the transitional arrangement is fully recognized and companies now have all the elements to proceed.

10.2.1 Required financial statements

Unlike "NAP 75," FAS cites the preparation of "financial statements" (F/S) according to international rules and standards. These financial statements (F/S), which form a whole, include the following components:

The 5 components of the F/S of FAS
1. Balance sheet
2. Income statement
3. Cash flow statement
4. Statement of changes in shareholders' equity
5. Appendix mentioning the accounting rules and methods, the details of the accounts and off-balance sheet components

The contents and presentation of the charts are not strictly imposed provided that they are based on standard format. Provisions are succinctly stated in their briefest version (e.g. the list of minimal information to be included in the income statement, the balance sheet etc.).

To ease the transition however, examples of charts have been provided in appendix 1 of the standards in detail, which can be adapted. These charts are analyzed in the following section.

The project contains provisions making comparative data necessary.

The income statement may be presented "by nature" (see previously) or "by allocation" (sales costs, commercial cost etc.), exactly as in IFRS.

With regard to the cash flow statement, an option is possible between the "direct" model (based on operating and financial cash flows) and the "indirect" model (which starts from accounting income and cash flow).

Finally, FAS contains a provision for a real appendix, very much like IFRS recommendations, including the presentation of the main accounting rules in application, information on the commitments and details about important items accompanied with explanations.

10.2.2 Balance sheet format

FAS, investors will see a return to much more conventional presentation standards, based directly on IFRS and centered on the current/non-current distinction (defined in the same manner as in IFRS, meaning more or less than one (01) year originally).

The asset side of the FAS balance sheet must show:

- Non-current assets with long-term assets (intangible, tangible, financial), but also deferred tax assets and non-current financial assets.
- Current assets with inventory, accounts receivable and related items and cash position (the latter includes current financial assets).

It can be presented as follows (suggested model in standards):

ASSET	Y Gross	Y Deprec.- Prov.	Y Net	Y-1 Net
NON CURRENT ASSETS				
Consolidated goodwill – positive or negative goodwill				
Intangible assets				
Property, plant and equipment				
Land				
Buildings				
Other tangible assets				
Fixed assets under concession				
Assets under construction				
Construction work in progress				
Long-term investment				
Equity method securities				
Other interests and related debts				
Other long-term investments				
Loans and other non-current financial assets				
Deferred tax assets				
TOTAL NON-CURRENT				
CURRENT ASSETS				
Inventory and work in progress				
Receivables and related assets				
Clients				
Other debtors				
Taxes and related items				
Other receivables and related assets				
Cash and related assets				
Investments and other current financial assets				
- Cash and cash equivalents				
TOTAL CURRENT				
TOTAL GENERAL ASSETS				

A distinction has to be made in liabilities between:

- Shareholders' equity (with the period's earnings and without the provisions).
- Non-current debts (financial debts, deferred taxes, provisions and other non- current debts).
- Current debts (debts to suppliers, taxes, other debts etc.)

It can be presented as follows (suggested model in the standards):

LIABILITIES	**Y**	**Y-1**
SHAREHOLDERS' EQUITY Issued capital Uncalled capital Premiums and reserves (Consolidated reserves (1)) Revaluation surplus Variance due to the equity method (1) Net earnings (Net earnings as part of the group (1)) Other shareholders' equity – Balance brought forward Share of the acquirer (1) Minority interest (1) TOTAL SHAREHOLDERS' EQUITY I NON CURRENT LIABILITIES Loans and financial debts Taxes (deferred and reserved) Other non-current debts Reserves and deferred revenues TOTAL NON CURRENT LIABILITIES II CURRENT LIABILITIES Suppliers and related accounts Taxes Other debts Cash liabilities TOTAL CURRENT LIABILITIES III TOTAL GENERAL LIABILITIES (1) to be used only for the presentation of consolidated financial statements.		

10.2.3 Format of the balance sheet

For the income statement, companies will be given the choice between a presentation by nature and a presentation by function (see later).

The proposed presentation by nature is inspired by both the current French presentation (note that FAS and is the product of a collaboration between the Algerian National Accounting Council and its French counterpart) and IFRS presentation.

It will successively show:

- The production of the period (sale, stored production and self-constructed assets),
- The added value (after deducting consumed goods and services),
- Gross operating profit (close to the English EBITDA),
- Operating income (after allocations),

- Financial income (distinct from operating income),
- Ordinary gross income followed by ordinary net income (after corporate taxes),
- Extraordinary income (meaning exceptional income defined more restrictively than before),
- Net income.

The model shown in the standard project is as follows:

	Y	Y-1
Sales		
Changes to inventory of finished and work-in-progress products		
Self-constructed assets		
Operating subsidies		
I - Production of the period		
Consumed purchases		
External services and other consumptions		
II – Consumption for the period		
III – OPERATING ADDED VALUE (I – II)		
Salaries and social security contributions		
Taxes, duties and related payments		
IV – GROSS OPERATING PROFIT		
Other operating income		
Other operating expenses		
Allocations to depreciation and provisions		
Adjustments to value losses and provisions		
V – OPERATING INCOME		
Financial income		
Financial expenses		
VI – FINANCIAL INCOME		
VII – ORDINARY INCOME BEFORE TAXES (V + VI)		
Tax liability on ordinary income		
Deferred taxes (changes) on ordinary income		
TOTAL REVENUE FROM ORDINARY OPERATIONS		
TOTAL EXPENSES FROM ORDINARY OPERATIONS		
VIII – NET INCOME FROM ORDINARY OPERATIONS		
Extraordinary elements (revenue) (to be determined)		
Extraordinary elements (charges) (to be determined)		
IX – EXTRAORDINARY INCOME		
X – NET INCOME FOR THE PERIOD		
Share of the net income of equity affiliates (1)		
XI – NET INCOME OF THE CONSOLIDATED ENTITY (1)		
Including minority interest (1)		
Share of the group (1)		

The presentation by function (essentially used in English-speaking countries), entails the entire process of operating income formation:

- Sales and sales costs define gross margins.
- Operating income is obtained after deducting commercial and administrative costs.
- Details of the items presented by nature (personnel, allocations etc.) must be provided

The statement by function model recommended by the standards is as follows:

	Y	Y-1
Sales Cost of sales GROSS MARGIN Other operating income Commercial costs Administrative expense Other operating expense OPERATING INCOME Provide details of expenses by nature (Personnel costs, depreciation allowances) Financial income Financial expense ORDINARY INCOME BEFORE TAX Tax liability on ordinary income Deferred taxes on ordinary income (changes) NET INCOME ON ORDINARY OPERATIONS Extraordinary expense Extraordinary income NET INCOME Share of the net income of the equity affiliates (1) NET INCOME OF THE CONSOLIDATED ENTITY (1) Including minority interest (1) Share of the group (1)		
(1) To be used only in the presentation of consolidated financial statements		

The FAS balance sheet and income statement include changes in shareholders' equity chart and the cash flow statement. They will not be examined in detail. Note however that their definition is very close to those in IFRS principles and recommendations.

These similarities in format should enable third parties or international investors to better understand FAS statements.

10.2.4 Detailed accounting plan and nomenclature of the FAS project

FAS codes in the CNC draft, as in the definitive texts, are very close to those in the French Code of Accounts, itself closely based on IFRS.

Balance sheet codes remain relatively similar to the old code, with some modifications, namely:

- with regard to financial debts, which fall into category 1 (account 16), and thus no longer fall into category 5,
- with regard to category 4 personal accounts, which can either be debit or credit accounts (in NAP 75, personal debit accounts fell into category 4, whereas personal credit accounts fell into category 3),
- with regard to cash, which now falls into category 5 (previously in category 48).

10 Capital and reserves	35 Goods inventory (finished and semi-finished)
11 Balance brought forward	36 Inventory from fixed assets
12 Income	37 Outside inventory
13 Deferred profits and expenses	38 Inventoried purchases
14 --------	39 Impairment in value of inventory and work in progress
15 Provisions for non-current expenses	40 Suppliers and related
16 Loans and debts	41 Clients and related accounts
17 Debts payable relating to participating Interests	42 Personnel and related accounts
18 Reciprocal accounts of institutions	43 Social organizations
19 --------	44 State and public sector
20 Intangible fixed assets	45 Group and associate
21 Tangible fixed assets	46 Various debtors and creditors
22 Fixed assets in concession	47 Suspense asset and liability accounts
23 Construction work in progress	48 Prepaid expenses and income and current
24 --------	49 Impairment in value of third party accounts
25 --------	50 Securities
26 Interests & receivables from interests provisions	51 Banks
27 Other long-term investment	52 Derivatives
28 Fixed assets depreciation	53 Cash
29 Fixed assets write-downs	54 Advances and credit lines
30 Merchandise inventory	55 ----------
31 Raw material and supplies	56 ----------
32 Other supplies	57 ----------
33 Goods in progress	58 Funds transfer
34 Service production in progress	59 Impairment in value of current financial assets

In the income statement, FAS codes are presented below:

- All purchases and sales are included in accounts no. 60 to 70 (the merchandise/productions distinction has been eliminated)
- Accounts 65 and 75 are devoted to "other expenses" and "other income."
- Financial income and expenses are found in accounts no. 76 and 66, outside operating income.
- Exceptional income and expenses are found in accounts no. 77 and 67 and are restrictively defined.
- Allocations/reversals are included in accounts no. 68 and 78 as items of the operating income.
- Corporate taxes (IBS) are included in account number 69.

Expense transfers are eliminated as transfer items, as under in IFRS, are posted directly to the debit or the credit of relevant accounts.

70	Sales (merchandise, products or services)	60	Consumed purchases (merchandise, materials)
72	Stored production/cleared surplus stock	61	External services
73	Self-constructed assets	62	Other external services
74	Operating subsidies	63	Personnel expenses
75	Other operating income	64	Duties and taxes
76	Financial income	65	Other operating expenses
77	Extraordinary items (income)	66	Financial expenses
78	Reversal of provisions and impairment of value	67	Extraordinary items (expenses)
79		68	Allocations for depreciation. Provisions and impairment of value
		69	Taxes on income

10.2.5 The main accounting concepts and innovations introduced by the proposed FAS compared to NAP 75

10.2.5.1 General principles

With regard to general principles, FAS follows the standard format but is more precise and detailed NAP 75.

The general principles are as follows:

- Accrual basis of accounting,
- Going concern assumption,
- Annual basis of the accounts,
- Independence of the periods,
- Presentation of the accounts in dinars (the national currency),
- Relative importance,

- Conservatism principle,
- Consistency,
- Historical costs (subject to multiple revaluation possibilities),
- Intangibility of the opening balance sheet,
- Economic substance over legal form principle,
- No offsetting,
- Fair presentation.

10.2.5.2 Main innovations

The main innovations relative to NAP 75 are as follows:

- Companies are no longer required to close their books on December 31 if the calendar year is not compatible with the activity (the concept has to be further detailed and accepted by tax authorities.).
- The paragraph on the independence of periods introduces the concept of "event taking place post-closing," which is not currently a common concept in Algeria.

Some of these principles are very much IFRS-based and may be contrary to previous concepts and practices:

- Fair presentation, with the possibility of waiving compliance with a rule if it does not allow for fairness.
- The materiality criteria, according to which accounting rules do not apply to immaterial transactions.
- The substance over legal appearance principle, which suggests that the genuine meaning of a transaction should be sought before determining the accounting treatment.

Within the framework of the general principles, it is stipulated that the assets/liabilities/expenses/income are accounted for as soon as they become likely and can be reliably estimated.

FAS does not stipulate what needs to be done when the likelihood of occurrence is not determined or when a reliable estimate is not possible. However, IFRS indicates that, in this situation, potential assets and liabilities must be mentioned and described in the appendix.

This is one of the main substantial differences between FAS and IFRS.

Finally, even if the historical cost method remains the norm, FAS introduces various exceptions with fair values, realizable values and present values. These new rules will cover fixed assets (see later), financial assets and liabilities and some operating assets (see previously).

10.2.5.3 IFRS influence in definitions and recognition criteria

In addition to the general principles, IFRS clearly influences FAS in terms of major definitions and the basic recognition criteria.

Assets are defined as "resources controlled by the company which will produce future economic gains."

When they have a sustainable usefulness (longer than an operating cycle or one (01) year), assets are said to be "non-current." When they are destined to be consumed quickly (within an operating cycle, in less than one (01) year), they are said to be "current."

At the same time, liabilities are defined as "present obligations, which, upon settlement result in the outflow of resources representing economic benefits."

They will be current or non-current, depending on whether they are settled quickly (within an operating cycle, one (01) year) or not initially.

FAS notes, without using the standard term, that obligations may be either "explicit," or "implicit," meaning that they result from use, a confirmed intention or a wish to act in an equitable manner.

This is an important innovation, as the debt to be recognized will not be limited to contractual or legal commitments, and might originate from commitments that the company independently or as a matter of usage. For instance, a cement worker ready to take on repair work must, beyond his legal obligations, recognize provisions to cover expenses "implicitly" incurred.

Shareholders' equity is defined as consisting of the surpluses of current and non-current assets minus current and non-current liabilities.

To all intents and purposes, this excludes the current Algerian classification mentioned earlier (cash reserves and income at the bottom of the balance sheet).

The same types of definitions or recognition criteria are found in the income and expenses categories.

Income is the increase of economic benefits, stemming from an appreciation in the value of assets or a decrease in liabilities – including a reversal of provisions. Expenses are the opposite (a decrease in the value of economic benefits, stemming from a depreciation of the value of assets or an increase in liabilities – including provisions).

In this definition, the current transfers of expenses can no longer exist, as they merely represent a transfer from one account to another without any increase of wealth.

10.2.5.4 Contradictions with previous legislations

Certain provisions are contradictory to the concepts and practices of NAP 75, namely those concerning legal (legal or contractual obligation) and physical (the presence of the asset) issues, or the formal schedule (debts of more or less than one (01) year).

These provisions could cause confusion, as they did in Europe during the transition to IFRS. They general concepts render useless most of the accrual accounts used in the past (deferred expenses, pre-operating expenses etc.)

10.2.6 Organizational rules of the FAS

With regard to statutory financial statements, FAS refers to certain mandatory documents, without changing the previous rules, such as the:

- Book of general entries or general journal,
- Ledger.
- Annual accounts book.

These documents must be kept for ten (10) years.

FAS has introduced considerations pertaining to computerized accounting, namely sufficient security and reliability (an "audit trail") and printouts of understandable documents.

Such provisions are not included in IFRS. Nonetheless, they are primordial in practice.

Failure to keep the mandatory documents or present "understandable" financial statements may result in the "rejection of the accounting" during a tax audit.

FAS also stipulates that corporate groups must prepare and publish consolidated financial statements each year, with an exemption for sub-groups (the obligation being imposed solely on the head of the group), as well as some exclusions (restrictions on audits, future resale etc.). It should be noted that this exemption does not exist in IFRS as a rule.

Following the same logic, FAS contains provisions making it mandatory to present combined accounts for entities ruled by the same decision-making center, but not linked legally or through shared capital.

Combined accounts have disappeared in most countries however, since IFRS was implemented and compels all entities to abide by classic consolidation, with or without capital (through the concept of "special purpose vehicles" or SPVs).

Nevertheless, these two obligations are relatively new in Algeria, as they have a clearly stated mandatory nature and FAS very precisely defines the basis of a consolidation, the manner in which it must be conducted and suggestions with regard to certain imperative restatements (leasings, deferred taxes etc.).

Under Algerian accounting practices, consolidations were often optional and bore a closer resemblance to an aggregation of accounts (without restatements) than to a genuine consolidation (with restatements).

The FAS proposal has the merit of clarifying their nature, applicable rules, as well as their status once and for all.

10.2.7 Analysis of the main accounting rules or standards

10.2.7.1 Property, plant and equipment

1) General principles

Although it confirms the principle of "historical costs," the FAS proposal introduces several possible exemptions to this concept, which also exist in IFRS:

- Investment property (property that is not used to operations) may be revaluated each year through the income statement.
- Operating fixed assets may be valued according to fair value, with regular updates (the impact of the revaluations being generally felt at the shareholders' equity level).
- The general principle of depreciation disappears or is called into question in these concrete cases.

2) Pre-operating expenses

Both FAS and IFRS rule out the possibility of activating and spreading certain expenses incurred prior to operations over a five-year period. Pre-operating expenses represent charges.

An exception is made for interests incurred while an asset is being built, which may be taken into account directly in the calculation of fixed asset costs (under the same item).

3) Depreciation methods

In FAS, there are several possible depreciation methods (straight line method, declining balance method, progressive method, possibly the production basis depreciation method).

Each corporation is supposed to choose the method which best reflects the economic reality and service life, without taking any tax consideration into account.

4) Introduction of the component and dismantlement method

FAS recommends applying the principle of "components," that is to sub-divide the whole in as many amortized sub units according to their specific service life

This issue will have a potentially significant impact for both corporations and tax authorities. The old accounting rule also provided for the blow-up of "compounds" in as many sub-groups as there were distinct periods (see previously), but in practice this was not applied very often.

The new elements introduced by FAS are not limited to "components." Companies will have to reserve for dismantlement or rehabilitation costs, recognize and then depreciate "counterpart assets."

In a country possessing significant energy and mining resources or basic industries, this could have a major impact.

5) Company's self-constructed assets

FAS stipulates and delineates the procedures for incorporating operating costs to the company's "self-constructed assets." The rules are rather restrictive, namely with regard to fixed and indirect expenses. On the other hand, unlike NAP 75, FAS allows the inclusion of financial interests incurred during the period of construction in self-constructed assets.

Note that a specific "self-constructed assets" account was maintained in FAS. In IFRS, that account no longer exists – just as charge transfers no longer exist – as charges expenses are to be directly credited by debiting investments.

6) Asset depreciations

The last significant innovation in FAS lies with the "asset impairment" principle. As in IFRS, "long-term assets" (goodwill, intangible and tangible assets) as a whole, are subject to annual depreciation tests, as soon the asset begins to depreciate.

These tests are implemented at the level of "cash generating units," as defined in IFRS, and under comparable terms and conditions (reference to market value, or to a going concern value defined as the sum of the present value of future cash flows etc.).

In practice, the implementation of "impairment" tests could cause significant problems for some companies experiencing difficulties or sub-par activity levels.

7) Revaluations

As mentioned in previous items:

- Revaluations were only allowed periodically under the old regime.
- It will be possible to conduct them on a regular basis in FAS, as in IFRS.

Corporations will be able to choose from two options:

- For investment property (property that is not useful or essential to operations).
- For property, plant and equipment in general.

For "investment property," corporations will be able to opt for recognizing the fair value at the end of each period. For the asset having the status of "investment," the impact will be recognized as part of earnings for the period. As for operating fixed assets, corporations will have the same option. Nevertheless, the impacts will usually be recognized in a revaluation account and generally speaking will not affect income (except for certain fluctuations or loss of value). The idea is that capital gains on operating assets (a plant for instance) remain latent and cannot be realized in the short term. Thus, they will be recognized, but in an accruals account, rather than as part of income.

8) Impacts for the average Algerian corporation

In light of the previous considerations, it is uncertain that the fixed assets of the average Algerian companies will be noticeably impacted by the new standards, as was the case in Europe, in that few companies have opted for systematic revaluations and/or recognized major adjustments on components.

In the long term, most companies will be impacted with regard to the reporting of borrowing fees and the implementation of economic depreciation (instead of tax depreciation).

The other issues should only affect a limited number of companies, but they could have a major impact nonetheless, namely with regard to:

- Revaluation possibilities in corporations that have large land and property holdings (especially if the holdings cannot be taxed with the mere recognition of deferred taxes).
- The components within large turnkey groups.
- Rehabilitation reserves for extracting or polluting industries.
- Impairment tests in companies operating well below normal levels.

10.2.7.2 Non-current financial assets

1) Four distinct categories of assets

As in IFRS, non-current financial assets will be put into four categories:

- Interests (securities or debt): assets giving the owner influence or control over another company.
- Long-term portfolio investment: assets that will be held for more than one (01) year, but which do not give any control or involvement in the management of the corporation in question.
- Other long-term investments: representing shares, or long-term placements that the entity has the possibility as well the intention or the obligation to keep until due
- Loans or debts from other entities: sums that the company does not intend, or is not able, to recover in less than one (01) year.

2) Differential treatments

Initially (acquisitions or additions to holdings), the assets of the 4 categories will be recognized at their "cost."

Later on, these assets will usually be evaluated at the "amortized cost" (i.e. the initial cost minus reimbursements made on the principal).

Exceptionally, assets held for the sole purpose of sale and long-term portfolio investments are evaluated at fair value (according to stock market valuation or an estimate). Gaps in value will be recognized against shareholders' equity in a special item (and sometimes to the bottom line).

Investment property is treated in the same way - as a rule the value of investment assets on the balance sheet must reflect the evolution of underlying markets.

10.2.7.3 Inventory

1) Inventory linked to fixed assets

For historical reasons, many Algerian corporations have excessive inventory of replacement or spare parts, usually new and of great value, and thus hardly depreciated – the provisions of the old accounting plan which recommended their amortization notwithstanding.

FAS confirms this rule – which also exists in IFRS – by providing more details. Thus, even though the concept is not new, it is likely to change in company practices concerning the treatment of inventory.

When spare parts are linked to certain fixed assets and are meant to be used over more than one period, they are treated as fixed assets and amortized.

From the outset, assets lose some of their value and cannot be indefinitely listed as assets side at their original value.

2) Valuing inventory

FAS specifies – more precisely than NAP 75 – how to evaluate an inventory.

According to FAS, valuation includes "all costs incurred to bring the inventory where they are":

- By excluding expenses linked to underused capacity.
- By excluding some financial fees, if need be.
- By only including those administrative fees directly linked to inventory.
- By excluding selling costs and administrative fees that are not directly connected.

Thus, under FAS, expenses are assigned more restrictively, by eliminating the sub-activity. In some cases, inventory values drop significantly.

Once recorded as inventory, the goods are subject to follow-up evaluations according to the FIFO or the weighed average unit cost methods. The other methods (LIFO, LPP) are prohibited as a rule.

3) Inventory depreciation

Following a purely IFRS-inspired logic, FAS defines depreciations as the comparison between the original value and "net realizable value."

The latter is defined as the sales price after deducting incurred expenses (distribution expenses, selling costs etc.). In practice, products carrying a negative margin will thus have to be systematically reserved.

Note that no special provision applies to inventory with little turnover (except for spare parts – see previously). Nonetheless, when some products prove problematic, it is usually necessary to depreciate them by considering the "net realizable value" criteria (that is a price that will allow the products to be sold off within a "normal" period of time – which generally means a low price).

10.2.7.4 Trade accounts receivables

1) Absence of specific documents

FAS does not include specific provisions on trade accounts receivables.

In this case, the general principles regarding revenue recognition and depreciation serve as reference.

2) Changes compared to previous practices

Even though FAS does not feature detailed explanations, references to general principles tend to provide solutions for a certain number of practical cases.

Thus, old and unpaid debts are subject to different measures. Current debts can only be justified as such if collection can be expected within a period consistent with the business cycle.

Failing which, the debt must be written down or updated, or even "written off."

10.2.7.5 Subsidies

FAS also uses the standard IFRS distinction between operating grants and investment grants, respectively recognized immediately or progressively.

FAS does not introduce major changes to earlier legislation (see previously).

10.2.7.6 Provisions for liabilities and charges

FAS defines provisions as liabilities of a probable term and amount, which can be estimated, but remain uncertain.

Operating losses are excluded.

The amount to be provisioned represents the "best estimate of the amount that will have to be disbursed."

These few principles are a reminder that:

- Provisions must be made for risks that are sufficiently known.
- Provisions cannot be made for everything, only for items for which the company reasonably expects to pay.

In practice, Algerian companies sometimes tended to either:

- Not provision at all.
- Provision for everything.

Benefits to personnel are covered in specific valuation methods.

It is stipulated that the said benefits (old-age pensions, severance pay upon retirement etc.) must be provisioned on the basis of the present value of existing obligations.

This short section indirectly refers to the IAS 19 standard, which determines very precisely the terms and conditions for defining and calculating these commitments.

10.2.7.7 Loans and financial liabilities

1) Miscellaneous and definitions

Financial liabilities are treated in the same way as financial assets.

The initial recognition is realized at cost, which is equal to the net consideration received, after deducting soft costs (borrowing costs for instance).

Then, these liabilities are recognized at the amortized cost (i.e. after deducting principal repayments). Liabilities held for transaction purposes are estimated at fair value.

Latent foreign exchange losses must be anticipated and recognized in a special financial charge account.

2) Interests

Loan issue costs, which are deducted from the debt (see later), are amortized according to the actuarial method (in other words, they contribute to the overall effective rate of the loan).

Interests incurred during construction of an asset requiring a long period of preparation may be capitalized, within the limit of the interest amount that could have been avoided if construction had not been undertaken.

The latter two provisions, which comply with IFRS, are different from current Algerian practices:

- Loan issue costs were previously activated and amortized according to the straight-line method (instead of being deducted from the debt and spread according to the actuarial method).
- Capitalization of interests on fixed assets was possible as an "intangible" and distinct from the funded fixed assets, but had to be amortized over five (05) years (in FAS, it is part of the asset and is amortized accordingly, possibly over more than five (05) years).

3) The updating of certain debts

One last important provision is cited in FAS: "Operations for which deferred payment is granted or obtained under conditions different from market conditions are recorded at their fair value."

This IFRS provision stipulates that a loan issued at a rate significantly higher or lower than the market rate, must be recognized at value different from face value (for instance, a debt of 1,000 carrying a rate of 20% must be recorded in an amount exceeding 1,000).

In practice, such a provision could be fairly far-reaching. This item will have to be more explicit and detailed however.

10.2.7.8 Long-term contracts

The proposed FAS project deals specifically with long-term contracts. First, it provides for the need to follow up on "progress." This follow-up is not described in detail, but FAS is clearly referring to standard 11 of IFRS which deals with this issue.

As with IFRS, "completion" is only possible if the outcome of the contract cannot be reliably

evaluated. The section recommends immediate recognition of the total amount of losses upon completion as soon as the amount of charges incurred in connection with the contract exceeds total income from it.

10.2.7.9 Leasing contracts and deferred taxes

1) Definitions

In the "special terms and conditions" section, FAS provides for the recognition of leases and deferred taxes in corporate financial statements. With regard to deferred taxes, it is stipulated that "at the end of the period, deferred taxes are recorded for all temporary differences which will likely give rise to a charge or taxable income later."

For instance, it might be provisions not yet deducted or losses that can be carried forward which the company may use in the future.

The recognition of deferred taxes in corporate financial statements represents a major innovation in Algeria. It is a commonly used, time-honored practice in English-speaking countries (e.g. England), but it is much less common in Mediterranean countries (Algeria, Spain, France, Italy).

The position of Algerian tax authorities regarding this issue is not yet known.

2) Specifics of leasing contracts and restatements

For leasing contracts, FAS sets rules that are in compliance with IFRS (five rules):

- Final transfer of the property
- Bargain option (attractive price of the final option, from the beginning).
- The period of lease which covers the useful life of the goods.
- Amount of minimal payments close to the value of the equipment.
- Specific characteristics of the goods.

Required restatements are in compliance with international standards:

- The asset is treated as a fixed asset by the lessee, at fair value.
- A debt for the same amount is recognized at the beginning.
- Rent is cancelled.
- Financial charges and amortization are substituted for it.
- The difference between cancelled rent and the financial charges is treated as reimbursement of principal and deducted from the debt. NAP 75 does not cover this issue.

10.2.7.10 Method and valuation changes

FAS distinguishes between method and valuation changes.

Changes in valuation affect the income for the period (including the portion relating to previous years, such as additional reserves for inventory that already existed at the beginning of the period for instance).

Changes in method must be assigned to balances brought forward for the portion related to the past and to income for the portion related to the current period (if changes are made to a reserve method, income for the previous period will be recalculated with the new method and it will be charged to balances brought forward, then the provision for the ongoing year will be

recalculated, as if the new method had always been applied).

Without specific reference, this treatment represents a "retrospective" approach, limited to the ongoing period. We find the preference for the retrospective approach applicable in IFRS.

10.2.7.11 Rules of consolidation, goodwill and concessions

An entire section of FAS is devoted to explaining the rules of consolidation, consolidated goodwill and concessions.

We will not examine these topics within the framework of this overview. We will simply point out that, as a whole, the rules take up provisions applicable in international accounts and in IFRS.

As for concessions, whose treatment is not set by IFRS - but which have been the subject of a wide-ranging debate opposing Latin countries (France, Spain, Italy), where the use of concessions is widespread, to Anglo-Saxon countries (England, Germany) - , FAS recommends the Latin "treatment," meaning that assets be recognized by the concession holder and that renewal provisions be constituted.

As IFRS will probably choose another position in the end, which excludes all or part of the assets under concession from the balance sheet of the concession holder and eliminates the renewal provisions as currently practiced, it is possible that FAS may have to evolve fairly quickly.

10.2.8 Conclusion regarding the FAS proposal under review

FAS is greatly influenced by IFRS and introduces a considerable number of changes compared to previous practices.

Moreover, it allows the application of a great many principles generally applied to consolidated accounts (namely lease activations, pensions, deferred taxes etc.).

A point that will require analysis in the coming months is that the IFRS rules that inspired FAS principles are never mentioned as such, nor is any reference made to them.

Certain minor provisions clearly refer to provisions (sometimes elaborate) of the international system.

In several instances, FAS appears to be little more than a simplified version of IFRS, usually containing an implicit reference to the original standards, which are particularly complex.

Such are the cases for:

- Rules on financial assets/liabilities.
- Rules on leasing.
- Benefits to personnel.
- Deferred taxes.

With regard to all these topics, FAS introduces very innovative concepts for Algerian accounting in just a few short lines, describing them in a very cursory manner. The same rules are generally explained in IFRS as part of standards that are much more complex.

Once in the practical phase, it will be necessary to refer to the source and apply the system of reference, bringing to the fore the complexity of the source documents, which the CNC sought to avoid in this first draft.

This is unless the CNC and Algeria's professional accountants decide to normalize or clarify the provisions or certain issues themselves and give them leeway with regard to international standards.

10.3 Latest elements concerning FAS

This section will examine the texts containing a number of IFRS-related details published during the second half of 2009.

10.3.1 Transition-related problems

The "first application instructions" for FAS were officially published by the CNC on October 29, 2009, definitively confirming the date of first application: 1 January 2010.

The instructions were followed by three methodological notes issued in 2010. They give the users necessary elements and directions to enable them to solve the difficulties met, on one part, on the other part to realize the operations of passage to the new referential table.

10.3.1.1 Contents of these instructions

The instructions are only four pages long but are concise and resolve a number of issues.

They are accompanied by a mapping between the previous and the present charts of accounts as provided by the NFAS.

10.3.1.2 Examination of general provisions

It is recalled that all economic entities that do not implement government accounting rules will adopt the NFAS as of 1 January 2010. As anticipated in our previous publications, it is then clear that the adoption of NFAS constitutes a change in accounting policies, and must be regarded as such.

The text includes the new regulations to be applied in this area:

- The impact will be calculated at 31.12.2010 and at 01.01.2010.
- The impact at 01.01.2010 (i.e. differences between the old and new systems at that date) must be charged to the opening equity.
- The residual impact at 31.12.2010 should impact net income for 2010.

If the calculations are done well it should ascertain the:

- Impact on the variance related to change in method on the last closing date and the unassigned results.
- Ensure that the 2010 transactions (such as depreciation expenses) are consistent with that resulting from the new method.

Roughly the same method was retained under IFRS for the first application and it is technically known as a "retrospective application". The mechanism is essential and is illustrated in the following example:

Imagine a truck at 15 million DZD bought 2 years ago and amortized using the straightline method over a period of 5 years.

At 01/01/2010, the accumulated amortization will be 6 million. The allocation for 2010 will be 3 million. At the end of 2010, the combination will be 9 million, and a net value of 6 million.

Under NFAS, the straight-line method over 7 years proves a viable option. In late 2010, it leads to an accumulated expense of 6.428 million, instead of the 9 million accounted for. As at January 1st, 2010, this figure would be 4.285 million instead of 6 million.

	Opening	**Provisions**	**Closing**
Old method	6,0 m DZD	3,0 m DZD	9,0 m DZD
New method	4,3 m DZD	2,1 m DZD	6,4 m DZD

In the balance, in all cases with an opening figure of 6.0 MDZD, it should reach 6.4 MDZD. Therefore, logically, expenses come to 0.4 MDZD:

- Either directly, by an allocation of 0.4 MDZD.
- By an allocation of 3.0 MDZD and a recovery of 2.6 MDZD.

The net expense of 0.4 MDZD does not make economic sense and does not correspond to the allocation under the old approach (3,0 MDZD) or by the new method (2,1 DZD).

With the "retrospective application", it would be as follows:

- The variance at 01.01.2010, 1.7 MDZD (6.0 minus 4.3), will be re-established in opening reserves (i.e. in accounting terms, debited from an amortization account, credited to a reserve account).
- To go from 4.3 MDZD to 6.4 MDZD, it would require 2.1 MDZD in expenses which corresponds to the allocation under the new method.

Ultimately, it appears that the 0.4 MDZD mentioned in the preceding paragraph would come down to:

- The impact of change in accounting method (1.7 MDZD).
- The allocation for the year by the new method (-2.1 MDZD).

10.3.1.3 Procedures that have to be implemented

The text explains the logical consequence of this approach.

It will be essential to:

- draw up a mock balance sheet and income statement under NFAS at 31.12.2010 and at 01.01.2010 - "as if the company had already applied the NFAS",
- establish variations compared to the previous chart of accounts on reserves as discussed above, Have data for the restated 2009 income statement so that they may be compared (Include a detailed "Before / After" table in the 2010 financial disclosures).

The text then provides some details worth mentioning:

- Certain assets will be scrapped or provisioned (e.g. preliminary expenses).
- Others will be created (active leasing).
- Certain liabilities will be created (debt leasing, pension and retirement bonus provisions etc.).

All this will be calculated and booked through equity at 01.01.2010.

Other assets / liabilities will be reclassified, which will not require an adjustment of equity, but will generate differences in presentation and will need to be reflected in the reconciliation accounts.

It is clear that the comparative data for 2009, in order to be standardized and comparable, will require that the impacts on balance sheet positions be calculated at 01.01.2009.

If we go back to the truck example, in 2010, it will incur 2.1 MDZD in amortization expenses. Compared to 2009, the amortization expense would have to be calculated between 01.01.2009 and 31.12.2009 (2.1 MDZD – relatively simple in this case, but it could be more complicated) and presented as such.

10.3.1.4 Accounting provisions related to the transition

The text identifies the specific documents and steps required in the preparation of NFAS accounts, allowing the traceability of conversion operations.

The following should be prepared:

- a mapping showing the concurrence in totals between the closing balance under the previous chart of accounts and the opening NFAS balance (i.e. before restatement),
- statements that take into account the reclassification operations,
- the impact of restatements,
- the final data.

In more general terms, all these transactions must be documented and a summary of impacts prepared so that:

- the Board of Directors can validate them,
- a summary of these operations may be included in the appendix,
- the statutory auditors can approve them.

In practice, companies can build on procedures in Europe in 2005, during the first IFRS application. The companies concerned had to publish reconciliation accounts, "before/after IFRS", summarizing and explaining the main variations.

10.3.1.5 Contents of the methodological notes:

The first methodological note, issued on October 19, 2010, gives more details about the disposition issued one year before.

The two other methodological notes, issued on December 28, 2010, are more specific and deal with the passage of elements of intangible assets and elements of stock.

1) The first methodological note: it clarifies furthermore the application of the first instructions. The main dispositions of this note can be summarised as follows:

- The transition to FAS is not limited to an accounting reconciliation; it goes beyond this financial year. The note confirms the introduction of new concepts, new evaluation and accounting rules, and new financial statements.
- The transition should be conducted as a real project management mobilizing all the functions of the company, with the association of external qualified experts specialized in the domain, if needed.
- Besides, the necessity to do certain tasks prior to the transition (preliminary diagnosis, elaboration of a work plan, impact studies, communication, training and sensitizing, vulgarizing) as well as other procedures to ensure a successful passage, especially in terms of information, documentation, and tractability systems.
- The note recommends a standard procedure that entities are encouraged to adopt while operating conversion (adapted training program, elaboration of an internal plan of accounts, definition of models of financial accounts and of a correspondence table, diagnosis and impact survey, implementation of reprocessing, elaboration of a specific gazette and of a balance and a FAS opening balance sheet before 01.01.2010.
- A purely accounting conversion work can be summarized as follows:
  - Prior to the mapping: elaboration of FAS plan of accounts, of a correspondence table with figures.
  - Translation of the sales of accounts: reclassifying of account settlements, globalization or deglobalization of accounts, elaboration of a translation journal.
  - Reprocessing: reprocessing of the sales of accounts of assets, and liabilities, products and expenses with passage adjustments the impact of which will be registered in stockholders'equity.
  - Finalization: elaboration of FAS 2009 financial statement (Pro forma). The appendix, the essential elements of which are resumed in that of 2010, must give details of the procedure adopted (methods and choices), reclassifying operated, the main reprocessing done, the justification of impact for the new delay, and the elaboration of a table showing the incidence of on the stockholders'equity.
- For the entities submitted to the legal control of accounts, the preparation plan for the transition must be examined by the statutory auditor, who must give his opinion on the opening balance sheet before January 01, 2010. This mission is part of specific missions in accordance with art 03 of Decree of November 1994 pertaining to the table of fees of statutory auditor.
- The passage work must be submitted, by the corporate entities, to the ordinary general assembly who must enact the accounts of the fiscal year 2010. For the entities who are not submitted to the control of accounts, the survey of the reprocessing is carried out by the corporate entities.

In the small entities, validation must be carried out by the operator himself, and must be formalised through a document duly signed by him and containing the balance sheet of the passage as well as income statements.

This methodological note provides interesting details, especially in terms of preparation and organization of the passage proceedings.

2) The other two methodological notes: they are more specific then the first one and deal with the particular cases of intangible assets and elements of stock.

The main dispositions in these notes can be summarized as follows:

A- For the intangible assets: after having defined the intangible assets as a whole, the note makes the distinction between reprocessing affecting the preliminary expenses, and those affecting the other intangible assets.

- The note explains that the reprocessing of intangible fixed assets, can stem from revaluations, depreciations, and the difference of valuation rules between NAP and FAS.

- The note specifies that the treatment of preliminary expenses must be treated with regard to their nature and content, preliminary expenses corresponding to loads by nature. For the first category, the note explains that these expenses are not actionable and thus must be worn in loads when they appear. At the passage to FAS, these expenses and their reduction must be cancelled in return of stockholders'equity resulting in deferred taxes. For the second category, the note explains that if these expenses correspond to the definition of intangible fixed assets given by the FAS, then they will be immobilized (expenses of loads of options, investment expenses…) and the amortization adjusted as a consequence. In contrary case, they are worn in loads. The adjustments of passage to the FAS must pass in transit in stockholders' equities too.

- As a conclusion, the note specifies the data which must be handed out in the appendix of 2009 financial statements (in conformity or not with the FAS, accounting methods adopted, impact of the change of method, reasons having prevented the reprocessing of certain rubrics, other useful information).

B- For the stocks:

- A comparison is given for the definition of stock under the old and the new referential table.

- The note precise the impact of the transition on the reprocessing to be operated. It fixes the criteria to be taken into account for the operation of reprocessing of stocks from the NAP account plan to the new FAS account plan. This criteria can be either a chronological order of the production cycle or the physical nature of the stored assets.

- The note also specifies the impact of the transition on the definition of stock costs. It excludes the cost of the sub-activity as well as the value of abnormal waste of raw material, of labor or any other lost spending which is not incurred to transport the stocks to the place and the state they are in.

- Besides, the note explains the impact of the transition on the valuation on at the end of the period. Valuation at the end of the tax period must lead the entity to verify the loss of value every time the cost of the stock is superior to its net value of realization.

- The note also specifies the impact of the transition on the valuing methods of stocks. The cost of fungible elements must be determined according to the method of the balanced average cost or to the FIFO method. The cost of non-fungible elements must be determined according to individual costs. Except for the real cost, the stocks can be evaluated according to the method of standard cost or according to the method of retail cost/price for practical reasons, since these techniques permit to give the nearest results to the real price.

- The note also specifies that in the framework of the consolidated accounts drafting, the consolidated firm must harmonizing the methods of all consolidated firms, in order to have coherent and homogenous data available.

- It must be noted that the transition to the FAS reprocessing must impact the stockholders' equity.
- As a conclusion, the note specifies the data to provide in the appendix of 2009 financial statements (conformity or not with FAS, accounting methods adopted to value the stocks, impact of the change of method, reasons which have prevented the reprocessing of some items, circumstances which lead to record a loss of value as well as the amount of depreciation recorded during tax period, relapse of depreciation recorded during the tax period, other useful information).

10.3.1.6 Details that are not contained in the instructions

The "mapping" provided in the latter part of the appendices in the instructions could facilitate the transition in some respects.

However, one should be wary of the "one size fits all" approach.

As explained in previous articles, there is nothing automatic about mappings and a detailed examination of the existing situation requires time[50].

Either way, the chart of accounts presented in the appendix of the instructions is limited to a 3-digit breakdown of the accounts, while the French Chart of Accounts, on which it is based, uses 4- and 5-digit codes.

This enables a more detailed classification of company accounts and their accounting schemes.

Without necessarily copying the French system in its entirety, the introduction by the CNC of 4-or 5-digit codes in the Algerian chart of accounts, would complete the system as certain sub-accounts, such as VAT for example, could be correctly managed.

10.3.2 Position of the tax authorities

Once the various texts published (see below), there remained to know whether the tax authorities would accept the new accounting rules of FAS.

So it is with particular attention we have studied the different finance laws issued since 2009.

Article 141 ter of CIDTA provides: "Companies should respect the definitions promulgated by the financial accounting system, provided that they are not incompatible with the tax rules applicable to the tax base.

10.3.2.1 Provisions of the Supplementary Finance for 2009 relating to FAS

The Supplementary Finance Law for 2009 contained a number of new fundamental investment and industrial policies; it also contained various provisions dealing with the NFAS.

We will review them to better understand their scope.

10.3.2.1.1 Monitoring long-term contracts

The article no. 140-3 of the direct tax code (CDITA) provides that "the taxable profit for these contracts shall be calculated solely by the percentage-of-completion method, regardless of the

50 For more developments on this issue see our different publications about the new financial accounting system on our website: www.kpmg.dz.

method adopted by the company". On the seemingly mundane, this text is very important for many businesses operating in the construction or contributing to investment projects.

The NFAS provides that long-term or construction contracts must, unless technically impossible, be calculated on a percentage-of-completion method basis.

This means that all the concerned companies must organize themselves in order to monitor their records by this method which is demanding in terms of information management (also explained in the text: appropriate management tools are required to monitor revenue, expense and income estimates.

10.3.2.1.2 Provisions

The article no. 141-5 (CIDT) states that provisions on inventory and clearly detailed and probable third-party accounts (provided that they have been recorded and carried in the statement of provisions) are tax-deductible.

So far, recognition of provisions for inventory or receivables in Algeria was rare, because few accounting texts dealt with the issue and the item frequently raised questions with tax authorities.

In NFAS, the general framework is much more stringent, providing that expected value of losses on stocks or the claims be subject to the necessary provisions.

This potentially leads many companies to see significant reserves.

Depending on the Supplementary Finance Law for 2009, tax authorities will accept these provisions provided that they are sufficiently defined, probable, and the supplies have been identified and included in the ad-hoc table.

10.3.2.1.3 Preliminary expenses

In NFAS, it is clear that most of the expenses previously capitalized under "preliminary expenses" then amortized, and could no longer be retained and had to be removed from the balance sheet or be treated alternatively.

The article no. 169-3 of the same code provides precisely that previously-entered preliminary expenses are deductible according to plan.

This confirms:

- that the old charges, even if they are eventually written off retroactively, will remain tax deductible;
- that new charges will not be, since they will no longer be activated and depreciable as such according to the NFAS.

10.3.2.1.4 Asset revaluation

In NFAS, there are several provisions that allow a revaluation of assets, including tangible assets.

Beforehand however, it was important to know their fiscal impact:

- neutrality reference the revaluation authorized in 2007;
- taxation, as for all free revaluations.

Section 185 responds well to this concern. It states that gains on asset revaluation once SFL enters into effect will be amortized over a maximum period of five years.

In fact, the administration has adopted an intermediary position:

- Taxation of capital gains contrary to what had been granted in 2007;
- no full or immediate taxes either;
- the possibility to spread capital gains, therefore taxation spread over 5 years.

10.3.2.1.5 General framework

Another major issue that arose with regard to NFAS was whether tax authorities would validate the new system, or instead dismiss it outright, as this has been the case in other countries. The answer is clearly indicated: Section 141 b provides that "companies must comply with definitions provided by the new accounting system ... unless inconsistent with the tax regulations". Specifically, this rule is very important: it means that tax authorities are supposed to accept all the provisions and the accounting consequences of NFAS, since they do not contradict the existing tax laws.

10.3.2.1.6 Conclusion

In the Supplementary Finance Law for 2009, it is therefore possible to establish:

- A general principle of "compatibility", as previously mentioned.
- Several clarifications on important points.

Even if this does not solve all problems at once, it definitely showed that the tax administration incorporated the impending accounting rules, therefore not imposing further delays and had begun to take notice of them.

10.3.2.2 Provisions relating to the 2010 Finance Law

Depending on the elements of the 2010 Finance Law, various provisions are related to NFAS.

10.3.2.2.1 Treatment of Leasing

This provision recalls that leases may not be amortized as previously, with the lessor, but with the policyholder, taking into account the provisions of NFAS. The text states that the depreciation period is equal to the duration of the contract, which is not necessarily equal to the life of the property. It introduces a potential gap between economic depreciation, practiced in NFAS accounts and tax depreciation, which will generate a deferred tax, except if, for simplicity, the contract is representative of the economic life in order not to create gap.

10.3.2.2.2 Operating depreciation

Economic depreciation is recognized according to the straight-line method, but the progressive or regressive methods are possible.

The amortization of production units (i.e. the use of the property), which is a new element in the NFAS and fairly frequent in IFRS in certain areas, such as mining, is not discussed which means there would be fiscal and accounting discrepancies, primarily with deferred taxes.

10.3.2.2.3 Reversal of preliminary expenses

Previous charges that have not yet been reversed will disappear from balance sheets, because of NFAS.

It provides that expenses not absorbed should not be charged in full for tax expense over 2010 but will be fall under "non-accounting" item, as before.

Concretely, this means that companies will eliminate the costs incurred before the NFAS balance sheet, in exchange for equity. However, the tax plan, they can continue to deduct depreciation which was established by a set of reversals/deductions.

Once again, there will be fiscal and accounting discrepancies, therefore, deferred tax.

10.3.2.2.4 Treatment of grants

In law, subsidies are mentioned.

For investment grants, there is no complication: they must be recorded as estimated liabilities at the same rate as the main investment. Thus, the depreciation expense recorded is offset by a product for the part covered by the grant.

For other grants, the text provides clearly that the grants will be taxed in the financial year during which they were granted.

The NFAS text lacks clarity on this point:

- it evokes the principle of linking the subsidy to the year it is supposed to compensate,
- it then adds that it must be recognized the year it is acquired, which is precisely the opposite of the first assertion.

For a balancing subsidy or support for utility costs, IFRS clearly states that income and grant claims should be recognized the year they are received not next year.

If we follow this precept, even if the NFAS text is not clear, there will be a discrepancy with the tax administration, which will consider only the year of payment - usually the following year. This should therefore result in deferred taxes.

10.3.2.3 Provisions of the supplementary Finance Law for 2010 affecting the FAS

Among the number of rules included in the Supplementary Finance Law for 2010, only one disposition affects the application of the FAS. It concerns the fiscal treatment of the leasing contract.

- Treatment of the leasing:

According to article 27 of the Supplementary Finance Law for 2010 from a tax point of view the lesser continues to be the legal owner of the leased good and it is authorized to deduct the related depreciation.

The rules prior to the 2010 Finance Law in connection depreciation on leasing continue to apply for a transitional period until 31 December 2012.

The lessee who is the economical owner continues to deduct the rental expenses that are paid to the lesser and this until the deadline of 31 December 2012.

This provision can lead the complication the follow up of leasing contract for the lesser as well

as for the lessee, particularly for the contracts settled before the FAS. In this latter case, a first reprocessing is operated at the moment of the transition from NAP to FAS. A second reprocessing must also be operated in extra-accounting when calculating the tax result. All these reprocessing, stemming from a difference between tax system and accounting will, of course, result in deferred taxes.

This provisions means that, tax authorities reject temporarily the principle of economic owners of the leased good. Nevertheless, it must be reminded that this provision will be applied, until 31/12/2012 only. At the end of this period, the tax treatment of leasing operations should be bringing into line with to the accounting rules.

The finance law for 2014 introduced a new section that holds the tax treatment of leasing operations as applied before the intervention of FAS, therefore it will always be a discrepancy between the accounting and tax treatment.

The provisions of the Finance law 2012 amending the FSA Among the provisions contained in the Finance Act for 2012, one provision affects the application of FSA.

In the Article 7 of the 2012 Finance Act, the Article 144 of CIDTA predicts:

« Subventions equipment awarded (.....) following exercises: However, the subventions that are allocated for the acquisition of equipment to be amortized over a period greater than five (5) years are reported under the conditions defined in the above exercises relating to the amortization period. In case of transfer (....). "

Under the terms of that article, the subventions that are allocated to the acquisition of equipment to be amortized over a period greater than five (5) years are reported under the conditions defined in the above exercises relating to the amortization period. The schedule of taxation of such the subventions is now aligned with the depreciation schedule of the equipment acquired through subventions.

The provisions of the Finance law 2014 amending the FSA. In Article 6 of the 2014 Finance Act, the article 144 of CIDTA plan that, the subventions of equipment granted to companies by local governments are included in the results of the current fiscal year when being paid.

They are linked to taxable income of following years proportionally to their exploitation, the remaining subvention amount is reported to taxable income, starting from the fifth year at lasted.

However, subventions intended for the acquisition of amortizable good, during a period of five (5) years, are reported in accordance with the conditions mentioned above, to amortization annuities.

In case of transfer of assets acquired through these subventions, the portion of the subventions not yet reported to the basis of tax is deducted from the book value of these assets for the determination of the taxable capital gain or the capital loss to be deducted. Exploitation and equilibrium subventions are part of the collection of their exercise result.

10.3.3 Conclusion

The application instructions published by the CNC will implement specific conversions without further ado and in the same way as those that were implemented elsewhere in the world during IFRS application.

CHAPTER 11

THE TAX SYSTEM IN ALGERIA

11.1 Taxation of individuals

11.1.1 Tax liable individuals

From a tax standpoint, tax liable individuals are those persons engaged in a professional or commercial activity, and members of partnerships, civil partnerships and undeclared partnerships who are indefinitely and collectively liable for corporate debts.

They comprise two major groups: resident individuals and non-resident individuals.

11.1.2 Residents and non-resident Algerians

Under the direct tax code and subject to the provisions of bilateral tax treaties to which Algeria is a party, a person is considered to have its fiscal domicile in Algeria in the following cases:

- The person has a home in Algeria,
- The person has a principal place of residence or the center of its main economic interests in Algeria,
- The person benefits from paid or unpaid employment in Algeria.

The people of Algerian nationality or a foreigner who have their fiscal domicile in Algeria, under the above provisions are subject to IRG on all their Algerian and foreign income (global income concept). They are subject, under Algerian law, to an unlimited tax liability.

Those whose tax domicile is located outside of Algeria are liable for IRG on their Algerian income source. They are subject, under Algerian law, a limited tax liability.

11.1.2.1 Domestic rules

In order to ascertain the fiscal residence, the tax code sets forth three alternative criteria as indicated above. Thus, are tax residents in Algeria the persons who have their property owners, tenants, life tenants of a residence in Algeria, or, persons who spend most of their time in Algeria or make it the main center of their activities, or, persons who exercise a professional activity here salaried or not.

11.1.2.2 Treaty rules

The tax treaties signed by Algeria have their own criteria in determining fiscal residence which apply when an individual is a resident of the two signatory states and in accordance with the laws in effect in both states

For the most part, these treaties have adopted the successive criteria of the OECD model convention, which are: location of the home, the place where the subject has the closest

personal and economic links, the usual place of residence and the nationality of the individual.

Determining the place of residence makes it possible to define the place of taxation for certain income categories. The details of those treaties will be discussed further on.

11.1.3 Definition of Global income tax (Impôt sur le revenu global, IRG)

Global income tax (IRG) is intended for personal, the law provides for an annual taxation calculated on the basis of all net income categories of the taxable person.

11.1.4 Tax regime

As general rule the net income for each category is clearly determined according to specific rules for each category, before being added to obtain global income. The latter is taxed according to a progressive scale. Except for an applicable tax treaty these revenues are determined and taxed according to the same rules, whether they are revenues received by Algerian fiscal residents or by non-residents.

In the case of persons subject to an unlimited tax liability (tax domicile in both countries), treaty provisions must be taken into account in order to avoid double taxation of the income.

For a person who exercise a professional activity and realize a turnover not exceeding 30 million dinars, their taxation is calculated on the basis of another regime which is the single flat tax develop further.

11.1.4.1 Taxation of salaries

This tax concerns stipends, indemnities, emoluments, salaries, pensions as well as life annuities.

Are also considered as salaries compensation allocated to shareholders and manager of LLC companies and members of the participating company's and civil one.

Also considered as salaries, compensation to persons working at home, on an individual basis and on behalf of third parties, non-monthly productivity bonuses and gratuities and remunerations derived from any occasional activity performed on an individual basis.

11.1.4.1.1 Determination of taxable income

Taxable income consists of pensions, life annuities and primary compensations paid to the beneficiaries and benefits in kind which may be granted to them (food, housing, heating, lighting etc.).

However, certain categories are exempt from the tax like deductions made by the employer for the creation of a pension or a retirement fund, social security dues of salaried employees, family allowances, temporary benefits and life annuities paid as workers' compensation, benefits allocated for travel or mission expenses, temporary allowances and life annuities paid in respect of Accidents at work, allowances for travel or mission expenses, allowances for geographical areas, severance pay and unemployment benefits in addition to allowances paid under the laws and orders for assistance and insurance.

11.1.4.1.2 Tax system for salaried workers

Apart from remunerations, benefits, non-monthly bonuses and gratuities covered by the 10%[51] withholding tax, earned income is taxable on the basis of a final withholding at source, withheld by the employer in accordance with the following monthly-adjusted progressive tax on global income rate schedule:

Fraction of monthly taxable income	Rate (%)
Less than 10,000 AD	0
From 10,001 to 30,000 AD	20
From 30,001 to 120,000 AD	30
Over 120,000 AD	35

The amount of tax to be paid is determined after application of the abatements, whose rate is set at 40% and must range between 1,000 and 1,500 DZD per month.

Note: Additional reductions may be applied on the amount of the total income tax for disabled employees.

11.1.4.2 Taxation of income from movable capital

Two types of income fall into this category: the income from shares, shares and equivalents on the one hand, and the revenues from debt securities, deposits and guarantee bonds on the other.

Revenues and gains from disposals of traded shares and related securities, and shares or units in collective investment in transferable securities are exempt from tax on total income (IRG) or the tax on corporate profits (IBS).

Income and capital gains on bonds disposals, related equity and Treasury bonds listed or traded on a regulated market, a minimum term of five years issued in a period of five (5) years from 1 January 2008, are exempt from Individual income tax on total income (IRG) and /or the tax on corporate profits income tax (IBS) for a period of five (5) year renewed on the occasion by several finance laws, the latest one is dated on 2014. This exemption covers the entire period of validity of shares issued during this period.

Companies whose common shares are publicly traded benefit from a reduction of income tax (IBS) equal to the opening of its capital stock exchange rate for a period of five (5) years effective from January 1st, 2014 .

Regarding the same law, the Article 67 provides for the extension of the provisions of article 63 of the 2003 FL, amended and supplemented, concerning the exemption from IRG and IBS for a period of five (5) years products and more-capital gains on disposal publicly traded or in a published market, starting to First January 2013.

11.1.4.2.1 Revenues from dividends and shares

These are the revenues distributed by joint stock companies, limited liability companies, partnerships companies subject to corporate tax (IBS).

Are also considered as distributed revenue, the revenue from mutual funds, loans and advances to partners, compensations, and directors' fees.

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51 Rate adopted in the 2010 Finance Law.

These revenues collected by a resident individual give rise to a withholding tax of 10% upon payment.

Income distributed to non-resident persons are subject to a 15% withholding tax, unless an applicable tax treaty.

11.1.4.2.2 Revenues from debt securities, deposits and guarantee bonds

This category includes interests and other income from mortgage claims, preferred or unsecured, from bonds, cash guarantees, money deposits and current accounts.

They are taxed as soon as they are paid, debited or credited to an account. A withholding tax of 10% applies in this case, and increases to 50% in the case of anonymous titles.

In the case of interests paid to non-resident persons, the situation may be different if an applicable tax treaty exists.

11.1.4.3 Taxation of capital gains

A special system applies to capital gains generated by the transfer of immovable properties and a general system for capital gains stemming from the transfer of capital gains generated as professional gain.

11.1.4.3.1 Capital gains on property conveyances

These are the capital gains actually realized by persons who transfer, outside the framework of their professional activities, all or part of buildings and undeveloped land, as well as the property rights associated with those assets.

The capital gain equal to the difference between the sale price and the purchase price or the creation value of the property and is subject to a withholding tax at the rate of 5%

Are not subject to capital gains tax on disposals involving property built buildings or undeveloped held for more than ten (10) years.

11.1.4.3.2 Capital gains from the transfer of capital assets

This concerns capital gains stemming from the transfer of fixed assets assigned to the activity and capital gains stemming from the transfer of securities and shares. Purchases of stock or shares which give the buyer ownership of at least 10% of the firm's capital are considered as capital assets.

Capital gains stemming from the transfer of property belonging to capital assets are taxed differently according to the duration of preservation of the property whether they are short-term or long-term assets. They are considered long-term when they result from the transfer of property acquired at three (03) years earlier.

The amount of the taxable gain to attach to taxable earnings is determined on the basis of the type of capital gains. If it is a short-term gain, 70% of the amount can be attached to taxable earnings, whereas if it is a long-term gain, 35% of the amount can be attached to taxable earnings. That means that a tax deduction of 65%.

With regard to leasing, the capital gains realized upon the sale of an asset by the lessee to the lessor in a Lease-Back, are not included in the profits subject to tax.

Regarding capital gains on stock or share transfers carried out by resident individuals, they give rise to a 15% discharging tax rate.

However, these capital gains, are tax exempt when the amount is reinvested. By reinvestment means of the subscription are equivalent to capital gains generated by the sale of stock or shares in the capital of one or several companies and resulting in the acquisition of stock or shares.

Regarding the non-resident persons having made gains in Algeria, the withholding tax at the rate of 20% is applicable.

The majority of tax treaties contain provisions stipulating that capital gains shall only be taxed in the country of residence of the seller.

11.1.4.4 Other revenue categories

11.1.4.4.1 Professional profits[52]

Professional profits are the profits generated through the exercise of a commercial or an industrial profession, a skilled trade or mining activities and the benefits for non-commercial professions.

When it comes to determine taxable income subject to the Global Income Tax for professional activity performed by an individual, the Law refers to the rules decreed with regard to taxes on corporate income.

Activities with an annual turnover not exceeding 30,000,000 DZD are subject to the single lump-sum tax system so called in French (IFU) "impot forfaitaire unique".

However, activities whose turnover exceeds the aforementioned threshold, they are subject to the regime of the real profit.

The rate of IFU is fixed as follows:

- 5 %, for the activities of production and sale of goods ;
- 12 %, for other activities.

Such system is also applicable for investment promoters involved in activities or projects eligible for support of the "National support for youth employment Fund" or the "National support fund to micro-credit" or "National unemployment Insurance Fund."

Individuals subject to the single flat tax system are required to subscribe and send to the tax inspector of the place of establishment of the activity, between 1 and 30 June of each year, a special declaration whose model is set by the tax authorities

Starting from 2017, these persons must pay 50% of the amount of the single flat-rate tax (IFU) at the time of the filing of the forward-looking statement, for the remaining 50%, their payment shall be made in two equal installments, From 1 to 15 September and from 1 to 15 December.

A supplementary declaration between 20 January and 15 February of year N+1 is provided in the event of a turnover exceeding the one declared by the taxpayer

Individuals subject to the single flat tax system may opt for taxation under the real profit regime. The option is notified to the tax authorities before 1 February of the first year in respect of which the persons wish to apply the regime of actual profits. The option is valid and

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irrevocable for the said year and the two following years.

The option is tacitly renewed for a period of three years. It is irrevocable during this period.

Persons wishing to waive the option must notify the tax authorities of their choice before 1 February of the year following the period in which the option was tacitly exercised or renewed.

11.1.4.4.2 Property revenues

Targeted revenues are those derived from the rental of buildings, unequipped commercial and industrial premises, and those derived from the rental of undeveloped land of any kind, including agricultural land.

Income derived from the civil lease of residential real estate is subject to income tax, calculated on the amount of the gross rents at the rate of:

- 7% withholding tax, for the rental of collective habitations.
- 10% withholding tax for rental of individual habitations
- For commercial or professional rental, a rate of 15% is applicable, this rate is also applicable to residential contracts concluded with companies.

11.2 Main taxes paid by legal entities

Legal entities present in Algeria may be taxed differently according to whether they are residents or not.

In addition, domestic regulations do not apply to tax treaties signed by Algeria in that they include provisions for specific taxation rules for certain revenues.

11.2.1 Resident legal entities

11.2.1.1 Direct taxes

11.2.1.1.1 Corporate income tax (IBS)

Profits earned by firms with legal status shall be subject to an annual tax on corporate profits (Corporate income tax, IBS).

Partnerships, participation companies, professional civil partnerships not constituted as joint stock companies are not, in theory, subject to corporate income tax, but may choose this form of taxation.

Other entities, such as mutual funds (Organismes de placement collectif en valeurs mobilières, OPCVM) cannot choose this system of taxation.

The profits in question are the profits or revenues realized in Algeria.

From a domestic law standpoint, the establishment must be located in Algeria, namely possess material facilities, its own autonomy and display a certain degree of permanence. In the absence of this type of establishment, the activity must be conducted through representatives or genuine agents working on behalf of the enterprise. In the absence of an establishment or representatives, the activity must translate into a complete cycle of commercial operations.

Treaties law provides for other criteria and gives special importance to the notion of permanent establishment.

1) Taxable income

It corresponds to the income from all operations, regardless of their nature, carried out by the enterprises, including the transfer of assets, either during, or at the end of the period of operation.

Taxable income is determined on the basis of accounting income before taxes, corrected in order to take the tax effect into account.

a) Taxable revenues

- *Operating revenues*

Revenues include the price of sold merchandise, works and services carried out by the firm. Revenues pertain to acquired and indisputable accounts receivable.

- *Financial revenues*

Financial revenues pertain to interests from debt-claims and revenues from securities (revenues from stocks, shares, bonds etc.).

- *Other operating revenues*

These are other products related to the business such as, capital gains, royalties and subsidies.

Capital gains from revaluations are taxable, except when a specific legislation providing for the exemption of these gains applies. Capital gains generated by sales are taxed differently depending on whether they are short-term or long-term sales and may be tax-exempt when the capital gains and the cost of the sold assets are reinvested in fixed assets within three years following the end of the financial year.

Capital gains generated by a sale conducted as part of a leasing contract between lessee and lessor, whether it is a lease back or an option being exercised, shall be tax-exempt.

Received subsidies are also taxable. There are three types of subsidies granted by the State or the public sector:

1. Equipment subsidies are not part of the accounting income for the fiscal year during the course of which they were received, when they were used in the creation or acquisition of depreciable assets. They must be linked to taxable income up to the amount of depreciation carried out on the cost price of those assets.

2. Operating subsidies include compensatory indemnities for insufficient prices and subsidies meant to cover operating expenses. They are considered taxable revenues under ordinary law.

3. Balancing subsidies granted on the basis of the firm's performance are included in the taxable income for the fiscal year.

b) Deductible charges

Costs and charges are only deductible to the extent that they are linked to normal corporate operations, and that they are effective, justified and included in the expenses of the fiscal year during which they were incurred and translated into a reduction of net assets.

They are as follows:

1. Purchases and consumption of material and commodities (inventory): Purchases must be recorded in the books at the purchase price (buying price plus related expenses minus discounts).

2. Service charges: Certain conditions must be met regarding deductions. Thus, remunerations paid to non-salaried third parties must be declared on corporate income tax return forms, as well as rent for premises directly assigned to operations. In addition, maintenance and repair expenses must contribute to maintaining fixed assets and facilities of the firm, and not constitute an upgrade. When the service contract involves a non-resident service provider, a withholding at source is applied by the firm on the amount of the contract.

3. Personnel charges: In order to be deductible, personnel charges must correspond to an actual job on the basis of a reasonable estimation of the importance of the service performed. Fringe benefits and social security dues associated with the compensations are allowed as deductions against income.

4. Taxes: The taxes paid by the enterprise are deductible, with the exception of the corporate income tax (IBS) itself. Fines and penalties and interests on arrears are not allowed as deductions against taxable income.

5. Financial charges: They are deductible in principle. In the case of interests paid to a non-resident corporation, a withholding at source of 10%.

6. Head office expenses: In accordance with the 2008 Finance Act, head office expenses are deductible up to 1% of sales recorded by the firm in the period during which the expenses were incurred.

7. Miscellaneous expenses: Insurance premiums are deductible when they are paid in order to protect against the risks to which the assets are exposed, donations to scientific institutions or philanthropic organizations, with a cap of 1 million AD, or sponsorship of sporting activities up to 10% of the turnover for the year up to a ceiling of thirty million dinars (30,000,000 DA).

8. Depreciations: Depreciations actually carried out within authorized depreciation limits are deductible, in other words, depreciations using the linear method and, for certain exceptions, the declining balance, the progressive or the accelerated linear methods (leasing activities). A deduction limit up to the purchasing value of 1000,000 AD applies to the depreciation of tourist vehicles acquired by the enterprise, except when the said vehicle represents the main tool used in carrying out the firm's activities.

9. The additional depreciation and amortization generated from revaluations to the entry of new financial accounting system, will be reported to the result of the year;

10. Reserves: In order to be deductible, reserves must correspond to losses or charges clearly specified, that have become probable and not just potential, as a result of an event originating during the fiscal year. The reserve must also appear in the accounting and be recorded on the statement of reserves of the corporate income tax forms.

c) Transfer pricing

Earnings that a firm was unable to realize because the transfer price policy of the group it belongs to is not compliant with the arm's length principle will also be considered taxable earnings and will be included in the firm's earnings subject to corporate tax.

The Direct Tax Code stipulates that when two affiliated firms complete transactions and that the conditions linking them are different from those between two independent firms, the earnings that could have been realized by one of the firms, but were not due to the different conditions, are included in that firm's net taxable earnings. This provision applies to both corporations of transnational groups and strictly national groups.

Products to integrate in the assessment taxable basis are those directly conveyed to companies located outside Algeria by means of:

- the increase or reduction of purchase or sale prices;
- payment of overpriced royalties without any counterpart;
- granting of loans without interest or at a reduced rate;
- renouncing to interest fixed in the loan contracts;
- assignment of benefit out of proportion to the service obtained;
- any other means.

These elements enable to determine the taxable products (of benefit). In case of the absence of these elements, the tax authority will determined the taxable products from elements at its disposal and by comparison with taxable products of similar companies normally exploited.

Besides, further to the publication of the Decree of April 2012, in JO N° 4 dated 20th January 2013, the documentation justifying the transfer pricing policy applied by affiliates is mandatory.

This documentation should be submitted to the tax administration with the annual tax return , i-e at the latest the 30th April of each year, for entities registered at the level of the "DGE" and at the demand of the tax authority for others taxpayers.

As a reminder, the lack of production or incomplete production of this documentation in a timely manner for this purpose leads to:

- The application of a fine of 2 000 000 DA, and;
- Reintegration of the transferred benefits plus a fine of 25% of profits transferred.

The companies registered before the DGE must produce this documentation prior to notification of the tax administration and keep an analytical accounting;

2) Calculation of the tax

a) Applicable rates

The tax rates depending on the business segments as follows[53]:

- 19% for goods-producing activities;
- 23% for building activities, public works and hydraulics as well as tourist and thermal activities excluding travel agencies;
- 26% for other activities.

It should be noted that goods production activities are defined as those that involve the extraction, production, processing or transformation of goods excluding packaging activities or commercial presentation to resale. Furthermore, the production activity within the meaning of the IBS tax rate does not include mining and hydrocarbons.

Regarding the building activity and eligible public and hydraulic works at the rate of 23%, it is necessary to hear the activities registered as such in the commercial register and give rise to the payment of social security contributions in specific sector, namely: CACOBATPH.

In case holding different activities with different rates, having separate accounting is required.

53 Article 2, 2015 Complementary Finance Law

Alternatively, the rate of 26% will be applied. This distinction provides for the separation of the income statement by activity.

b) Withholding taxes

There are a certain number of rates for corporate income rates withheld at source, which are set as follows:

- 10% on revenues from debt securities deposits and guarantee bonds. The amount withheld at source represents a tax credit which is applied against the definitive taxation.
- 50% on income from anonymous or bearer securities.
- 20% on amounts collected by firms as part of management contracts for which taxation is done through withholding at source.
- 24% on:
  - amounts received by foreign companies in Algeria with no permanent professional installation as part of market services or;
  - amounts paid as remuneration for services of any kind provided or used in Algeria;
  - products paid to inventors abroad either under exploitation of patents licensing, or the cession or concession of the trademark, process or manufacturing formula.
- 10% for amounts charged by foreign shipping companies, when their country of origin imposes Algerian shipping companies. However, whenever that country applies a higher or lower rate, the rule of reciprocity is applied.

When the basis for calculating the withholding tax benefits from a reduction in the rate or abatement, a VAT is applied under the reverse charge regime

3) Assessment and payment of taxes

a) Obligations of corporations

Firms liable for corporate income tax (IBS) are required to fulfill accounting obligations, which consist of keeping accounting records in accordance with the laws and regulations in force and keep documentation for a period of at least ten (10) years.

Accounting is carried out in accordance with the laws and regulations in force and in particular the new Financial Accounting System (SCF)

Secondly, these firms must submit a declaration of existence to the tax authorities having jurisdiction over the territory in which they operate within thirty days (30) after beginning their activities.

At the moment of transferring or winding up the company, owed taxes will be immediately assessed on the basis of the income that has not yet been taxed.

b) Tax return and payment

Taxes on corporate profits are set up in the name of legal persons where their headquarters or their main establishment is located.

The annual income statement must be submitted at the latest by 30 April each year. If the firm has suffered losses, the amount of the deficit must be declared under the same conditions.

The deficit of a fiscal year is deductible from the profits of subsequent fiscal years up to and including the fourth fiscal year. However the firms must post their oldest losses first.

The payment of taxes by firms established under Algerian law consists of three installment payments of 30% of the taxes pertaining to the income of the last fiscal year. The tax balance is recovered by spontaneous payment without a tax roll.

In the case of newly established corporations, each installment payment is equal to 30% of the tax calculated on the basis of an estimated 5% yield on called-up capital. Note: the 2010 Finance Law establishes a tax on importing and wholesale distribution of drugs. The levy is 5% based on the net income of importers and wholesale distributors of imported drugs purchased for resale.

11.2.1.1.2 Dividends

1) Dividends paid to legal entities incorporated under Algerian law and to resident individuals

In accordance with the provisions of the direct tax code, dividends distributed to shareholders of resident legal entities which have incurred corporate income tax are not included in the taxable base of corporate earnings from which the corporate shareholders receive the dividends, provided that those earnings stem from regularly declared earnings., dividends paid to shareholders or holders of shares of the companies under the single flat tax, are exempt from withholding[54].

2) Dividends paid to non-resident legal entities or individuals

Dividends distributed to non-resident corporate legal entities and individuals are subject to a 15% withholding tax, collected by the distributing corporation.

If an applicable tax treaty exists, the withholding tax rate may vary.

11.2.1.1.3 Tax on professional activities (TAP)

The TAP represents a major source of revenues for local communities to whom it is entirely allocated. The TAP is a tax on professional activities based on overall sales or gross revenues minus taxes.

1) The rate of the TAP:

- The normal TAP rate is 2%.
- A reduced rate of 1% is applicable for the production of goods.
- A rate of 2% with a reduction of 25%, for the activities of building, public works and hydraulics.

However, this rate shall be increased to 3% as regards the turnover resulting from the transport activity by pipeline of hydrocarbons

2) Taxable base

It consists of sales for the fiscal period, excluding value-added tax. The tax base could be reduced to attain special goals. Reductions listed below are only granted on turnover not realized in cash.

Moreover, certain operations are excluded from the taxable base.

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54 Article 10 FL 2015.

a) Reductions of 30%

They apply to:

- the amount of wholesale sales operations;
- the amount of retail sales operations pertaining to products whose retail sales price includes more than 50% in indirect taxes;

b) Reductions of 50%

They apply to:

- wholesale sales operations pertaining to products whose retail sales price includes more than 50% in indirect taxes, whether the sales are carried out by producers or wholesale merchants, or under the same price and volume conditions with corporations, institutions or administrations,
- retail sales of drugs with the dual condition that margins not exceed 10% to 30% and that the drugs be categorized as strategic goods as defined by Executive Decree No. 96- 31 of January 15, 1996.
- Sales operations by producers and wholesalers.

c) Reductions of 75%

It applies to retail sales of petrol, natural gas and oil.

d) Elements excluded from the taxable base

The following are not included in the TAP taxable base:

- The amount of retail sales operations pertaining to strategic goods targeted, when the retail margin does not exceed 10%;
- The amount of sales operations pertaining to the sale of mass-consumption products, supported by State funds or benefiting from compensation;
- The amount of sales operations; brokerage operations; or delivery operations pertaining to goods, supplies or merchandise earmarked for exportation;
- Sales not exceeding 80,000 AD in the case of taxpayers whose primary activity is to sell merchandise, commodities, supplies and foods for take-out or on-site consumption, or 50,000 AD, in the case of service providers.
- The portion corresponding to the repayment of the credit under the financial leasing agreement
- Transactions carried out between member companies belonging to the same group.
- The amount realized in foreign currency in tourist activities, hotel, classified catering and tour operators.

2) Exigibility

The tax is due:

- for sales, by legal or physical delivery of the goods;
- for building works and services, for the total or partial receipt of price.

3) Assessment and payment of taxes

The TAP is assessed in the name of the corporation or enterprise according to sales generated by each entity or establishment and every commune of the site of their installation.

The amount of tax is declared monthly on the amount of sales recorded during the month, whereas the tax is paid upon presentation of the declaration in each of the communes where the taxpayer possesses facilities or units. Except of taxpayers registered at the DGE level for which the payment is centralized there[55].

Payment must be made at the latest the 20th of each month.

Firms are required to submit a declaration every year tracing the amount of sales subject to taxation along with the annual return (IBS and IRG).

This declaration must namely specify the amount of taxable sales, the amount of exempt sales and the amount of sales benefiting from a reduction.

With regard to operations conducted as wholesale operations, the declaration must be substantiated by a statement, including IT support which includes, for each client, all elements necessary to identify the said client (name, given name, corporate name, address, registration number with the Commerce Register, amount of the purchases, etc.)

This statement must be filed along with the annual return..

11.2.1.2 Value Added Tax (VAT)

Value-added tax (VAT), instituted in Algeria in 1992, applies to any activity pertaining to sales operations, construction works, the performance of services and importation, regardless of the legal status of the persons involved in conducting these operations and without consideration of their situation with regard to the provisions contained in the legislation as far as other taxes.

There are other taxes to which the rules concerning the taxable base, liquidation, recovery and VAT disputes extend. These are the domestic consumption tax (TIC), the tax on oil products (TPP) and energy efficiency tax (TEE).

11.2.1.2.1 Territoriality of the VAT

In the case of sales, a transaction is deemed to have taken place in Algeria when it is carried out in accordance with delivery terms and conditions of the merchandise in Algeria.

In the case of other operations, a transaction is deemed to have taken place in Algeria, when the service performed, the transferred right, the rented object or the studies done are used or exploited in Algeria.

11.2.1.2.2 Taxable operations

1) Operations subject to mandatory taxes

This includes sales and deliveries made by producers and distributors, construction works, sales of properties and businesses, sales by wholesalers, deliveries of goods to themselves by taxable persons, rental operations, performance of services, works involving research and

55 Article 19 FL 2013.

studies and operations conducted within the context of a liberal profession and operations conducted by banks and insurance companies.

2) Operations subject to VAT via option

These are the operations outside the scope of application of the VAT in principle, but which may be liable for it, at the option of the taxpayer.

This pertains to operations carried out by persons who are not subject to VAT to the extent that they bill upon export, to oil companies, to other tax-liable persons or to firms that benefit from the duty-free purchasing system.

3) Exempted operations

Exemptions apply to certain operations falling within the scope of application of VAT and meeting economic, social or cultural considerations, or reciprocity measures with another country.

For transactions made within the country, exemptions apply to the sale of pharmaceutical products, certain categories of utility or passenger vehicles, goods, material, products and works acquired or realized for the benefit of oil companies, insurance contracts of persons and banking operations extending credit to households, the repayment of loans under the contracts property lending in the medium and long terms including that attached to property leasing and earmarked for the acquisition or construction of individual housing units and access fixed internet services.

Moreover, in order to develop leasing operations, the law provides for an exemption to this tax in the case of acquisition operations conducted by banks and financial institutions as part of leasing operations.

For transactions taking place as part of import operations, the exemptions pertain to goods whose sale inside the country is VAT-exempt, and to imported goods falling within the scope of one of the regimes suspending customs duties, and to goods admitted duty free.

For transactions taking place as part of export operations, the exemptions pertain to sales and manufacturing operations regarding exported merchandise, except those that pertain to antiques, old books, furniture, memorabilia, and works of art by artists who have been dead for more than twenty (20) years and sales pertaining to jewelry, gold and silver plates, and other precious metal works.

Domestic merchandise delivered to legally constituted bonded warehouses is also exempted.

11.2.1.2.3 Calculation of the tax

Three tax rates are provided for: one set at 19% (normal rate), the other at 9% (reduced rate) and complete exemptions 0%.

The reduced rate applies to certain goods, products and materials, and a certain number of operations specifically provided for by Article 23 of the turnover tax code.

For transactions carried out domestically, these rates are applied to the price of merchandise, works or services, including all costs, duties and taxes, with the exception of the VAT itself.

Special rules are set for determining the tax assessment basis for operations pertaining to oil products, construction works, and self-deliveries of goods and for operations conducted by

concession holders, forwarding agents, dependent firms and merchants involved in the sale of property and businesses.

For imported goods, the rate applies to the customs value, plus duties and taxes other than the VAT.

VAT deductions on purchases

VAT-taxable persons may deduct the taxes charged on their purchases and acquisitions from the collected VAT, billed to his clients.

VAT deduction is conditioned by substantive, formal and temporal requirements. It is deductible for the month or quarter during which it was invoiced or paid. The tax whose deduction has been omitted may be applied to subsequent declarations up to 31 December of the year following the year of omission. It must be entered separately from the deductible taxes for the current reporting period.

VAT deductions on cash operations can only be applied when the amount of the purchase does not exceed 100,000 DA including VAT[56].

From a substantive standpoint, purchased or acquired assets must contribute to operations actually subject to VAT and not be excluded from the right of deduction.

In this respect, operations falling outside the scope of application of VAT, exempted operations and operations specifically excluded pertain to goods, services, materials, properties and premises not tied to the exploitation of a VAT-taxable activity, passenger and transport vehicles which are not the main operational tool of the enterprise, donations and gifts, merchants of goods and equivalents and agents and brokers.

With regard to the form, the deductible VAT must appear clearly on the duly recorded purchase or acquisition invoice.

For VAT-taxable persons who are partially liable which does not pay VAT on all their business, the deductible VAT is limited to a fraction of the amount of VAT charged on the purchase of goods and services. This fraction is equal to paid VAT accompanied by a general deduction percentage called pro-rata.

Thus, all the amounts must be taken exclusive of taxes, excluding the VAT amount due or the VAT which the payment is not required.

VAT-taxable persons must pay back the VAT deducted from the collected VAT when: the purchased goods disappear, or it is used for non-VAT taxable operations, or when the purchase invoice containing the deducted VAT is considered as permanently unpaid.

No refund of deducted VAT is required for financial leasing corporations in connection with the transfer of goods when the lessee exercises the purchase option.

Payment

VAT-taxable persons are required to send, within the first 20 days of each month or quarterly following, a declaration of VAT due and pay, if any, the tax due. The form provided for this also serves as the declaration for other taxes.

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56 See Article 30 turnover tax Code amended by the Supplementary Finance Law for 2010.

11.2.1.2.4 Specific regimes

1) VAT refund

The VAT charged to purchase operations carried out by VAT-taxable persons can generally be deducted from the invoiced VAT. Under certain circumstances, the persons liable for tax cannot exercise their right of deduction through a tax credit due to the absence of collected VAT. There is a system in place that enables them to recoup the VAT paid to suppliers, service providers or sub-contractors through a refund.

The refund of the tax must nonetheless result from export operations, or from works, services or the delivery of products for which duty-free purchases are authorized, a marketing goods operation, goods and services specifically exempted from VAT deductible, and from a cease of activity or a tax resulting from the difference between the reduced applicable sales rate and the normal rate charged to purchase invoices. However, reimbursement of VAT credit is determined after adjustment of the overall fiscal situation of the taxpayer. In addition, the credit for which the amount is requested can no longer be charged to the G50 tax form.

Applications for reimbursement of VAT credits shall be made, as the case may be, to the Director of Large Enterprises, the Director of Taxes in Willaya or the Head of the competent tax office by the 20th of the month follows the quarter in respect of which the repayment is asked.

For partially liable persons, the VAT on operations which are not subject to a deduction by application of the pro rata is not eligible to a refund.

In case of rejection of the VAT refund application, a period of four (4) months is provided for the submission of a contentious complaint to contest the decision of the tax management service.

2) Duty-free purchases

The system of duty free purchases represents the second option for VAT-taxable persons but who are unable to deduct their VAT on purchases, to the extent that it enables them to buy goods, material and services without having to pay the related VAT.

This system pertains to:

- goods and services acquired by the suppliers of oil companies, apart from prospecting activities[57];
- purchases of raw materials, components or packaging used in the production, conditioning or the commercial presentation of exempted products or those earmarked for an exempted sector;
- the purchases or imports of products destined, either to be exported or re-exported in the same state, or to be incorporated in the manufacturing, conditioning or packaging of products earmarked for exportation, as well as the services directly tied to export operations;
- Asset, other than passenger vehicles, acquired by young investment promoters.
- goods and services acquired within the framework of a transaction concluded between a co-contracting partner and foreign nonresident company may benefit from a VAT exemption.

Note: The purchase of raw materials, components or specific packaging for a production,

57 Adopted by the 2011 Finance Law.

packaging or presentation of commercial products specifically exempted or intended a tax exempt sector through direct refund of the tax credits, undergone upstream.

Exemption VAT or VAT exemption certificates can be downloaded electronically. The beneficiary must present them to the department managing his tax file, for the purpose of his visa.

3) ANDI's VAT-exemption regime

Taxpayers carrying out investment operations may benefit, namely by decision of ANDI, from a VAT exemption. This regime allows the purchase of goods and services going directly into the implementation of an investment without having to pay the VAT.

11.2.1.2.5 Other tax on turnover

The 2009 Finance Law introduced a tax applicable to prepaid telephone recharges. It is due monthly by the mobile operators irrespective of the charging mode. The tax rate was fixed at 5% and increase to 7 % on 2017. It applies to the amount of recharge for the month. Tax-liable operators pay the tax to the regional tax collector within the first twenty (20) days of the following month.

11.2.1.3 Registration fees applicable to legal entities

Registration fees apply every time a deed or a transfer is registered with the competent authorities in charge of the registration in terms of tax proceeds.

11.2.1.3.1 Registration fees on transfers

The registration code defines the sale as a contract by which the seller pledges to transfer the ownership of a thing or any other property right to the acquirer, who must pay the price for it.

1) Sale of property

The sale of property gives rise to the obligation of registering with the registry inspection and publishing in the land registry. It requires the payment of a registration fee of 5% and a land registration tax at the rate of 1%.

Sales of professional buildings conducted as part of the exercise of an option by the lessee in a leasing contract are exempt from the 5% registration fee.

Moreover, the sale must be recorded by official deed (notarized deed) and the payment, on sight and for one fifth of the price, must be placed in the hands of a notary.

The registration fee pertains, not only to the bills of sale, but also to any other deed, which even without seeming like a sale involves nonetheless the transfer of property in exchange for money.

The basis of tax assessment consists of the price as stated in the deed, to which all increasing charges, as well as the indemnities, are added to the seller's benefit. However, the tax authorities may calculate the tax on the basis of the market value of the property, if, during verification, it appears to exceed the declared value.

2) Sale of movable property

Sales of movable property may be conducted through public sales or by private agreement. If they are recorded by deed, they must be registered and a 2.5% fee must be paid.

Sales of professional equipment conducted as part of the exercise of an option by the lessee in a leasing contract are exempt from the fee.

3) Sale of goodwill and customer base

Transfers of business assets and customer base for valuable consideration are subject to a registration fee of 5%. This fee is collected on the price of the sale, of goods, the transfer of lease rights and movable assets and other assets used to operate the business.

However, new merchandise is only subject to a fee of 2.5%.

11.2.1.3.2 Registration fees for articles of incorporation

1) Articles of incorporation

The creation of a corporation implies the assignment of assets distinct from those of the partners.

a) Unconditional contributions

In exchange for his contribution the contributor receives simple shares (interest components or share components) exposed to all the risks of the enterprise. The tax legislation stipulates that the deeds of incorporation of corporations shall be subject to a 0.5% tax on the total amount of contributions of movable or immovable property made on an unconditional basis and that the tax shall not be lower than 10,000 AD or exceed 300,000 AD (for joint-stock companies).

b) Contributions for consideration

They are analyzed as a genuine sale agreed to by the contributor to the corporation and lead, as a result, to the payment of a transfer fee determined according to the nature of the assets being transferred, as in the case of a sale. This fee is collected on the basis of the price, to which charges are added, or on the market value of the assets, if it is higher.

c) Mixed contributions

They are, in part, unconditional contributions, and for the rest, contributions for consideration. The parties must declare in the deed the assets transferred for consideration. If this declaration pertains to movable property and immovable property, the tariff associated with immovable property alone is applicable, provided that the movable property is not assessed item per item in the contract.

2) Deeds during the existence of the corporation

During the existence of the corporation, certain changes are made on the capital.

a) Capital increase

Capital increases are subject to a registration fee of 0.5%, but this fee shall not be less than 10,000 AD or exceed 300,000 AD (for joint-stock companies).

For capital increases of variable capital corporations, a proportional duty is charged only on the fraction of the share capital which, at the end of a corporate fiscal year, exceeds the previously taxed capital.

The initial capital tax is collected on the actual value of the new contributions.

Increases to a firm's capital achieved through the capitalization of earnings, reserves or

provisions of any kind which have not been taxed on corporate earnings is subject to a registration fee of 1%.

b) Capital decrease

Capital decreases are reductions of a firm's capital which are effective with respect to corporate creditors.

From a fiscal standpoint, a distinction is made between the reduction as a result of a loss, which is registered subject to the fixed fee for unspecified deeds (5,000 AD), provided that no associated refund be made to the benefit of the partners, and the reduction made by way of distribution of shares, which opens the way to a partition tax of 2% on the shares assigned to each partner.

c) Change of legal form

When the transformation of the form of the corporation does not result in the birth of a new corporation, the deed recording it is subject to the fixed rate for unspecified deeds of 500 AD. In the opposite case, the fees provided for in connection with the creation of corporations are payable.

d) Continuance of the firm's existence

The continuance of a firm is the extension of its existence. This operation is subject to a different tax regime depending on whether it takes place before or after the expiration of the corporation.

If the continuance precedes the expiration of the corporation, the deed is subject to a fee of 0.5% collected on corporate assets, but this fee shall not be lower than 10,000 AD or exceed 300,000 AD.

In cases where the continuance takes place after the expiration of the corporation, which leads to the creation of a new corporation, it is subject to the ordinary capital duty applicable to net corporate funds, as well as a fee on transfers for consideration, applicable to the amount of liabilities.

e) Merger of the corporation

For all types of mergers, there is a contribution for consideration, stemming from the fact that the surviving corporation takes on the liabilities of the corporations that are dissolved.

The 0.5% capital duty is settled on the basis of the actual value of the contributions less the actual liabilities taken on, and the fee on transfers for consideration is collected in application of the rules provided for in cases of mixed contributions.

It is worth noting with regard to joint stock companies (JSC), that the application of the 0.5% rate cannot result in the collection of a fee less than 10,000 AD or exceed 300,000 AD.

3) Dissolution of the corporation

a) Deeds pertaining to the dissolution of the corporation

These deeds are subject to mandatory registration. They result in the payment of a fixed fee of 3,000 AD, when they do not pertain to any transfer of assets between partners or other persons.

b) Transfer of corporate shares after the dissolution

Transfers of corporate shares taking place after the dissolution, but before the liquidation, are subject to the same rules as those in effect before the dissolution. However, when the

liquidation is completed, transfers of corporate shares are subject to ordinary transfer fees, at the rate stipulated for each of the said assets.

c) Transfer of corporate shares leading to the dissolution

Fees applicable to the transfer of corporate shares are also due when the said transfer results in the dissolution of the corporation.

11.2.1.3.3 Registration fees on the transfer of corporate shares and bonds for consideration

1) Transfer of corporate shares

Deeds pertaining to the transfer of shares and shares are subject to a fee of 2.5%. The collection of that fee is subject to the existence of a deed recording the transfer.

The fee is based as in the case of ordinary movable property, namely on the transfer price, to which charges are added, or on the market value of the transferred securities, if it is higher.

From a fiscal standpoint, the assets in kind represented by the transferred securities are considered to be the object of certain transfers of corporate shares. They pertain to:

- transfers of shares carried out during the period of non-negotiability of these securities,
- transfers of shares when they take place within three (03) years after the contributions to the firm have been made.

These transfers are subject to the tax regime provided for in connection with the sale of assets whose contribution was compensated by the transferred securities.

2) Transfer of bonds

The deeds pertaining to the transfer of negotiable bonds are subject to a 5% fee.

As with the transfer of corporate shares, this fee is based on the price, to which charges are added, or on the actual value, if it is higher.

11.2.1.4 Tax incentives

These are the tax incentives provided for in Ordinance No. 2001-03 of August 20, 2001 pertaining to the development of investment in Algeria amended and supplemented by Law n° 16-09 of 3 August 2016 on the promotion of investment. These incentives[58] are provided by the National Agency for the Development of Investment (Agence nationale pour le développement de l'investissement, ANDI).

Also by financial law acts provides certain exemptions not codified.

The Supplementary Finance Law for 2010 makes provision for following measures:

- Operations related to books, including printing and publishing, as well as the creation, the production and the national edition of works on digital media are exempted from VAT.

Exemption of VAT, up to December 31, 2020, for expenses related to Internet access, that is to say:

- expenses and royalties related to services of fixed access to Internet and expenses relating

58 For a detailed review of benefits, see section 2.3, "The institutions in charge of promoting investments."

to lease bandwidth exclusively for the provision of fixed internet service[59];

- expenses related to the housing of web servers at the data centers in Algeria and in ".dz" (dot dz);
- expenses related to engineering and development of websites;
- expenses related to maintenance and aid to the activities of access and housing of websites in Algeria.

According to the 2011 Finance Law, travel agencies and hotels benefit from a temporary exemption, for a period of three years, starting from the beginning of the activity, on the portion of sales in foreign currency.

The Finance Act for 2017 also provides for the following:

- Also exempt from income tax (IRG) and corporate income tax (IBS) as well as registration fees, for a period of five (5) years from 1 January 2014, Transactions in securities listed on the stock market or traded on an organized market.
- Also benefit from the exemption for corporate income tax (IBS) and income tax (IRG) for a period of five (5) years, the bonds with a maturity of three ((3) years and five (5) years within the framework of national borrowings issued by the Treasury ".
- It exempts customs duties and VAT for a period of five (5) years for components and raw materials imported or acquired locally by subcontractors in the context of their production activities of assemblies and sub- Assemblies for products and equipment of the mechanical, electronic and electrical industries.
- This exemption applies only to subcontractors approved by the producers of these products and equipment.

Also, the following operations benefit from a permanent exemption:

- Income of activities related to raw milk devoted to consumption as is, are exempted of corporate taxes.
- Any operation generating foreign currency, particularly sales and services to be exported. The fixed exemption is granted sales pro-rata realized in foreign currency.

As a reminder, to benefit from this exemption, companies must provide to the concerned tax department, a document certifying the deposit of income in hard currency in a bank domiciled in Algeria. Land and maritime operations air transport and reinsurance and banking operations are still excluded from this exemption.

The 2014 Finance law introduce some exemptions in the measure to promote some sectors:

1. Exemption from the tax on transactions of new vehicles, the vehicles produced locally

Are exempt from tax on transactions of new vehicles when produced locally:

- Passenger and commercial motor-fuel;
- Cars and diesel-engine utility;
- Trucks;
- Equipment rolling;

59 Article 31, 2014 finance law

- Trailers;
- Vehicles carrying people;
- Motorcycles and mopeds subject to registration.

Regulatory text set a local integration threshold from which the exemption applies.

11.2.2 Non-resident legal entities

In the absence of an applicable tax treaty, domestic law stipulates that all non-resident foreign corporations in Algeria be taxed on revenues from Algerian sources, but according to a different tax regime, depending on the type, duration and place of activity the corporation engages in.

The withholding at source regime covering all non-resident foreign corporations conducting operations was abolished in the case of building construction companies in 1999. It is now applied only to service. Construction works, as well as EPC contracts, have become taxable according to the real income regime.

When a treaty applies, some adjustments are made to these tax regimes.

11.2.2.1 The regime of service providers

11.2.2.1.1 The withholding tax regime

Unless a tax treaty applies, non-resident foreign corporations performing service delivery contracts, such as engineering studies, supervision, project management or the use or the right to use industrial property, are subject to a withholding tax of 24%, which covers IBS, the tax on professional activities and VAT, when the services are delivered or used in Algeria.

The taxable base to calculate the 24% withholding tax is the gross amount of billed services.

Duties and taxes payable in connection with the execution of a contract legally implicating the foreign partner cannot be supported by institutions, government agencies or businesses incorporated under Algerian law.

Those corporations are required to register with the tax authorities within a month following the signing of the service delivery contract and to meet certain tax declaration obligations. Namely they must declare the salaries received by their employees for work performed in Algeria and pay taxes on those salaries.

Corporations providing these services from abroad or through an intermediate on the Algerian territory for a period not exceeding 183 days are not subject to this type of tax declaration obligation. When the basis for calculating the withholding tax benefits from a reduction in the rate or abatement, a VAT is applied under the reverse charge regime, such VAT is charged to the Algerian client and deducted by itself.

11.2.2.1.2 The real income regime option

Service providers subject to a 24% withholding tax may choose to be taxed on real income. The tax authorities must be notified of the decision to opt for that regime within 15 days following the signing of the contract.

Choosing that option requires that the corporation keep accounting records in accordance with the new financial accounting system (SCF). It also imposes monthly declarations of realized turnover and the payment of corresponding taxes and duties, as well as the filing of annual corporate income tax return forms.

11.2.2.1.3 Provision of services and sale of equipment

When the service delivery contract also provides for the supply of material and equipment, the Code of direct taxes and similar taxes (Article 156) offers the possibility of subtracting the amount of that supply from the taxable base for assessing the withholding tax. This sale is deemed to be a simple importation subject to taxes and duties on imports supported by the Algerian client.

Separate invoices must be issued from abroad for this equipment and imported on the name of the Algerian customer.

11.2.2.1.4 Fee for use of software

For software royalties, an 80% rebate applies on the amount of royalties subject to 24% withholding tax, resulting in an effective tax rate of 4.8%.

In addition to this deduction, the Finance Act for 2017 provided for VAT to be taxed under reverse charge regime on services benefiting from rate reduction or abatement.

11.2.2.1.5 Delivery of services and tax treaties

When a tax treaty between Algeria and the country of residence of the service provider exists, the delivery of services should be taxable according to the provisions of that treaty. Thus, depending on whether the performance of services by the corporation is deemed a permanent establishment or not, the delivery of services may either be taxed in Algeria or only in the country of residence.

According to the interpretation of tax administration, services physically performed outside of Algeria by the headquarters of the corporation are not taxable in Algeria, but only in the location of the said headquarters. In this case, the regime of reverse charge is applied and the VAT is paid by the Algerian client.

Also, where the tax treaty provides for the application of a reduced rate as in the case of royalties, the above said regime of reverse charge of VAT is extended in this case.

11.2.2.2 The construction regime

11.2.2.2.1 The real income taxation regime

Non-resident foreign corporations performing a construction contract or an EPC contract are deemed to have a taxable entity in Algeria subject to the regime that applies to domestic corporations without having to create a legal entity requiring registration to the Commerce Registry.

In other words, these corporations are subject to the common tax regime with some specificities and are taxed on their actual income to TAP, VAT, CIT & Branch tax (Unless the contract is exempt from VAT or any specification provided by an applicable treaty)..

11.2.2.2.2 Tax declaration obligations

Establishments must be registered with the Algerian tax authorities the month following the signing of the contract, keep accounting records based on actual income and submit monthly and annual tax declarations under the same conditions as domestic corporations.

11.2.2.2.3 EPC contracts and tax treaties

Tax treaties signed by Algeria all stipulate that a construction site or an assembly site may represent a permanent establishment when it exceeds a certain length of time provided for in the tax treaty (between three and nine months).

When the foreign corporation is deemed to have a permanent establishment in Algeria, the earnings of the said corporation attributed to the permanent establishment are taxed in Algeria.

According to the interpretation of the tax authorities, certain components of the contract may not be attributed to the permanent establishment in Algeria, such is the case for the supply of equipment and for services physically provided outside of Algeria to the related charge and also not attributable to the permanent establishment.

11.2.2.3 Specific circumstances linked to the existence of a grouping

11.2.2.3.1 Signing a grouping contract

It is rather frequent for Algerian national agencies and other clients to require that the non-resident foreign firm associate with a local firm to execute the contract.

A group incorporated under Algerian law has to be created, somewhat complicating the tax treatment of the contract.

We have already studied the primary characteristics of groups in item 4.2 and have seen that from a taxation standpoint, groups are transparent entities. A group cannot generate sales by itself and must not declare the profits stemming from the execution of the contract in its name.

It is the members of the group that are deemed to be generating the profits. Profits are divided between group members who are taxed accordingly.

Generally speaking, a group contract shares the amount of the contract among members of the group. This may also be specified in the performance contract with the client. It is on the basis of this distribution that the non-resident foreign firm will be taxed.

11.2.2.3.2 Invoicing and earnings distribution problems

With regard to invoicing, if it is the group's responsibility to bill the client, its role is limited to merely assembling invoices issued by members of the group onto one invoice to be presented to the client in its name.

The amount of the invoice is collected by the group and then transferred to the accounts of each member according to their respective share.

As we have said, sales and earnings are attributable to the members of the group taken separately. Thus, it is important that the costs and charges of the project be borne out in the same manner by each of them (based on their share of the work) and not by the group itself.

Thus, each member will collect the payments to which it is entitled in connection with the contract and will assume direct responsibility for expenditures related to the execution of its share of the contract This will enable members to keep their own accounting records and to also use, when a tax treaty exists, the rules attributing earnings to permanent establishments.

11.2.2.4 Double taxation treaties

Since the fiscal reform of the 1990s, which pointed the country in the direction of a market economy, Algeria has been committed to developing its network of tax treaties.

Indeed, the domestic tax legislation did not make it possible to promote foreign investment, as it failed to propose solutions to double international taxation, in most cases, and to offer legal stability to potential investors.

International tax treaties thus replaced the domestic fiscal legislation by bringing practical solutions to these problems of double taxation.

11.2.2.4.1 General presentation

International tax treaties thus gained in popularity and have now been concluded by several countries wishing to encourage investors to establish a presence on their territories.

This increase in the comfort level of investors is based on the guarantees offered to investors that their profits or revenues earned locally will not be subject to double taxation.

The risk of double taxation is linked to the fact that, from a tax standpoint, the foreign investor is usually bound to two different countries, one being his country of residence and the other being the country where his profits or revenues originate. These two countries, by applying their respective territorial rules, each tax these profits or revenues.

The goal of the treaties is thus to prevent or neutralize this double taxation.

They eliminate the risk of double taxation by establishing harmonized tax residence criteria and in designating a place of taxation, a place of residence or collection for each type of revenue. This harmonizing of fiscal rules protects investors and enables them to know the tax system they are subject to.

When tax treaties do not eliminate this double taxation, they neutralize it through the application tax credit rules or exemptions of the tax overcharge resulting from double taxation.

Tax treaties give an even greater feeling of comfort to foreign investors based on the fact that as international treaties they are, once they have taken effect, of greater legal value than domestic legislation.

The entry into effect of treaties, subject to specific procedures in each country, is an important notion to understand, to the extent that it determines the exact date from which the provisions contained in the treaty begin to apply. Entry into effect is subject to the ratification by the two contracting parties. Thus a treaty signed by the two parties is not necessarily applicable.

Tax treaties are also a way for countries to combat tax evasion and international tax fraud through increased communication between them.

11.2.2.4.2 List of treaties signed by Algeria

Algeria's network of treaties has experienced much growth recently as part of its investment development program.

By analyzing this network more closely, we see that the majority of treaties that were signed draw as much from the OECD model as they do from certain provisions of the UN model.

Country	Date of signature	Date of ratification	JORA No.	Observations
South Africa	04/28/1998	05/07/2000	N. 26-2000	In effect
Germany	11/12/2007	06/14/2008	N. 33-2008	In effect
Saoudia Arabia	12/19/2013	12/27/2015	N. 01-2015	In effect
Austria	06/17/2003	05/28/2005	N. 38-2005	In effect
Bahrain	06/11/2000	08/14/2003	N. 50-2003	In effect
Belgium	12/15/1991	12/09/2002	N. 82-2002	In effect
Bosnie	02/08/2009	01/11/2010	N. 08-2010	In effect
Bulgaria	10/25/1998	12/29/2004	N. 01-2005	In effect
Canada	02/22/1999	11/16/2000	N. 68-2000	In effect
China	11/06/2006	06/06/2007	N. 40-2007	In effect
South Korea	11/24/2001	06/24/2006	N. 44-2006	In effect
Egypt	02/17/2001	03/25/2003	N. 23-2003	In effect
United Arab Emirates	04/24/2001	04/07/2003	N. 26-2003	In effect. Applicable to UAE residents
Spain	10/07/2002	06/23/2005	N. 45-2005	In effect
Ethiopia	05/26/2002	Not ratified	---	Not in effect
France	10/17/1999	04/07/2002	N. 24-2002	In effect
United Kingdom of Great Britain and Northern Ireland	02/18/2015	02/18/2015	N. 33-2016	In effect
India	01/25/2001	Not ratified	–	Not in effect
Indonesia	04/28/1995	09/13/1997	N. 61-1997	In effect
Iran	08/12/2008	05/12/2009	N. 32-2009	In effect
Italy	02/03/1991	07/20/1991	N. 35-1991	In effect
Jordan	09/16/1997	12/17/2000	N. 79-2000	Not in effect
Kuwait	05/31/2006	11/05/2008	N. 66-2008	In effect
Lebanon	03/26/2002	05/22/2006	N. 35-2006	In effect
Morocco	01/25/1990	10/13/1990	N. 44-1990	In effect
Mali	01/31/1999	Not ratified	–	Not in effect
Mauritanie	12/11/2011	12/27/2015	N. 70-2015	Not in effect
Niger	05/26/1998	Not ratified	–	Not in effect
Poland	01/31/2000	Not ratified	–	Not in effect

Portugal	03/10/1997	03/31/2005	N. 24-2005	In effect
Oman (Sultanate)	04/09/2000	02/08/2003	N. 10-2003	Not in effect
Qatar	08/05/1998	Not ratified	–	In effect
Romania	08/28/1994	07/15/1995	N. 37-1995	Not in effect
Russia	03/10/2006	04/03/2006	N. 21-2006	Not in effect
Switzerland	06/03/2006	12/28/2008	N. 04-2008	In effect
Syria	09/14/1997	03/29/2001	N. 19-2001	Not in effect
Turkey	08/02/1994	10/02/1994	N. 65-1994	In effect
Tunisia	02/09/1985	06/11/1985	N. 25-1985	In effect
Ukraine	12/14/2002	04/19/2004	N. 27-2004	Not in effect
AMU	07/23/1990	last ratification on 07/14/1993		In effect
Vietnam	12/06/1999	Not ratified		Not in effect
Yemen	01/29/2002	02/26/2005	N. 16-2005	Not in effect

Source: *Revenue Services and Ministry of Foreign Affairs*

11.2.2.4.3 Presentation and analysis of the OECD model convention

1) An OECD model tax convention[60] on double taxation exists. Nearly all the tax treaties signed by Algeria are based on this model, with some adjustments due to Algeria's specific taxation system however.

2) Scope of application

With regard to physical or legal entities the convention applies to persons residing in at least one of the two countries. This notion is important, in that it determines the persons to whom the convention applies.

As for taxes, the OECD model treaty stipulates that the convention shall apply to the various taxes on income and capital. In Algeria's case, the global income tax (IRG), the corporate income tax (IBS), the tax on professional activities (TAP), oil revenue taxes, mining revenue taxes, taxes on capital, and estates taxes are included.

3) Taxation of revenues

We will deal with the most important revenues.

a) Taxation of corporate profits

The relevant provisions are those contained in Articles 5, 7, 8 and 9 of the OECD model convention.

Thus, the profits of a firm from a contracting state are only taxable in that state, unless the firm carries out its activities in the other contracting state through the intermediary of a permanent establishment located there and to the extent that the profits are attributable to that permanent establishment.

The notion of permanent establishment is important, as the power to tax is only granted to a state to the extent that it demonstrates the existence of a permanent establishment on its

60 Model Tax Convention on Income and Wealth.

territory and that the profits are calculated on the basis of the revenues attributable to that establishment alone.

The existence of a permanent establishment generally revolves around three criteria:

1. the firm possesses a facility;

2. it has a degree of fixity;

3. it conducts, all or part, of an activity there.

A specific rule is provided for however for construction sites and assembly sites. The OECD model convention considers that such sites are permanent establishments when they are in operation for more than 12 months. Most tax treaties signed by Algeria provide for a much shorter period (3 or 9 months).

As for the delivery of services performed in Algeria, the OECD model convention and nearly all tax treaties signed by Algeria contain no provisions pertaining to the matter. As a result, Algerian tax authorities tax service deliveries in Algeria even when there is no permanent establishment according to the three criteria listed above. Please refer to the sections on non-resident legal persons.

Upon determining taxable income in Algeria, the OECD model convention gives the establishment the possibility of including all expenditures incurred by the permanent establishment, even those made abroad. This provision is difficult for the Algerian tax authorities to apply.

There are provisions of domestic law pertaining to affiliated companies allowing a country the possibility of making readjustments with regard to affiliated companies, in order to hold transfer prices down.

b) Taxation of salaries

The OECD model convention stipulates that the salaries, stipends and similar forms of compensation received by salaried workers as part of their employment shall only be taxed in the state in which they reside.

However, if the activities related to the employment are carried out in the other contracting state, compensation for the said employment shall be taxable in that other state.

They may be only taxable in the state of residence however if the salaried worker meets three cumulative criteria. Thus salaried workers shall be taxed in the state where they reside if they have spent more than 183 days there during the year under consideration, if the compensation they receive is paid by an employer residing in their state of residence and not by a permanent establishment owned by the employer in the state where the activities related to their employment are carried out.

c) Taxation of royalties

The OECD model convention stipulates that taxation shall only take place in the state of residence of the owner of the intangible asset for which royalties are paid.

Some tax treaties, such as the treaty between Algeria and France, provide for a withholding tax at the following rates:

- 5% for the use, or transfer of the use, of copyrights,
- 12% for all other cases, when the source country is Algeria

d) Taxation of dividends

With regard to dividends, the OECD model convention stipulates that they shall be taxed in the state of residence of the beneficiary. They may be subject to a withholding tax in the state where the dividends are paid however.

The OECD model convention provides for a general rate of 15%. However, this rate is lowered to 5% when the effective beneficiary is a corporation which directly or indirectly owns 25% or 10% (depending on the applicable convention) of the share capital of the corporation paying out the dividends. This percentage varies according to the various tax treaties signed by Algeria.

e) Taxation of interests

With regard to interests, the shared taxation rule also applies. Interests are taxable in the state of residence of the beneficiary and may be subject to a withholding tax in the state where payment is made.

The OECD model convention provides for a 10% rate, but some tax treaties, such as the treaty between Algeria and Spain, provide for different rates depending on the state from which the interest payments originate. Thus, in Spain's case, the rate is 5% when interests originate from Algeria.

f) Elimination of double taxation

The OECD model convention provides for two methods for the elimination of double taxation: the exemption method and the tax credit method.

The exemption method provides for the country of residence exempting income already taxed in Algeria from taxation, whereas the tax credit method provides for the country of residence granting a tax credit on the amount of tax it collects which is equal to income taxes paid in Algeria.

11.3 Supervision and litigation

11.3.1 Control procedures and the guarantees of taxable persons

Tax audit may come in different forms depending on the extent of control operations, the amount of taxes and duties to audit and the underlying structures. Tax audit operations may be conducted repeatedly, periodically or episodically. They may also be general or pertain only to a specific tax or duty.

11.3.1.1 Controlling declarations

11.3.1.1.1 Definition

The tax authorities control the declarations, as well as the deeds used to establish any tax, fee, duty and royalty. The control of declarations includes the control of declarations for duties paid in cash, the control of annual returns and control on the basis of documents.

The first type of control ensures that all taxes and duties that the taxpayer is subject to have been declared and that the sales figures are consistent, the second type of control consists of ensuring that annual returns are prepared in accordance with the provisions of the legislation

in effect and are accompanied by all required documents, while the third type includes a critical examination of the elements contained in the declaration compared with the information in the hands of the tax authorities.

11.3.1.1.2 Control procedures

The control takes place either at the level of the tax administration services (check on document) or at level of the establishment and enterprises concerned (check on place) during opening hours.

The control may require explanations and justifications presented in writing. The inspector may also ask to examine the accounting documents pertaining to the indications, operations and data being audited. When asked to do so, the enterprises concerned must provide the tax authorities with the books and documents in their possession.

This examination may lead, if necessary, to an audit of concerned taxpayers, or to a request for a verbal explanation. The taxpayer has at least thirty (30) days to provide his answer.

11.3.1.1.3 Correction of the declarations

The inspector may correct the declarations on the basis of the new data obtained during the controls.

The inspector must notify the taxpayer in writing however, providing him with explicit explanations detailing the justifications for each corrected item, as well as references to the corresponding Articles of the tax code. At the same time, the inspector asks the taxpayer in question to notify the authorities of his acceptance or his remarks within thirty (30) days. Failure to answer within that period will lead the inspector to set the tax base, subject to the taxpayer's right of complaint, after establishing the tax roll adjustment.

A control on the basis of documents is just an examination of the declarations and the elements in the hands of the tax authorities and is clearly different from accounting audits which follow special procedures.

11.3.1.2 Accounting audits

Accounting audits general or punctual include all operations aimed at verifying the authenticity of tax declarations, their reconciliation with accounting entries, and verification of the reliability and probative value of the accounting entries. Accounting audits can also be used in order to fight against tax evasion.

Spot checks of accounts may include one or more taxes on all or part of the unprescribed period.

During accounting audits, the auditors of the tax administration can be based on their verification provided by article 169bis of Tax Procedures Code to control transfer pricing between member companies of the same group even if the audited company does not fall within the Direction of Big Companies (DGE).[61]

Spot (punctual) audit of accounts is a form of control that take place under the same conditions as those for general tax audit and do not prevent the tax authorities from carrying out a thorough audit of the accounts later, and to returning to the verified period.

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61 Article 27 of 2014 Finance law.

This is a strict and rigorous procedure during which the taxpayer benefits from several legal provisions which represent guarantees with regard to tax controls.

Rejection of accounting[62]

The tax procedures code identifies the reasons for rejection of accounting, resulting from a tax audit as follows:

The rejection of accounting can only intervene in cases where the administration demonstrates the inconclusive nature of accounting and this is when:

- Bookkeeping, accounting and supporting evidence is not in conformity with the provisions of articles 9 to 11 of the Commercial Code, financial and accounting system and others regulations;
- The accounts contain repeated errors, omissions or inaccuracies relating to transactions recorded.

The new rewrite of the article related to rejection of accounting in tax procedures code removes the last paragraph providing notification of the rejection and the bases selected automatically (automatic taxation).

This deletion dissociates rejection accounting taxation automatically procedures and reclassifies with conflicting recovery procedures.

11.3.1.2.1 Audit notification dispatch

An accounting audit may not be undertaken without the dispatch or hand delivery, with acknowledgment of receipt, to the taxpayer of an audit notification accompanied by the charter of the rights and obligations of audited taxpayers.

The audit notification must include the names, given names and grades of the auditors, the time and date of the first inspection, the period under audit, the fees, taxes, duties and royalties concerned, and the documents to be examined.

11.3.1.2.2 Prior preparation period

A minimum of 10 days of preparation from the date of receipt of the audit notification must be granted to the taxpayer, namely to enable him to gather his accounting records.

However, the auditors may, as soon as the audit notification has been received by the taxpayer, conduct a fact-finding mission concerning the physical elements of the operation (inventory of stocks, long-term assets and cash items) or to the existence and state of the accounting documents.

A report must be made at the end of the fact-finding mission by the auditor with the taxpayer or his representative.

11.3.1.2.3 Assistance of counsel

When receiving the audit notification, the taxpayer is notified of his right to be assisted by counsel of his choosing during the audit procedure, as failure to provide such information will result in the nullification of the audit.

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62 Article 28 & 29 of 2014 Finance law

11.3.1.2.4 Place of audit

The examination of the accounting documents is conducted on the audited taxpayer's premises.

However, in emergency situations duly verified by the tax authorities, the taxpayer may request that the audit be conducted in the office of the tax authorities.

11.3.1.2.5 Time limit of accounting audits

On-site verification of statements and records cannot, on pain of nullity, be extended beyond the period specified by law. They are 03 months, 06 months or 09 months according to the turnover of the audited company. This period could be extended by six (6) months when the tax administration, in the context of international assistance and exchange of information.

On-site verification is mandatory proven by a report, verified and countersigned by the taxpayer. The refusal to sign by it should be noted on the minutes.

In cases of alleged indirect transfers of profits within the meaning of dispositions Code of direct taxes and similar taxes, the deadline for on-site verification of the deadline is extended to the taxpayer checked to enable it to respond to requests for clarification or justification.

A pre-litigation procedure is introduced as part of the notification of adjustments.

Specifically, the provisions of Article 20 of the Tax Procedure Code provide as follows:

The audited taxpayer should be informed, in the recovery notification, that it has the opportunity to request in its arbitration response about fact or law question, as the case the Director of big size company, Director of the department of taxes, the head of the tax office, head of the Research and Service Checks.

11.3.1.2.6 Provision prohibiting the renewal a control following of accounting audits

When the accounting audit of a determined period, regarding a tax or duty or a group of taxes or duties, is completed, the tax authorities may not undertake another audit of the same accounting entries regarding the same taxes and duties for the same period unless the taxpayer used fraudulent practices or provided incomplete or false information.

11.3.1.2.7 Notification of adjustments

Taxpayers must be notified of the results of the accounting audit through a notification of adjustments, even in the absence of adjustments or in cases where the accounting is rejected.

This notification must be addressed to the taxpayer by registered mail with acknowledgment of receipt or be hand delivered to the taxpayer with acknowledgment of receipt and must be detailed and duly justified so as to enable the taxpayer to retrace the rationale for taxation and make comments or make his acceptance known.

The adjustment notification must mention that the taxpayer is entitled to the assistance of a counsel of his choosing to discuss the adjustment proposals or to respond to them, as failure to provide such notification will result in the nullification of the procedure.

1) The right to respond

The taxpayer has 40 days to make his comments or express his acceptance. Before the expiration of this deadline, the taxpayer may request verbal explanations pertaining to the content of the notification.

Upon expiration of the deadline, he may also request that the tax authorities provide him with additional explanations.

2) Provision prohibiting the authorities from questioning the results of the audit

When the taxpayer accepts the taxes set on the basis of the figures appearing in the notification, the notification becomes definitive and cannot be questioned by the tax authorities.

If the taxpayer comments on the notification, his comments are either taken into consideration, thus leading to the amendment of the adjustment project, or are rejected.

To strengthen the verification system of the incumbent administration, a mechanism was established by the 2008 Finance Bill which seeks to consolidate controls through a new targeted auditing system. Tax authorities may carry out spot-check of the accounts of one or more taxes, all or part of the non-prescribed period, or a group of operations or accounting data covering a period under one tax year. This audit follows the same rules applicable in the case of verifications.

The 2009 Finance Law creates, within the Directorate General of Taxes, a tax investigations service at the national level, to conduct investigations identifying sources of tax evasion and fraud.

11.3.1.2.8 Offence of tax flagrante delicto

It is through provision of Article 18 of the Supplementary Finance Law for 2010 that tax flagrante delicto is defined as "a control made by the tax administration that occurs before any operation organized by the taxpayer to include the organization of insolvency. "

The procedure intervenes "in case of circumstances likely to threaten the recovery of future tax assets."

It allows the tax authorities to intervene to stop an ongoing fraud when sufficient evidence is gathered.

The Tax administration has the power to a direct access to accounting, financial and corporate documents of the concerned entity in real time, even for a period for which the reporting obligation under the tax legislation is not expired.

The implementation of the procedure is subject to the prior approval of the tax central administration.

The procedure in tax flagrante delicto results consequences in terms of tax assessment, control procedures, recovery right, in particular:

- Possibility of making provisional seizures by the tax authorities;
- Exclusion from the VAT exemption, and derogations;
- Possibility to renew a tax audit which was already completed;
- Possibility of extension of control/audit duration on-site;

- Extension of the limitation period for two years;
- Exclusion from the right to legal respite for payment of 20% and of the scheduled payment;
- Application of penalties under Article 194 ter of the Code of Direct taxes,
- The inclusion in the national register of tax evaders.

11.3.1.2.9 Institution of "abuse of rights" principle, in tax matters

The article 25 of 2014 Finance law introduces the principle of "abuse of rights" in tax matters, in order to challenge acts or agreements submitted by taxpayers hiding their true scope.

In these cases an audit will be planned by the tax administration.

11.3.1.2.10 The tax preliminary

The finance law for 2012 introduced a new procedure under the heading of "tax preliminary."

The draft budget law, the tax rescript is presented as "designed to ensure the taxpayer in a practical protection against the possible classification of abuse of rights by the administration because of a transaction or agreement that it intends to spend." This is the opportunity for a taxpayer, as a guarantee, before signing a contract or agreement, to consult in writing the central government taxes by providing all relevant information. The tax authorities confirm whether or not, after review, the merits of the taxpayer's request. This procedure allows a taxpayer to question the tax authority on a factual situation with regard to a text tax. The tax administration undertakes its assessment. As such, the administration can proceed with no enhancement tax (additional tax) which is based on an assessment of this situation.

However, do not qualify for this guarantee the taxpayers who are under the DGE, and it is shown that the assessment made by the taxpayer in good faith was accepted by the authorities, through a written request, accurate and complete.

The administration is expected to respond formally on this request within four months. If no response, this implies acceptance by the administration.

It should be noted also that, if the administration has formally responded to this request, the taxpayer may bring the administration within two months to seek a second review of this request, provided that n 'invokes no new elements. The four-month period also applies to this second request.

11.3.2 Litigation

There are two types of appeal.

- The contentious procedure
- The non-contentious procedure

The contentious procedure consists of different types. Procedures open to taxpayers covered by the Directorate of Large-scale Enterprises (Direction des Grandes Entreprises, DGE) and procedures available to other taxpayers will be covered in more detail in this guide.

The non-contentious procedure is open to taxpayers in a state of poverty or destitution that make it difficult to pay off their debts to the Treasury. This procedure gives taxpayers the possibility of requesting a remission or a reduction of taxes, tax increases or tax penalties.

11.3.2.1 The prior administrative appeal

First, it pertains to claims seeking reparation for errors committed in connection with the assessment of the tax base or the calculation of taxes.

These are the claims of taxpayers who believe they have been wrongly taxed (petition for tax relief) or overtaxed (petition for tax reductions) or who claim to have made unwarranted payments or deductions at source when those payments are made in connection with taxes not established by way of assessment (petition for tax refunds).

Secondly, it pertains to petitions to benefit from a right granted by a legal or regulatory provision. They pertain to taxes normally established or collected which are likely to be reconsidered as a result of special circumstances or events provided for in legal or regulatory texts.

11.3.2.1.2 Jurisdiction of the director of the DGE

The Director of the DGE has jurisdiction to receive the claims pertaining to the taxes and duties under the supervision of its personnel and to render judgment in cases where the total adjustment amount does not exceed 300 million dinars without the approval of the central administration. The Director of Large Enterprises may delegate his decision-making power, in order to rule on contentious claims, to the agents placed under his authority. The conditions for the granting of this delegation are determined by decision of the General Director.

The Director has 6 months to render a decision of relief, partial admission or rejection. Upon expiration of this deadline, rejection is said to be implied.

When the claim pertains to a case where the total adjustment amount exceeds 300 million dinars, the Director of the DGE must obtain the assent of the General Directorate of Taxes (Direction Générale des Impôts). In such cases the deadline to render a decision is 8 months.

Note: taxpayers not under the jurisdiction of the DGE should address their claims to the tax directors of the wilayas or heads of tax offices.

11.3.2.1.3 Investigation of the claim

1) The form

The claim represents the first step of contentious procedures pertaining to tax issues. The taxpayer may only petition the central commission or the judge after a claim has been rejected.

The claim addressed to the DGE:

- must be written on a separate sheet of paper,
- must be individual (except in the case of members of a partnership who may present a collective claim regarding the taxation of the partnership),
- must mention the disputed taxes or duties, justify the amount paid or withheld, and present the means and conclusions of the claimant,
- must be signed by the claimant.

2) The deadline

The claim must be presented by 31 December of the second year following the events which gave rise to it at the latest as failure to do so will result in the claim being declared inadmissible.

Thus the claim is admissible until 31 December of the second year following that for which the taxes were paid. As for the application of the withholding tax, the claim is admissible until 31 December of the second year following that during which the taxes were withheld.

The date used to calculate the deadline is the date the claim was received by the directorate or the postmark date.

11.3.2.1.4 Choosing a residence in Algeria

Any claimant residing abroad must choose a residence in Algeria, so that any notification regarding his claim may be communicated to him.

11.3.2.1.5 Statutory payment deferment

The taxpayer who disputes the merit or the amount of the taxes imposed on him may defer payment on 70% of taxes due until the decision of the director is rendered. The deferment of payment only applies to prior claims.

1) Conditions for granting a payment deferment

First the claim must be presented in accordance with the aforementioned deadline and formal requirements.

The taxpayer must prove payment of 30% of taxes due by attaching a receipt of payment.

Finally the taxpayer must specifically take advantage of the provisions of Article 74 of the CPF giving taxpayers the right to request a payment deferment by specifying the amount or the basis for the reduction he deems to be entitled to.

In the case of foreign companies without any permanent professional installation (establishment) in Algeria, and when the tax liability relates to a contract at the end of its execution, the tax collector must, in conformity with the necessity for an immediate payment claim, the integrality of the amounts requested from the tax payers who are not settled, except when these latter provide bank guaranties likely to permit latter recovery of due sums.

2) Effect of the payment deferment

It suspends all coercive measures against the claimant. It also suspends the period of limitation pertaining to actions for recovery by the tax authorities.

It does not suspend the accrual of late payment penalties. The penalties may be subject to free reductions however. The effect of payment deferments stops only when the director renders his decision, even when it is rendered after the deadline.

If the decision of the tax authorities does not satisfy the taxpayer, he can choose between petitioning the courts or petitioning the competent appellate commission. For taxpayers under the supervision of the DGE, that would be the Central Commission.

11.3.2.1.6 Jurisdiction of the central tax authorities

The central tax authorities are required to rule on claims pertaining to matters involving adjustments relevant to DGE whose total amount exceeds 300 million dinars and must issue a verdict within 2 months.

Note: In the case of taxpayers over whom the DGE does not have jurisdiction, the central tax

authorities rule on contentious claims pertaining to audits conducted by units of the Research and Audit Directorate (Direction des recherches et des vérifications, DRV), which has jurisdiction at the national level.

The central tax authorities also rule on contentious claims when the total amount of taxes and penalties exceeds hundred fifty million dinars (150,000,000 AD) for which the local authorities (Tax directors of the wilayas) must request a due notice.

11.3.2.2 Appealing before the Central Commission

The commission is open to taxpayers after a total or partial rejection by the director of the DGE regarding a prior claim, but before petitioning a judge.

Jurisdiction of the Central Commission

The Central Appellate Commission is the highest institution in the land with regard to contentious procedures. It has jurisdiction over disputes involving taxpayers under the supervision of the DGE and pertaining to direct taxes and VAT.

It renders opinions on petitions either presented to obtain reparation for errors in connection with the tax base or the calculation of taxes, or to benefit from a right emanating from a legal or regulatory provision.

Note: with regard to taxpayers not under the supervision of the DGE, the competent commission is, depending on the size of the disputed adjustment, , the Wilaya Commission, regional commission or the Central Commission..

11.3.2.2.1 Deadline for petitioning

The commission must be petitioned within two months from the date of notification of the DGE director's decision, or upon expiration of a 4-month deadline if the director fails to render a decision.

11.3.2.2.2 Effect of the Central Commission's opinion

The opinions of the Commission are binding for tax authorities.

Depending on the case, the director of the DGE must provide notice of the decision to grant relief or reject the petition, along with the reasons and legal basis for the decision. It must be in accordance with the opinion of the appellate commission, within 30 days from the date of receipt of the commission's opinion.

If the opinion of the commission does not entirely satisfy the taxpayer, he or she may petition the tax court judge, as a last resort.

11.3.2.3 Judicial proceedings

Tax litigation is the part of administrative litigation over which adjudicators have jurisdiction.

Judicial proceedings relating to taxation concern legal and/or monetary issues and therefore proceedings tax relief, reduction or restitution are sought.

The proceedings start with a petition brought before the lower court and, if need be, continue before the State Council, which acts as an appellate court enjoying full jurisdiction. Judgments

rendered in cases pertaining to indirect taxes are without appeal and can only be the subject of an appeal in cassation.

11.3.2.3.1 Proceedings before the administrative court

1) Petitioning the court

Taxpayers may initiate proceedings before a court if they are not satisfied with the decision rendered by the DGE on prior claims or after the commissions' opinion, or in cases of implied rejection by the DGE.

In such cases, the claim must be filed within 4 months after the implied rejection or after notification by the DGE of its decision, whether or not the decision was rendered after the commission made its opinion known.

The court may be petitioned by tax authorities as well.

2) Procedure for initiating legal action

Legal actions pertaining to taxation begin with the registration of an application to initiate proceedings with the registry of the administrative court.

The application must meet formal requirements: namely it must contain a specific list of means and be written on stamped paper and be signed by the applicant. The application may only pertain to taxes mentioned in the prior claim addressed to the DGE. The taxpayer may introduce any new conclusion within this limit however.

11.3.2.3.2 Proceedings before the State Council

Judgments rendered by the administrative courts with regard to taxation may be appealed to the State Council.

The action must be filed with the registry of the State Council in the form of a written application signed by an authorized attorney.

The time-limit for appealing is set at one month from the date of the notification of judgment by the administrative court.

11.4 Taxation of corporate groups

Capital participations may result from the conversion of operations or of whole departments of existing companies into subsidiaries. In this case, the existing firm holds a majority of the subsidiaries' share capital, or even all of their share capital, when the subsidiaries are set up as private limited companies under sole ownership. The subsidiaries may create sub-subsidiaries under their own control. This structure represents a pyramid in which the original firm is called a parent company or holding company. The reason for this denomination is that the goal of the original firm is to manage its financial interests in the group. As the majority partner of its subsidiaries, the parent company holds decisional power during their general meetings, as well as that of the sub-subsidiaries through the subsidiaries under its control.

11.4.1 Definition of corporate groups

Although the concept of corporate group has more to do with taxation than with legal matters, the Commercial Code grants significant legal effects to relations between parent companies and their subsidiaries.

11.4.1.1 Legal definition of corporate group

The Commercial Code does not formally recognize the concept of the corporate group. It pays more attention to the concepts of subsidiaries and controlled companies.

Because the law is silent on this matter, the group does not have the status of legal personality. The companies making up the corporate group have their own legal personality and are legally independent.

Thus the parent company is not liable for obligations incurred by its subsidiary and may not offer to use the debt owed to its subsidiary by a creditor to whom the parent company is indebted to as compensation for its own debt. This principle is somewhat mitigated in cases of collective action however legal or de facto managers of a company being reorganized or wound up by court order may be liable for the company's liabilities as a result of actions to make good a deficiency in assets or to extend liabilities. In this case, a parent company may be considered a legal or de facto manager of its subsidiary.

Moreover, the fictitious nature of a subsidiary opens the way to collective action against the parent company which acted under the cover of the said subsidiary. Creditors may then invoke the doctrine of the apparent existence of an act to demand payment of the subsidiary's debt by the parent company when it is established that the parent company and the subsidiary were not two companies, but in fact a single company.

The Commercial Code defines a subsidiary as a company in which another firm owns more than 50% of the capital. A company has a stake in another firm when the share of capital it owns ranges between 10 and 50%.

A company is deemed to control another company when it directly or indirectly holds a share of capital which give it a majority of voting rights during the said company's general meetings, when it is the sole holder of a majority of voting rights in that company pursuant to a shareholders' agreement, or when it has de facto control, by virtue of the voting rights in its possession, over the decisions made at the controlled company's general meetings. In such cases, the controlling company is called a holding company.

11.4.1.2 Definition of a corporate group from a tax standpoint

A specific definition and special conditions differentiate tax law from common law. Provisions pertaining to exemptions and tax incentives will only apply to groups as defined by the tax law.

According to the tax law, a corporate group is any economic entity made up of two or more legally independent joint stock companies, in which one company, called "parent company," keeps the other companies, called "member companies," under its control by directly holding 90% or more of the share capital and whose capital may not be held either totally or partially by the member companies, or held in a proportion exceeding 90% by a third party eligible to be a parent company.

Several requirements have to be met.

First, the companies must be established as joint stock companies. Companies organized differently (LLCs, General partnerships, PLSCOs, etc.) are thus excluded from the corporate group regime.

Secondly, the share capital of the member company must be directly held in a proportion of at least 90% by the parent company, whose share capital may not be directly held in a proportion exceeding 90% by a third party eligible to be a parent company.

Finally, the share capital of the parent company may not be directly or indirectly held, totally or partially, by the member companies.

Certain companies are specifically excluded from the corporate group regime.

Thus, any corporation whose primary object is linked to the exploitation, transportation, transformation or marketing of hydrocarbons and derived products, is not eligible to use the corporate group taxation regime.

11.4.2 The regime applicable to corporate groups

11.4.2.1 The legal regime

When a company acquires a stake representing more than 50% of the capital of another company, or controls the company, these facts must be mentioned in the report submitted to the annual general meeting pertaining to the operations conducted during the fiscal year. Information about the activities and the performance of the subsidiaries and the companies they control must be included in the said report.

When they control companies or exert a dominant influence on them, companies must publish consolidated accounts and a report on the group's management every year. These accounts assemble the balance sheets and income statements of the companies under their control.

Consolidation of the group's accounts is achieved through full consolidation, proportional consolidation or the equity method depending on the level of dependency of the firms under control. Full consolidation consists of a complete integration of the balance sheets and income statements of the consolidated firms with the holding company's equity stake account to prepare a single consolidated balance sheet and income statement for the group. This method applies to those firms over which the holding company exerts exclusive control.

In this case, the claims and debt, the revenues and expenditures, as well as the profits on intra-group stock transactions and the dividends paid to the holding company by the subsidiaries are eliminated from the group's consolidated accounts.

Proportional consolidation consists of partially integrating, up to the percentage of shares held by the parent company, the balance sheets and income statements of the consolidated firms with the holding company's equity stake account, to prepare a single consolidated balance sheet and income statement for the group. This method applies to firms whose control is shared by a limited number of shareholders.

The equity method consists of replacing the book value of the equity stakes of the holding company with its share of owner's equity, including the income of the firms integrated for the fiscal year. This method applies to those firms over which the consolidating company exerts significant influence through an ownership stake that is at least equal to one fifth of the voting rights.

The Commercial Code stipulated that a joint-stock company is forbidden to hold shares of another company, if the said company owns a portion of its capital exceeding 10%.

11.4.2.2 The tax regime

The tax regime of corporate groups is a preferential regime which includes consolidation of the taxable earnings of all member companies and offers the possibility of benefiting from certain tax incentives.

11.4.2.2.1 Applicable tax rate

The tax rates depending on the business segments as follows[63]:

- 19% for goods-producing activities;
- 23% for building activities, public works and hydraulics as well as tourist and thermal activities excluding travel agencies;
- 26% for other activities.

In case the activities of the member of corporate company group are subject to different IBS rates, the benefit resulting from the consolidation is subject to 19% if the turnover resulting this rate is predominant. Otherwise, the consolidation of profits is authorized by category of revenue.

11.4.2.2.2 Consolidation of earnings

The consolidate balance sheet regime consists of preparing a single balance sheet for all corporations belonging to the group and in keeping accounts which represent the overall activities and situation of the corporations making up the group.

The earnings consolidation regime is only granted when the parent company opts for the regime and all member corporations give their consent. We should point out that the current tax law does not distinguish between opting for the earnings consolidation regime and opting for the group taxation regime itself. Indeed, by opting for the earnings consolidation regime, the groups automatically joins the group taxation regime.

The option thus taken is irrevocable for a period of four (04) years.

Legally limited spending deductions are allowed for all companies, meaning that each company belonging to the group is entitled to claim deductions up to the authorized limit.

11.4.2.2.3 Granted tax advantages

1) With regard to corporate income tax (IBS)

In addition to the provisions applying to all corporations under common law, namely the exemption of dividends received by corporations in connection with their participation in the capital of the other companies of the group from corporate income tax (IBS), the group taxation regime provides for an exemption of capital gains realized as part of asset transactions between members of a same group.

However, the main advantage of the group taxation regime in terms of corporate income tax comes from the consolidation of earnings which makes it possible to post an overall income for the group as a whole, considering that it is a single economic entity, and to then submit those earnings to corporate income tax (IBS). The latter is thus reduced on the whole when one or more firms within the group posted losses.

2) With regard to the tax on professional activities (TAP)

Intra-group transactions are exempted from the tax on professional activities (TAP).

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63 Article 2, 2015 Complementary Finance law

3) With regard to the VAT

Intra-group transactions are exempted from the VAT. VAT also benefit of the consolidation regime.

It is also stipulated that the consolidation of accounts at the parent company in accordance with Article 138a of CIDTA (Direct Tax Code), may deduct (since the enactment of SFL 2009) under the same conditions the VAT paid on goods and services purchased by or for their companies within the group.

The measure allows VAT consolidation at the parent company to allow recovery of the tax by avoiding structural prepayments.

4) With regard to registration fees

Deeds pertaining to the transformation of firms eligible to the corporate group taxation regime in preparation for the integration of the said group, and deeds certifying asset transfers between corporations belonging to the group, are exempted from registration fees.

In both cases however, the firms are required to go through the registration process.

11.4.2.2.4 Declaration obligations of corporate groups

1) The annual return

The firms that opted for the group taxation regime are required to submit their annual declaration and corporate income tax (IBS) return forms to the DGE management services. The parent company must prepare a consolidated balance sheet (corporate income tax return form and declaration) and submit it to DGE management services.

Subsidiaries controlled by a parent company must also submit their tax declarations to the same services with the mention "subsidiary member of a group" on their declaration.

11.4.3 Financial flexibility granted to corporate groups

Cash operations between corporations of the same group are frequent. The automatic centralization of the company's cash management has the advantage of channeling the credit or debit balances of secondary accounts, or just the credit balances, or all accounting entries of the secondary accounts of member companies, into a single central account. The central account can be that of the parent or of one of the group's subsidiaries.

This technique makes it possible to bypass the banks to obtain loans and cash advances. It does not infringe on the principle of letting lending institutions enjoy a monopoly in this field. Article 79 of Ordinance No. 2003-11 of 26 August, 2003 pertaining to Currency and Credit, departs from the principle that only a bank or a financial institution may extend credit in the sense given in Article 68 of the Law.

Article 79 allows any enterprise to "conduct cash operations with firms having direct or indirect capital ties with it giving one of the firms effective control over the others."

Moreover, the prohibition forbidding joint stock company directors and the managers and partners of limited liability companies from contracting loans from the company, or from having

the company guarantee their commitments to their parties, is lifted when legal persons are involved; a subsidiary may thus extend cash advances or guarantees to its parent company even when the latter sits on the subsidiary's board of directors, or in the case of LLPs, is the firm's partner of manager.

These agreements may be subject to a prior authorization procedure.

Financial aid granted by the managers of one firm to another firm may be deemed contrary to the interest of the former by some of its partners, who are often minority partners.

CHAPTER 12

SOCIAL SYSTEMS

12.1 The main characteristics of labor law

Beginning in 1988, the Algerian legislation underwent a complete overhaul in the areas concerning social and economic life of the country, particularly with regard to labor law.

The changes made were in line with the opening of the Algerian market to the global economy and to potential domestic and foreign investors. Employment relationships were redefined in comparison to previous legal texts, which gave a great deal of power to institutions and organizations representing workers (such as the former GSE or Gestion socialiste des entreprises) in the public sector and the provisions pertaining to work discipline and union involvement, in the private sector. Employment relationships in the private sector were governed by special legislation (Ordinance No. 75-31 of April 29, 1975).

Under previous texts, it was difficult to dismiss a worker for disciplinary, or even economic, reasons, without attracting union attention. "Managerial unionism" (based on socialist theory) was fairly widely applied at one point. More often than not, workers were reinstated by the relevant social authorities.

This legislation subsequently underwent major transformations and several texts have been adopted, giving more latitude and flexibility to employers.

12.1.1 Law No. 90-11 of 21 April, 1990 concerning employment relationships

This is the fundamental law for all employment relationships. Just like the previous legal texts, it refers to the notion of employment relations rather than that of employment contract. This Law was modified several times bringing it in line with the new context and needs of the job market.

Collective bargaining agreements specifying the rules and procedures in the major economic sectors also exist.

Several other regulatory texts later made certain provisions of the aforementioned Law effective or regulated various aspects of corporate life.

12.1.2 Collective bargaining

A collective bargaining agreement is a written agreement stipulating the terms and conditions of employment and work as a whole for one or more professional categories. It may be concluded for a specified or unspecified period of time. The Law requires that employing organizations ensure sufficient publicity for collective bargaining agreements.

12.1.3 Internal rules

In firms employing 20 workers or more, the Law requires that internal rules be drafted and submitted to the organs of representation, when they exist or to workers' representatives if they do not, for discussion.

Internal rules are part of a document by which the employer is obligated to set rules regarding the technical organization of work, hygiene, safety and discipline. It also establishes the definition of professional misconduct or negligence, the degrees of corresponding sanctions and procedures for their implementation.

Internal rules must then be filed with the labor authorities with territorial jurisdiction, for approval, within 8 days.

12.1.4 Exercising union rights

The right to unionize is recognized for both workers and employers, who may form unions to defend their moral and material interests. The Law only requires that these organizations be totally distinct from any association that is political in nature. In addition to the usual requirements regarding the enjoyment of civil and civic rights and legal majority, only people of Algerian origin or who acquired Algerian nationality at least 10 years earlier, are authorized to found a union.

12.1.5 Organs of representation

Representation is ensured within the employing organization:

- When there are several workplaces, at any single workplace where there are 20 workers or more, by personnel delegates and at the employing organization's headquarters, by a representative committee made up of elected personnel delegates.
- If there is only one workplace, by the personnel delegate who enjoys the privileges granted to the representative committee.

In principle, the representative committee receives all the information, which is communicated by the employer each quarter, regarding the activities of the enterprise, and more specifically, issues concerning employment, health and workplace safety. The committee takes the appropriate measures to ensure that the employer respects these rules. It voices its opinion on annual projects, work organization, restructuring projects, staff redeployment (relocations?) and cutbacks and the management of charities. When the firm has more than 150 workers, the representative committee designates one or more delegates to represent the workers within the board of directors or the supervisory board, if it exists.

Labor inspectors play:

- a role of adviser and information provider, advising the parties involved in employment relationships and play a conciliatory role, in order to prevent conflict and settle collective work disputes,
- a role of controller, by ensuring that laws, rules, collective bargaining agreements, etc. are observed,
- a role of sanction enforcer, by observing and recording violations.

The settlement and prevention of collective bargaining agreements and the right to strike are also included in specific texts.

The settlement and prevention of collective bargaining agreements, as defined by Act No. 90-02 of 6 February, 1990, amended and supplemented by Law No. 91-27 of 21 December 1991, establish a consultation process between employers and workers' representatives to avoid conflict, and a resolution process to settle conflicts when they occur. Both a mediation process, which entails the designation by common agreement of a mediator to resolve disputes, and an arbitration procedure chosen by the parties, are provided for.

The right to strike is recognized and regulated by the same text. Strikes only occur when the amicable settlement efforts mentioned above have failed and after pre-notification of at least 8 days after its notification to the employer and to the labor authorities with territorial jurisdiction.

This right to strike is subject to limitations imposed by the requirements of corporate life, which are minimal services, requisitions and prohibitions targeting certain activities and jobs.

12.1.6 Employer obligations concerning registers

The books and registers that all employers are required to keep are:

- the register of observations and formal notices from the labor authorities,
- the payroll journal,
- the paid leave register,
- the personnel register,
- the register of foreign workers,
- the register of technical verifications of industrial facilities and equipment,
- the hygiene, workplace safety and medicine register,
- the workplace accidents register.

12.1.7 Recruitment

Under Act No. 04-19 of December 25, 2004, relating to the placement of workers and monitoring of employment, all employers are required to notify the relevant agency, commune or accredited private organization of any vacant position in their firm that they wish to fill, as well as information concerning their workforce needs and the employees hired. Failure to do so is punishable by a fine ranging between 10,000 AD and 30,000 AD per vacant position for which no notification was provided and for all recruitment or workforce needs that were not transmitted to the agency in charge of the public placement services. This fine is doubled in the case of a repeat offense.

Law No. 04-19 of 25/12/2004 cited above, is amended and supplemented by Executive Order n° 09-94of February 22, 2009. This Decree defines the frequency and types of information of manpower needs and statistical data which are transmitted to the National Employment Agency for use by employers, municipalities and accredited employment agencies. The communication shall be made on a quarterly basis for manpower needs and on a monthly basis for hiring carried out by employers.

In addition to the above-mentioned requirements, Law No. 14-06 of 9 August 2014 concerning national service, stipulates that every citizen do not justify its order vis-à-vis the national

service cannot be recruited in the public sector or private, or practice a profession or a professional activity.

Measures to promote and support employment, aiming to set the level and procedures to grant advantages to employers who hire job applicants.

An abatement depending on applicable case, of the employer's social security contribution's share to those employers who hire job applicants.

The maximum period of these abatements is three (3) years.

In order to benefit from the incentives provided for in the law, and its statutory regulations, employers who hire job applicants must, within ten (10) days at the latest, from the date of membership, apply for the advantage by presenting a file to the wilaya agency of the National Social Security Contribution Recovery Fund with territorial jurisdiction.

Generally speaking, access to work is guaranteed by law and no discrimination between workers with regard to employment, compensation or working conditions based on age, gender, social or marital status, family ties, religion or political beliefs, membership to a union, is permitted.

There are a number of pieces of legislation which organize specific schemes (special status) for certain categories of workers, such as company directors, air and sea transport personnel, commercial and fishing vessel personnel, Home, journalists, artists and comedians, trade representatives, elite and performance athletes and house staff.

Candidates may not be under sixteen years old, except in the case of apprenticeship contracts. The written authorization of the legal guardian is an essential condition in this case. Failure to comply with the legal age for admission to employment is subject to the payment of a fine from 10,000 to 20,000 AD.

Work that is dangerous, unsanitary and harmful to a person's health or moral values is prohibited to minors.

12.1.8 Recruitment people with disabilities

Under the provisions of Decree No. 14-214 on the organization of work stations for people with disabilities, all employers are required to devote at least 1% of its jobs to people with disabilities which a worker is recognized, the number job postings to disabled workers is determined on the basis of the total wage formal personal ended 31 December of the year, it is applied to the proportion of 1%, rounded to the nearest unit.

Any breach of the above provisions expose the employer to the payment of an annual financial contribution whose value is equal to the number of jobs to be reserved. However, the employer, the total number of workers is greater than twenty (20) and less than one hundred (100) is required to pay an annual contribution equal to two-thirds (2/3) of the salary of the annual amount national guaranteed minimum.

The employer shall, at the end of each year transmit to the department of Directorate for Employment and the province of Directorate for Social Action, territorial jurisdiction, a detailed list of employees with disabilities and / or notice of transfer of the financial contribution to the bottom.

12.1.9 Type of the work contract

The work contract may be of a fixed term or permanent, in those cases provided for in the legislation. In the absence of written details, the work contract is always deemed to be of an unspecified length. It can be proven by any means.

The same contract of indefinite length may be concluded on a part-time basis, but never for less than half the legal workweek:

- when the volume of work does not make it possible to retain the services of a full-time worker,
- when the active worker asks to work part-time for family or personal reasons.

A fixed-term contract may be concluded for part-time or full-time work:

- when it pertains to performing non-renewable duties or services,
- to replace a permanent salaried employee who is temporarily absent,
- to perform intermittent, periodic works,
- when there is a surplus of work or when seasonal reasons justify it.
- when it pertains to activities or jobs of limited length or which are temporary by nature.

In all cases, the work contract must set the length and justify it. The labor inspector verifies that these provisions are being respected.

12.1.10 Trial period

The newly hired worker is usually subject to a trial period which varies according to his qualifications. The trial period may last up to 6 months for low-skilled workers and up to 12 months for jobs requiring higher skills. The trial period is determined in the collective bargaining agreements for each category of worker.

In practice, the trial period is one (01) month for the worker without qualifications and from 3 to 6 months for executives. The trial period is taken into account in the calculation of seniority, when the worker in confirmed in his job.

During the trial period, the contract may be terminated by either party, without prior notice or compensation.

12.1.11 The manager/executive

Corporate executives are subject to the provisions of Executive Decree No. 90-290 of 29 September, 1990. The work contract of the manager/executive is concluded with the administrative body of the joint stock company, namely the board of directors or the supervisory board. The contract defines the rights and powers granted by the board to the manager/executive. It pertains to the principal salaried manager and the executive officers assisting him. The rights and obligations of corporate executives, including their compensation, are not subject to collective bargaining.

The legislation applies to Algerian and foreign salaried employees.

12.1.12 Legal workweek

The legal workweek is set at forty (40) hours in normal working conditions. It is spread over 5 working days, from Sunday to Thursday inclusive. The weekly rest period is set on Friday and Saturday.

The establishment and partitioning of the work schedule within the week are established in the collective bargaining agreements.

The length of the effective work day may not exceed 12 hours.

When work schedules are established under the continuous work session system, a rest period must be granted. It may not exceed one hour, of which thirty minutes are considered as working time. In practice, the workday is often continuous. Thursdays end a little earlier.

This length of time may be reduced for people performing tasks that are particularly arduous and dangerous, just as it can be increased for certain positions involving periods of inactivity.

In agricultural operations, the legal number of work hours is set at 1800 hours a year, distributed according to the requirements of the activities.

Overtime hours are possible, but they must be applied only to fulfill certain imperatives that are exceptional in nature. Overtime may not exceed 20% of the legal workday and the total period of work may not exceed the maximum set by law, namely 12 hours a day.

In the cases mentioned below only, this maximum may be exceeded, after mandatory consultation with workers' representatives and labor inspectors:

- to prevent imminent accidents or repair damage caused by accidents,
- to complete works whose interruption could, due to the nature of the works, cause damage.

Overtime gives rise to pay increases which cannot be less than 50% above the normal hourly rate.

Night work between 9 o'clock pm. and 5 o'clock am is considered as such and is prohibited:

- to workers of both genders under 19 years of age,
- to female personnel.

However, certain exceptions may be made by the labor inspector, when the nature and the special characteristics of the position make it necessary.

Shift work is authorized and largely used in practice. It gives rise to a premium.

12.1.13 National guaranteed minimum wage "SNMG"

Compensation for work may be a salary and/or revenue proportional to performance. It is set by a common agreement between the salaried employee and the employer, based on the professional qualifications determined by the collective bargaining agreements applicable to the employer.

The national guaranteed minimum wage for a 40-hour workweek is 18,000 DZD per month in net.

For the determination of SNMG, account is taken of evolution:

- The recorded national average productivity;

- Index of consumer prices;
- General economic conjunction.

Thus SNMG includes basic salary, allowances and any kind of bonus with except for those relating to:

- reimbursement of expenses incurred by the worker;
- professional experience or any promotion based on seniority;
- to the organization of work on shift work, the permanent service and overtime;
- the conditions of isolation;
- Performance, profit sharing or profit sharing with an individual or collective nature.
- Payment of compensation for remuneration lower than SNMG or wages set by the agreement or collective labor agreement is subject to payment of a fine ranging from 10,000 to 20,000 AD. In case of second offence, the penalty is 20,000 to 50.000 AD multiplied each times as there are workers concerned.

12.1.14 Legal rest periods and leave

1) Weekly rest period

This is generally set on Fridays, except when economic imperatives do not allow it. Public and paid holidays which are set by laws and usually correspond to religious holidays and holidays tied to the country's political history, such as the date marking the beginning of the war for national liberation (November 1st), and Independence Day (July 5), etc.

When the weekly rest day is incompatible with the nature of the activity, employers affected by this situation are authorized by law to grant weekly rest days on a rotational basis.

A compensatory rest of equal length is granted in the case of work on a legal holiday.

The worker is also entitled to overtime pay.

In retail structures and establishments, the weekly rest day is determined by an order from the wali, according to the procurement needs of consumers.

2) Annual paid leave

Workers are entitled to an annual leave paid for by his employer. Workers may choose not to take it. This right to a leave is based on an annual period of work extending from July 1st of the year preceding the leave to June 30 of the year of the leave.

If a new worker is hired, the starting point is the recruitment date.

Any period of more than 15 working days during the first month of employment of the worker is considered equal to one month of work for the purpose of calculating the leave.

Specificities

- In the Northern region of Algeria:

Leave comprises two and a half days per month of work and may not exceed thirty (30) calendar days per year of work.

Any period equal to twenty four (24) working days or four (04) weeks of work is equivalent to one (01) month of work.

This period is equal to one hundred eighty (180) working hours for seasonal workers.

- *In the Southern regions of Algeria:*

An additional leave, which cannot be less than ten (10) days per year of work, is added.

Collective bargaining agreements set the terms and conditions for granting this leave.

The length of the leave may be increased for workers engaged in work that is especially laborious from a physical and stress-related standpoint.

The employment relationship may neither be suspended nor terminated during the annual leave.

The annual leave compensation is equal to one twelfth of the total compensation collected by the worker during the year of reference or the year preceding the leave.

The annual leave compensation is paid by a specific fund for workers in professions that are not usually filled by the same employer on a continuous basis. In such cases, employing organizations must become members of the fund and pay dues.

3) Absences

Outside of the cases specifically designated in the law or in the regulations, absences are not compensated. Absences without loss of compensation are tied to union or personnel representation, according to time limits set by legal provisions or provisions contained in the collective bargaining agreement and to professional or union training authorized by the employer and to academic or professional exams.

The following family events entitle workers to a compensated leave of absence of 3 working days:

- wedding of the worker,
- birth of the worker's child on the basis of subsequent proof,
- wedding of one of the worker's descendants,
- death of a parent, grandparent, descendant and first-degree relative of the worker or his spouse, and death of the worker's spouse, on the basis of subsequent proof,
- circumcision of a child of the worker,
- pilgrimage to a holy site, one time during the professional career of the worker.

During the periods before and after the delivery of a child, female workers benefit from a maternity leave in compliance with the law in effect. The period of leave is fourteen (14) consecutive weeks. It is taken between six (6) weeks at the earliest, and one week at the latest, before the expected date of delivery. It is reimbursed in its entirety by the Social Security Fund.

Female workers may also benefit from other incentives, under conditions set by the employer's internal rules.

12.1.15 Training and promotion while employed

Each employer usually employing twenty (20) salaried workers or more is required to take measures contributing to the training and improvement of workers, in accordance with a

program overseen by the representative committee. The worker is required to take part in these training courses.

The worker designated by the employer is required to contribute actively to the training and improvement efforts.

Subject to the employer's agreement, the worker who registers for training or improvement courses may benefit from an adapted work schedule or a special leave during which his position is maintained for him.

The employer is also required to take measures favoring the apprenticeship of young workers between the ages of fifteen (15) and twenty-five (25) years old. The employer is exempted from the payment of social security contributions throughout the length of the apprenticeship contract. The apprenticeship takes place within the framework of a written contract detailing all the terms and conditions. The apprentice benefits, from a state-funded student, stipend for a period between six (6) and twelve (12) months. Beyond that period, it is paid for by the employer. The apprenticeship is conducted by a training organization

12.1.16 Amendment, suspension and termination of the employment relationship

Amendments of the work contract occur when the law, regulations or collective bargaining agreements introduce rules that are more favorable to the workers than those stipulated in the contract itself. A common desire by the parties to the contract may also lead to an amendment.

This rule is interpreted very strictly by Algerian jurisprudence. Algerian jurisprudence does not distinguish between a substantial modification and a non-substantial modification of the work contract.

The absence of the salaried worker's agreement results in the prevention of any amendment, even minor, to the contract.

The suspension of the employment relationship occurs legally as a result of:

- a mutual agreement: the employee is released,
- sick leave,
- the mandatory performance of national duties (military service),
- the exercise of an elected public office,
- the imprisonment of the worker, as long as a final conviction has not been rendered,
- a disciplinary decision suspending the performance of duties,
- the exercise of the right to strike,
- a leave of absence without pay.

The worker is reinstated to his position or to a position with compensation similar to that of the position he had before the suspension.

The termination of the employment relationship occurs as a result of:

- the voiding or the legal abrogation of the work contract,
- the end of the work contract of definite length,
- the resignation, which is a right recognized to the worker to quit his position, after a period

of notification usually equal to that of his trial period,
- a total disability to work,
- the termination of the legal activity of the employer,
- retirement,
- death,
- dismissals for economic or disciplinary reasons.

Algerian regulations concerning labor relations closely consider the termination of the work relationship following a dismissal. The term dismissal is still fairly general and Art 66 of Law No. 90-11 does not specify the type of dismissal, because in this sense it is necessary to distinguish different types of dismissal: the dismissal of an employee for reasons other than misconduct, the disciplinary dismissal or dismissal for staff cutbacks.

When justified for economic reasons, the employer may reduce the work force. This reduction is done through a collective dismissal which translates into simultaneous individual dismissal, decided after collective bargaining. It results in the employer being prohibited from hiring workers with the same qualifications to work in the same workplaces.

The reduction of the work force can only occur once all measures to preserve the jobs, such as reducing the number of work hours, resorting to part-time work, pensioning, transferring to other activities, have been exhausted. In the case of transfers, the worker who refuses the proposed transfer still benefits from an indemnity associated with staff cutbacks.

A plan protecting salaried workers who are particularly vulnerable for economic reasons has been implemented.

This plan requires that any employer, who employs more than nine (9) salaried workers and who wishes to readjust his work force, use all the means mentioned above. The salaried worker benefits from social protection measures ranging from early pension to employment insurance. The employment insurance and early retirement systems are funded by dues paid by employers and salaried workers of all sectors. The salaried worker benefiting from an early retirement is not entitled to any indemnity other than the payment of paid leave.

Regarding the disciplinary dismissal, the law provides for limited circumstances under which such termination, described in Art 73 of Law 90-11 and detailed below. The law also recalls the procedure to be followed by the employer before resorting to dismissal and disciplinary and refers, if necessary to the rules of the employer. It does not, however, contain provisions for cases of dismissal of an employee who have not committed a serious offence. In addition and because of the absence of legislation, it does not specify the mandatory procedure. Only the internal rules could identify cases that may result in dismissal for causes other than those prescribed by law and the procedure to be followed in these cases.

Limiting cases of disciplinary dismissal that may result in dismissal without notice or compensation leave are:
- punishable wrongdoings committed while working,
- refusal to follow instructions tied to one's professional obligations without just cause,
- the disclosure of secrets tied to professional activities,
- participation to a concerted collective work stoppage in violation of legal provisions,
- acts of violence,

- refusal to perform a notified requisition order in compliance with legal provisions,
- alcohol or drug consumption in the workplace.

The firing must be carried out in conformity with the procedures set by the law and the internal rules, particularly with regard to:

- the notification of the decision to fire the worker, which must be in writing,
- a hearing for the worker, who can be assisted by another salaried employee of the enterprise.

Procedures for settling individual work conflicts are of two (02) types and may be set in the collective bargaining agreements:

- the internal procedure: the worker submits the dispute to his direct hierarchical superior, who must answer him within 8 days; as failure to do so will result in the worker being allowed to petition the authority in charge of personnel management or the employer directly. Personnel management or the employer must answer the worker within 15 days, in writing, and justify his total or partial refusal as the case may be.
- the litigious procedure: should the internal procedure fail, the dispute must, except in the case of a bankruptcy, of legal settlement, or if the defendant resides outside of the territory of the labor inspection authority with jurisdiction, be subject to:

1) An attempt at conciliation before the Bureau of Conciliation, which is made up of two (02) representatives of the workers and two (02) representatives of the employers,

2) Should the attempt at conciliation fail, the Bureau of Conciliation petitioned by the plaintiff, through the labor inspector, draws up a failed conciliation report,

3) The interested party then petitions a court with jurisdiction in social matters and presided by a professional judge assisted by assessors chosen from amongst workers and employers,

4) The court then issues a ruling, with no possibility of appeal, except with regard to jurisdiction.

Jurisprudence tends to favor the salaried worker and it is not rare to see a judge order the reinstatement of the worker with payment of salaries, at the expense of the employer, financial compensation not less than the salary received as if he had continued to work, in addition to damages and interest, and that in spite of the relaxation of the legal provisions in this area. Judges pay special attention to respecting procedures.

In other words, the employer may pay wages from the date of dismissal until actual reinstatement. Possible delays involved in legal procedures must be taken into account should the matter be taken to court. The employer will then have the obligation to reinstate the employee and then proceed with his dismissal following the procedure.

However, even in the case of due process of dismissal the employer is not immune from a subpoena before the Court, as it should be noted that the dismissal of an employee outside the cases of dismissal cited above (Art. 73), is presumed abusive. The court may, in fact, decide either to reinstate the employee in the employer company, maintaining his/her advantages or, in case of refusal by either party on the grant the employee a monetary compensation.

A work certificate with the hiring and termination dates, as well as the positions filled by the worker and the time periods corresponding with each position, must be issued to the worker.

The worker who is laid off without having committed serious wrongdoing is entitled to a period of notice equal in length to the trial period corresponding to his professional category.

During that period, the worker is entitled to two hours a day which are paid and taken concurrently so that he may look for work.

The employer can free himself of this obligation regarding the period notice by paying the salaried worker an amount equal to the total compensation of the period of notice. This period of notice exists even in cases where the firm's activities have ceased.

Finally, it must be pointed out that in cases of modifications to the legal status of the employer, employment relationships in effect on the day of the modifications remain the same. Such is the case for mergers and acquisitions of companies.

12.2 Social security, retirement and unemployment

The social security system in Algeria is governed by a great number of legal texts. This system is compulsory in nature and gives social security funds special powers and privileges with regard to civil law.

12.2.1 Subjection and affiliation

Any employer, whether they are physical or legal persons (including individuals employing people on their own behalf, as well as non-salaried workers exercising on their own behalf) are required to submit an affiliation application with the Social Security Agency of the wilaya with territorial jurisdiction, within ten (10) days after beginning operations.

In addition to the forms printed by the social security funds, this affiliation application must be accompanied by certain documents such as the Articles of incorporation of the firm, the trade register, the registration with the tax authorities, etc.

The employer is also required to submit an affiliation application for any salaried worker, within ten (10) days following his hiring, to the Social Security Agency of the district where the workplace is located.

If the worker fails to affiliate within the required deadlines, the employer may face sanctions and the salaried worker could be affiliated automatically at his request or that of his legal representatives. The employer faces sanctions for failing to submit a declaration of subjection as well as for failing to declare a salaried worker.

Within thirty (30) days following the end of the calendar year, the employer is required to submit to the Social Security Agency a nominal declaration of the salaries and the salaried workers showing the compensations collected from the first day to the last day of the year, as well as due contributions.

In the case of failure to submit the declaration mentioned above, the Social Security Agency may set, on a temporary basis, the amount of the said contributions, on the basis of the contributions paid during the previous month, quarter or year, calculated presumptively according to any element of assessment available. The amount of the contribution temporarily fixed is then increased by 5%; in addition to this, a 10% penalty on due contributions must be paid.

Failure of a salaried worker affiliate to social security lead the payment of a fine of 200,000 AD to 400,000 AD for each non-affiliated salaried worker. In case of second sentence, the employer is liable to a fine of 400,000 AD to 1,000,000 AD by non-affiliated worker.

All persons of all nationalities exercising a salaried activity or a similar activity in Algeria must register with social security.

12.2.2 Retirement

A new law was published in 2016, law 16-15 of 31 December 2016. This law amends and completes the Law 83-12 linked to the retirement.

According to article 06 of this law "the worker claiming the benefit of the retirement pension must necessarily meet the following two (2) conditions:

- be at least sixty (60) years of age; however, the working woman may be admitted, at her request, upon retirement from the age of fifty-five (55) years.
- Have worked for fifteen (15) years, at least ", indicates article 6 of this law.

It is explained that "in order to qualify for the retirement pension, the worker must have completed an actual work period of at least seven and a half (7.5) years and pay Social security contributions ".

It is also stated, "subject to the provisions of Article 10 of this Law, the worker may voluntarily opt for the continuation of his activity beyond the aforementioned age in

The limit of five (5) years, during which the employer can not announce his retirement".

Article 7 of the law states that "a worker who occupies a high-performing position may be entitled to a retirement pension before the age laid down in Article 6 after a minimum period Appointed to this post ".

The list of posts and the corresponding ages, as well as the minimum period spent in these posts, will be fixed by regulation. Article 10 states that "a worker who fulfills the conditions laid down in Articles 6, 7, 7bis and 8 of this Law shall be entitled to retirement. Nevertheless, retirement cannot be pronounced before the granting of the pension ".

The text also provides in its article 61 bis that "without prejudice to the provisions of this Law and for a transitional period of two (2) years, the benefit of the retirement pension may be granted with immediate enjoyment where the worker The employee has completed an effective working time for which contributions of at least thirty-two (32) years have been paid and has reached or exceeded the minimum age set out below:

- Fifty-eight (58) years in 2017.
- Fifty-nine (59) years in 2018.

Admission to retirement in the cases provided for above takes place at the sole request of the employed person, notes the text, which adds, "The age provided for in section 6 of Act No. 83-12 of 2 July 1983, shall apply to the workers referred to in this Article, with effect from 1st January 2019 ".

12.2.3 Organization of unemployment insurance

With the risk of jobs being lost with the restructuring of the Algerian economy, and notably the privatization of public sector enterprises, the legislator has taken measures to organize and ensure the protection of salaried workers.

Unemployment insurance is meant for salaried workers of the economic sector as part of downsizing for economic reasons, while complying with the following conditions:

- be affiliated to Social Security for a cumulative period of at least three (03) years,
- be a confirmed worker within the employing organization before being laid off for economic reasons,
- be registered and have insurance payments up to date for unemployment insurance for at least six (6) months before the end of the work relation,
- not having refused a job or training for a transition to another job,
- not receive income from any professional activity,
- appear on the nominative list certified by the labor inspector with territorial jurisdiction,
- be registered as a job applicant with the relevant services of the public authorities in charge of employment for at least two (02) months.
- be a resident of Algeria.

It does not concern salaried workers who have reached the legal retirement age, nor those who are entitled to an early retirement, nor even those who lose their jobs temporarily or partially for less than half of the legal workweek.

The management of the unemployment insurance system is entrusted to a pension fund (Caisse autonome nationale, CNAC). Expenditures for unemployment insurance benefits are funded by salaried workers and employers.

The funding of the unemployment insurance system is partly ensured by salaried workers (0.5%) and partly by employers (1.75%). Employers of all economic sectors, including the State, pay the fraction of the social security contribution assigned to the funding of the unemployment insurance system on behalf of salaried workers.

The terms, conditions and frequency of the payments are those provided for in the legislation with regard to the collection of social security contributions.

The employer who has experienced a termination of activity or a reduction of the work force duly approved by the labor inspector must submit a detailed list of the salaried workers who will benefit from the unemployment insurance system to the National Unemployment Insurance Fund (Caisse nationale d'assurance chômage). This list must be submitted to the labor inspection authorities for a prior visa and to the local employment agency for registration on the list of job seekers.

For all salaried workers with seniority equal to or above 3 years, the employer must pay an eligibility establishment contribution (contribution d'ouverture des droits, COD) calculated at the rate of 80% of one (01) month of salary per year of seniority, with a limit of 12 months of salary.

The terms and conditions of payment are negotiated with the unemployment insurance organization, but, in all cases, the employer must pay 2 months of salary per salaried worker

involved, as an advance on the payment schedule, which may not exceed 24 months, from the date of signature of the agreement.

The salaried worker being admitted to the unemployment insurance system is entitled to all the social security benefits due to salaried workers.

Executive Decree No. 07-292 of 26 September 2007 pertaining to the modification of Decree No. 65-75 of March 23, 1965 pertaining to family related benefits was published and aimed to reevaluate single salary benefits.

The annual rate of allowance for single salaries is set at 9,600 AD for agents working in the public sector who have at least one (01) child under their care and whose spouse has no income.

This provision was effective since January 1st, 2007.

A decree was published on 18 July 2012 aiming to increase the value of Social Security pensions, allowances and benefits with the application of a single rate of 9%.

This rate applies to the monthly amount of pension and retirement, disability, work injury and occupational disease allowances.

The amount of the upgrade is added to the legal minimum of each pension, allowances and complementary benefits.

12.2.4 Assessment basis, payment, control and litigation

12.2.4.1 Assessment basis of contributions

The assessment basis of social security contributions is made up of all salary components or revenues proportional to work performance, with the exception of:

- family related benefits (schooling benefits, single salary indemnity),
- indemnities linked to expenses (meal allowances, vehicle allowance etc.),
- exceptional allowances and indemnities (lay-off pay, retirement pay etc.),
- indemnities linked to special housing and remote conditions (mobile home housing, shift work etc.),
- the salary subject to contributions may never be, under any circumstance, inferior to the national guaranteed minimum wage,
- for pensions or annuities equal or inferior to the national guaranteed minimum wage, the people concerned are exempt from payment of those contributions.

The rate of the social security contribution is 35%, broken down as follows: 26% to be paid by the employer and 9% to be paid by the worker.

Sectors	Share of the employer	Share of the employee	Quotes-parts borne by the welfare schemes fund.	Total
Social security	11.5%	1.5%		13%
Industrial accidents and illnesses	1.25%	-		1.25%
Retirement	11.5%	6.75%	0,5%	18.25%
Unemployment insurance	1%	0.5%		1.5%
Early retirement	0.25%	0.25%		0.5%
Funding for social housing (FNPOS)	0.5%	-		0.5%
Total	26%	9%		35%

12.2.4.2 Payment

The payment of social contributions is the employer's responsibility. The employer is required to collect the share owed by the worker each time a payment is made as compensation. The worker may not oppose it. Social security contributions are subject to a single payment by the employer to the social security organization with jurisdiction over the territory where the employer is active:

- within thirty (30) days following the end of each calendar quarter, if the employer employs less than ten (10) workers,
- within the first thirty (30) days following each month's deadline, if the employer employs more than nine (09) workers.

Failure to pay the social security contributions will result in a 5% increase applied to the amount of due contributions.

12.2.4.3 Verification

Any employer may be subject to verification performed by duly sworn agents of the social security agencies accredited by the Minister in Charge of Social Security. The agents are sworn in by a tribunal. Employers and workers are required to submit all the documents and information needed by the agents to perform the verification. The agents are bound by professional secrecy.

12.2.4.4 Litigation

A law dated 23 February, 2008 was published, which set regulations for:

- disputes concerning social security and its rules of procedures;
- procedures for enforcing payment of contributions and other claims by social security;
- recourse against third parties and employers.

This act distinguishes between three types of litigation: general litigation, which pertains to all disputes other than those pertaining to the medical state of the Social Security beneficiaries and those pertaining to technical disputes, medical litigation, which pertains to disputes relative to the health situation of the insured and their beneficiaries, technical litigation, which pertains to all medical activities with regard to social security.

1) General litigation

- failure to affiliate, as it is compulsory,
- failure to declare the affiliation of one or more salaried workers to the fund with jurisdiction,
- failure to pay contributions that may lead to criminal proceedings,
- failure to pay contributions within the periods and deadlines provided for in the law and which leads to increases and late-payment penalties,
- dispute pertaining to the amount of the declared salary used as the assessment basis for calculating the contribution,
- failure to declare a work accident or a professional illness.

The principle established by the law requires that all disputes pertaining to general litigation be presented to review commissions before the judiciary authorities with jurisdiction (the tribunal in charge of social matters in this case) are petitioned.

- Review commission of the wilaya

This commission rules without appeal with regard to requests for remission of penalties and increases. The petition must meet the following conditions, as failure to do so will result in inadmissibility:

- within the two (02) months that follow the disputed notification, if the notification pertains to social security benefits,
- within one (01) month for anything that pertains to disputes having to do with affiliation, the collection of contributions, increases and late-payment penalties.

Legal possession or seisin is done:

- either by registered mail with acknowledgment of receipt,
- or by application to the Secretariat of the Commission in exchange for a receipt.

- National Prior Review Commission

The National Prior Review Commission may be petitioned as part of an appeal of all the rulings issued by the Wilaya Commission with regard to all disputes other than those pertaining to late-payment penalties and increases.

The terms and forms for seisin are similar to those of the Wilaya Commission.

It must rule within thirty (30) days from the day of seisin.

The reports of these commissions are transmitted to the relevant authorities within the next fifteen (15) days.

If the dispute persists and all previously mentioned possible review proceedings have been exhausted, the matter is then put to the tribunal with jurisdiction over social matters.

The matter must be referred to the tribunal within the month following notification of the decision to the employer or within three months following a review petition left unanswered.

These procedures notwithstanding, the Social Security Agency remains a preferred creditor and acts against the duly notified employer:

- either through the tax roll,
- or by using forcible measures,
- or by other procedures, such as garnishment, foreclosure, etc.

Collection through the tax roll is launched by the director of the Social Security Agency who signs the amount claimed. That document is certified and made enforceable by the wali before being transmitted to the direct tax collector, who carries out the order as if he were collecting taxes.

The procedure involving forcible measures is also initiated by the director of the Social Security Agency, before being certified and signed by the president of the tribunal with jurisdiction over social matters. Notice of the measures is given by the sworn verification agent. It is enforced like a court judgment.

2) Medical Expertise

The cases under medical litigation require medical expertise.

The request for medical expertise must be made by the insured within fifteen (15) days from the date of receipt of notification of the decision of the social security institution.

The request for medical expertise must be in writing and accompanied by a report of the treating physician.

The request is sent by registered letter with acknowledgment of receipt or deposited with the services of the social security institution against a deposit receipt.

The social security institution must, within eight (08) days from the date of filing the application, start the procedure of medical expertise by recommending to the insured in writing, at least three (03) medical experts on the list of medical experts established by the Ministry of Health and the Ministry of Social Security, failing which, the insured is bound by the opinion of the treating physician.

The insured is obliged to accept or refuse medical experts proposed in a period of eight (08) days, failing which he relinquishes his right to medical expertise. When he fails to respond, the insured is obliged to accept the expert appointed by social security.

The social security agency shall notify the complainant of the results of medical report within ten (10) days of receipt.

The insured is deprived of his right to medical expertise when it refuses, without reason, to respond to the summons of the medical expert.

The fees of medical experts appointed for the expertise shall be borne by the social security unless the physician certifies that the request for social insurance is clearly unfounded. In this case, the fees shall be borne by the latter.

3) Litigation cases involving medical issues

Litigation cases involving medical issues are defined as disputes that arise between social security and health care providers and services relating to the professional activities of physicians, pharmacists, dentists and paramedics on the type of treatment and stay in a hospital or clinic.

A technical commission for medical issues has been created by the Ministry for Social Security, evenly composed of:

- Doctors of the Ministry of Health;
- Doctors at the social security agency;
- Doctors on the Board of Medical Ethics.

Without prejudice to the provisions of the legislation and regulations, the technical commission for medical issues adjudicates without appeal on additional costs for social security brought on by cost overruns.

The technical commission for medical issues shall be entitled to take any measures enabling it to establish the facts, including designating one or more experts and undertake any necessary investigation, including hearing the practitioner concerned.

The decisions of the commission of a medical nature shall be notified to the social security agency, the Minister for Health and the National Medical Ethics Council.

4) The opposition and deductions from current accounts and postal accounts

The social security creditor can object to the current postal and bank accounts of debtors within the limits of the sums owed.

The opposition is notified to banks, financial institutions and "Algérie Poste" represented by the national postal checks by registered letter with acknowledgment of receipt.

To recover sums due, the director of the social security creditor can object to the property or cash belonging to the debtor of the agency, in the hands of third party in accordance with the provisions of Code of Civil Procedure.

Banks and financial institutions are obliged to require applicants for loans under a certificate of updated contributions issued by the social security authorities.

The lender will, where appropriate, to make the deduction of amounts due to the social security institution and creditor to pay him.

12.3 The independent consultant and the work contract

There are no provisions applying specifically to independent consultants in the law governing employment relationships. The independent consultant is an expert in a well-defined area who performs services outside the work contract. The consultant may be a physical person or a legal entity.

If we are in the presence of a consultant with Algerian nationality, he is compensated as such, and the organization using his services will deduct a lump sum as a tax on global income.

If we are in the presence of a non-resident foreign consultant, a 24% withholding tax at source will be made by the employing organization.

If the consultant is a resident, he will be treated as an Algerian consultant. He is subject to the same rights and obligations depending on the manner in which he exercises his profession, subject to having obtained a residence permit and a settlement permit.

12.4 The status of the expatriate

12.4.1 Conditions of entry, stay and movement of foreigners

A law dated 25 June 2008 has been published aimed at defining the conditions for entry, stay and movement of foreigners in Algeria, subject to international conventions or agreements of reciprocity.

12.4.1.1 General provisions

All individuals with a nationality that is not Algerian, or without nationality, are considered foreigners.

They must, with regard to their stay, possess a valid travel document and a valid visa, and where appropriate, administrative authorizations.

The minimum period of validity required for the above-mentioned travel document is six (6) months.

A foreigner must leave the Algerian territory upon the expiration of the validity of his visa or resident card, or the legal duration of the authorized stay on Algerian territory.

The foreign resident must return the residence card to the wilaya that issued it.

12.4.1.2 Conditions of Entry and Exit of Foreigners

Subject to international agreements ratified by Algeria on refugees and stateless persons, all foreigners arriving on Algerian territory are required to report to the competent authorities responsible for border control, with a passport issued by the State of his nationality or any other valid document recognized by the Algerian state as a valid travel document and accompanied, where appropriate, by the required visa issued by the competent authorities and a record of health in accordance with international regulations.

The maximum validity of a visa granting authorization to enter Algerian territory is two (02) years. The maximum stay allowed at each entrance in Algerian territory is ninety (90) days.

12.4.1.3 Conditions of stay for non-residents

Foreigners in transit through Algerian territory or staying for a period not exceeding ninety (90) days, with no intention to establish residence or to exercise a professional activity or employment are considered non-residents.

The following benefit from visa exemptions:

1 – foreigners on board vessels calling at a port in Algeria;

2 – foreign seamen on leave in the service of a ship calling at a port in Algeria in accordance with maritime conventions ratified by Algeria;

3 – foreigners in transit through Algerian territory by air;

4 – foreign crew members of an aircraft calling at an airport in Algeria;

5 – foreigners qualifying for the provisions of international conventions or agreements of reciprocity in the matter.

A transit visa for a maximum of seven (7) days may be issued to foreigners transiting through Algerian territory, holding a visa for the country of destination and providing proof of sufficient means of subsistence for the duration of their transit.

12.4.1.4 Conditions of residence for foreigners

Foreigners who, wishing to establish their actual, habitual and permanent residence in Algeria and have been authorized by means of the residence card with a 2-year (02) validity issued by the wilaya of residence are considered residents.

Except in the case of reciprocal arrangements, the resident card is required at the age of eighteen (18) years.

The foreign employee receives a residence permit whose validity cannot exceed that of the document authorizing them to work.

The delivery of the residence card shall be subject to payment by the recipient of a stamp duty set by the Finance Act.

A resident card valid for ten (10) years may be issued to a foreign national who has resided in Algeria for a continuous and legal for a period of seven (7) years or more, with his/her children who have reached the age of eighteen (18) years.

The renewal of the residence permit may be granted for students and foreign workers employed on the basis of legally required documents.

Any foreigner wishing to reside in Algeria and engage in gainful employment, may receive a residence permit only if they hold one of the following documents;

1 – a work permit;

2 – a temporary work permit;

3 – a statement of employment of foreign workers for foreigners not subject to work permit.

Any foreigner who wishes to extend his stay in Algeria, beyond the duration of the visa, in order to establish habitual residence should apply for a residence card, fifteen (15) days before the expiry of the visa.

A foreign resident who is absent from the Algerian territory for a continuous period of one (1) year, ceases to be a resident.

The residence card may be withdrawn at any time from its holder if it has definitively been established that he has ceased to fulfil any of the requirements for the award.

The residence card may also be withdrawn from a foreign resident whose activities are considered by authorities as being contrary to public morals and tranquility or prejudicial to national interests or that led to a conviction for acts in connection with such activities.

In this case, the expulsion of the alien is immediate upon completion of the appropriate administrative or judicial procedures.

12.4.1.5 Conditions for movement of foreigners

The foreign may move freely within the Algerian territory without disturbing public tranquility, in compliance with the provisions of this law and the laws of the Republic.

When a foreigner legally established in Algeria changes his residence permanently for a period exceeding six (06) months, he must report to the police, the gendarmerie or the district authorities of both the old and new residences.

12.4.1.6 Declaration of employment and accommodation for foreigners

Any individual or legal entity that employs a foreigner, for any reason whatsoever, is required to declare it within forty-eight (48) hours to the Ministry of Employment with the relevant territorial jurisdiction or failing which, the district of the place of recruitment, the national police or gendarmerie with the relevant territorial jurisdiction.

The same formalities shall be performed when employment relations cease.

Any professional or ordinary landlord who houses a stranger in whatever capacity, is required to declare it to the police or the national gendarmerie, or the district in which the leased property is located within twenty-four (24) hours.

12.4.1.7 Expulsion and escort to the border

The expulsion of a foreigner outside Algerian territory may be declared by decree of the Minister of the Interior in the following cases:

1 – where the authorities believe his presence in Algeria is a threat to public order and / or security of the State;

2 – when he/she has faced a trial or a final court decision, including a custodial sentence for a criminal offence;

3 – when he/she did not leave the Algerian territory, within the time allotted to him/her in accordance with the provisions of this law, unless he justifies his delay was due to force majeure.

The expulsion order is served on the person.

Depending on the seriousness of the accusations against them, he is granted a period between forty-eight (48) hours and fifteen (15) days from the time of notification of the expulsion from Algerian territory.

A foreigner on the point of expulsion may contact his/her diplomatic or consular representation and benefit, where appropriate, from the assistance of a lawyer and / or interpreter.

A foreigner who is the subject of an expulsion order and that proves the impossibility to leave the Algerian territory may, until the execution of the order is possible, be compelled by order of Minister of the Interior, to reside at a fixed place of residence.

12.4.1.8 Penalties

Housing a foreigner and failing to make the above-mentioned declaration concerning the professional or ordinary landlord is punishable by a fine of 5,000 to 20,000 AD.

A foreigner refusing to submit documents or proof of his/her situation may be fined between 5,000 and 20,000 AD.

A foreigner who has not declared his/her change of residence may be fined between 2,000 and 15,000 AD.

Any foreigner evading the execution of a deportation order or an order of expulsion or, after expulsion, re-crossing the border again without authorization and re-entering Algerian territory, is liable for imprisonment of two (02) years to five (05) years, unless he proves that he cannot return to his home country, or go in a third country in accordance with the provisions of international conventions governing the status of refugees and stateless persons.

The direct or indirect facilitation or attempt to facilitate the entry, movement through, residence in and exit from the Algerian territory of a foreigner in an illegal manner, is punishable by imprisonment of two (02) to five (05) years and a fine of 60,000 to 200,000 AD. The act of contracting a marriage, for the sole purpose of obtaining or aiding to obtain a residence card, or for the sole purpose of acquiring, or aiding in acquiring the Algerian nationality is punishable by imprisonment of two (02) years to five (05) years and a fine of 50,000 to 500,000 AD.

A foreigner contracting a marriage for the same purposes with another foreign resident is liable to similar penalties.

When the offence is committed by an organized group, the penalty is increased to ten (10) years imprisonment and a fine of 500,000 to 2,000,000 AD. The authors also face confiscation of all or part of their property.

Legal entities may be declared criminally liable in accordance with the provisions of the Penal Code.

12.4.2 Recruitment conditions

12.4.2.1 In the private economic sector

The employer may hire foreign workers if there are no skilled Algerian workers of the same level.

In order to work and reside in Algeria, the foreign worker must obtain a permit or a temporary work authorization and a resident card. (For more details, please consult our 2010 Expatriate Guide.) The length of the work permit is two (02) years with the possibility of renewal. Application for residence cards must be sent to the police station with territorial jurisdiction and must be accompanied generally with copies of the passport, the work contract, the accommodation certificate, as well as photos and revenue stamps. The length of the residence card will be that of the work contract.

When the contract is terminated, the employer is required to inform the competent national employment authorities within 48 hours. The employer is also required to make a list of the names of his foreign employees in the first quarter of each year.

12.4.2.2 In the public service sector

National and local public services may hire foreign employees on a contractual basis. These employees are essentially high level teachers and instructors. The initial contract is for a maximum of 2 years and may be renewed several times for a maximum of one year at a time. The personnel thus hired is subject to the supervision of Algerian authorities in the exercise of their functions and may not take part in political activities. They benefit from the same rights and are subject to the same obligations as their Algerian colleagues.

12.4.2.3 Criminal Provisions

Is punishable by a fine of 10,000 to 20,000 AD any employer who illegally use foreign workers subject to the requirement of a work permit or temporary work authorization.

Illegal employment of foreign workers includes:

- Worker who do not hold a work permits;
- Worker who would be in possession of non valid of permit or title that would be used in a function other than the one mentioned on the work permit.

The penalty is from 5,000 to 10,000 AD applicable to any employer who does not provide the relevant services with a notice of employment termination of the contract or the annual list of foreign worker names. The fine will be doubled in case of second offence.

12.4.3 Taxes

According to Algerian tax laws, the fiscal domicile of the following persons is in Algeria:

- foreign nationals who possess housing in Algeria for a period of at least one (01) year;
- persons who receive earnings or revenues whose taxation is assigned to Algeria by an international treaty pertaining to double taxation.

For salaried workers, in the case of:

- A foreign enterprise that does not have a permanent professional establishment in Algeria, but which employs foreign salaried workers, the firm must, when paying taxable salaries and indemnities, make a deduction at source at the rate in force for local employees[64].
- A company incorporated under Algerian law or a foreign enterprise with permanent facilities in Algeria. The enterprise also makes a deduction at source on the salary of salaried workers, based on the schedule in effect for local salaried workers.

12.4.4 Repatriation of salaries

The foreign worker working for a resident company producing goods or services who wishes to have the right to have his salary transferred must hold a work permit or have a temporary work authorization and a duly executed work contract accompanied, as the case may be, by a visa of the General Directorate of the Civil Service and/or the Ministry in Charge of Labor.

The salary, divided into a transferable part and a part payable in Algerian dinars, is freely negotiated and established by a contract between the employer and the foreign worker.

The transfer of part of salary is made through a bank or financial institution, approved intermediary, or the center for postal checks at which the file should be domiciled.

The foreign worker must complete a file.

The transfer request is made by the employee and covered by his employer, according to a regulatory model. The transfer can occur from any post office or accredited bank.

Under Article 182b of the CID, transfers in any capacity whatsoever, of funds to non-resident individuals or legal entities must be declared prior to the regional tax authorities. Remittances are, as such, subject to this requirement.

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64 The 2010 Finance Law removes the specific rules previously applicable to income of expatriate employees. For more details see Chapter 11.

Exceptions

The exceptions concern:

1 - foreign workers governed by a treaty concluded between Algeria and their government or an international body. They are subject to the special rules set by the treaty.

2 - foreign salaried workers employed by foreign firms operating in Algeria within the framework of the performance of work or services contracts. They are subject to the terms and conditions of the contract.

3 - foreign workers who do not have the status of salaried worker, who are hired for a short time and who are compensated by contract or by fee. They are subject to the transfer conditions set by the contract.

4 - foreign workers employed as contingent workers and doing transfers for other activities.

5 - foreign workers who are shareholders of firms incorporated under Algerian law which produce goods or perform services.

12.4.5 Social security

Outside of treaties, expatriate salaried workers are subject to Algerian legislation and their employers make deductions at source as they would for Algerian salaried workers.

Treaties have been signed with certain countries such as Belgium, Tunisia, Romania and

France. These treaties enable seconded workers to remain affiliated to the social security fund that was covering them, for a period of time strictly defined by the treaties.

In the case of France, expatriate workers remain affiliated to the social security fund that was covering them before they were seconded, for up to 3 years renewable once. Social security dues of the French workers are channeled to the French fund.

A certificate is issued by the original fund to justify the non-payment to Algeria's social security fund.

CHAPTER 13

THE JUDICIARY

It is a pyramidal system structured as follows: Tribunals, Courts of Appeal and Supreme Court. Organic Law No. 98-01 of May 30th, 1998 created a Council of State intended to stand in for the authority of the courts of appeal and the Supreme Court when ruling on administrative matters. Furthermore, Organic Law No. 98-03 of June 3rd, 1998 created a Conflict Tribunal that has authority to settle conflicts of competence between jurisdictions under the authority of the judicial courts on the one hand and jurisdictions under the authority of the administrative courts on the other hand.

13.1 Structure of the Judiciary

13.1.1 Tribunals

There are 210 tribunals. These are courts of first instance. They are organized in various divisions: civil, commercial, social, etc.

They examine all civil, commercial and social actions that fall within their territorial competence. They issue rulings with a right to appeal before the Court of Appeal.

Tribunals sit in the administrative centers of courts. Their jurisdiction extends to the parts of the territory coming under the jurisdiction of the court of appeal to which they report.

They have exclusive jurisdiction in the following matters:

- Foreclosure;
- Order and auction settlements;
- Seizure and judicial sale of vessels and aircraft;
- Exequatur;
- Disputes pertaining to occupational accidents, bankruptcies, legal settlements, and requests to sell business capitals subject to a pledge entry.

Tribunals are ordinary courts. They consist of divisions before which cases are registered according to the nature of the dispute.

However, in the courts where certain divisions have not been established, the civil division remains competent to examine all disputes except the ones relating to social litigation.

The specialized divisions sitting in certain courts exclusively examine litigations relating to international trade, to bankruptcy, to legal settlements, to banks, to intellectual property, to maritime and air transport disputes as well as to insurance matters.

Algerian law grants Algerian citizens answerable to the law jurisdiction privileges inasmuch as any foreigner, even when they do not live in Algeria, may be summoned to appear before Algerian courts to execute the obligations they undertook in Algeria with an Algerian citizen. They may be summoned before Algerian courts for obligations they undertook in a foreign

country with Algerian citizens. Conversely, an Algerian citizen may be prosecuted before Algerian courts for obligations they undertook in a foreign country, even with foreigners.

Foreign courts orders, judgments and decisions cannot be enforced on the Algerian territory unless they were declared enforceable by the Algerian courts.

The request for exequatur on enforceable foreign orders, judgments, decisions, titles, and actions must be submitted to the tribunal sitting in the administrative center of the court of appeal in the prosecuted person's place of domicile or the place of enforcement that shall verify they meet the following conditions:

1 - Not be in violation with the rules of jurisdiction;

2 - Have acquired the authority of a final decision (res judicata) in accordance with the laws of the country where they were rendered;

3 - Not go against orders, judgments or decisions already rendered by the Algerian courts and that the defendant pled;

4 - Not go against public order or morality in Algeria.

Similarly, authentic documents and instruments established in a foreign country cannot be enforced on the Algerian territory unless they were declared enforceable by the Algerian courts that shall verify they meet the following conditions:

1 - Meet all requirements of authenticity of instruments in accordance with the laws of the country where they were established;

2 - Have legal enforceability and be enforceable, in accordance with the laws of the country where they were established, and not go against public order or morality in Algeria.

These rules shall not affect the ones provided for in international conventions and legal agreements concluded between Algeria and other countries.

13.1.1.1 Proceedings before the Tribunals

A case is taken to tribunal by filing a written citation, with the Registry, bearing the date and signature of the plaintiff.

All citations must mention the name and address of the recipient, the competent tribunal designated, and a brief statement of the action's grounds and reasons in fact and law. When a corporation is involved, the citation must mention the company's name, legal status and head office.

The citation is delivered by the tribunal registrar, and sent by registered mail or through administrative channels. If the recipient does not have any known residence in Algeria, the citation is sent to his permanent address. If the recipient lives in a foreign country, the prosecutor's department shall send a copy of the citation to the Ministry of Foreign Affairs, or to any authority empowered by diplomatic agreement.

With regard to the hearing and judgment, the judges may rule any day, and also on public holidays. The hearings shall be public.

The tribunal shall have authority to order appropriate measures of inquiry and expert assessment. The tribunal may also order on-site visits and fact-finding investigations on occurrences potentially noticed by witnesses, when such verification is considered admissible and meaningful to the proper investigation of the case.

Judgments by default may be appealed by way of opposition within a month following notification. Once the citation is delivered to the concerned person, the judgment of the tribunal shall be deemed to have been rendered after due hearing of the parties.

13.1.1.2 Administrative Tribunals

They were created by law No. 98-02 of May 30, 1998. Their number and the scope of their jurisdiction have yet to be determined. The rules of procedure before administrative tribunals are set by the Code of Civil and Administrative Procedure. Rulings rendered by the administrative tribunals are subject to appeal before the Council of State, except when the law specifies otherwise.

Administrative tribunals are organized into chambers, the latter being subdivided into divisions.

13.1.2 Courts of Appeal

There are 48 courts of appeal. It is before these courts that judgments rendered by tribunals are appealed. Appeals must be filed within one (01) month from the date of notification of the contested decision to the concerned person. Appeals must be filed within two (02) months from the date of notification, when the concerned person is notified at the real domicile or the elected domicile. In the case of judgments by default, the period of appeal runs from the expiry of the time limit for objection.

As a rule, the appeal has suspensive effects. Nevertheless, the law may decide otherwise. The appeal shall take the form of subpoena substantiated and signed by the party appealing the decision of the tribunal.

Time periods for objection, appeal, recantation requests, and cassation complaints are of two (02) months for persons living outside the Algerian territory.

The investigation of the case subject to appeal is conducted according to the same procedures as before the tribunal. The parties either appear in person or are represented by their lawyers.

The court reserves their decision once the hearings are closed. The court notifies the date the judgment is to be rendered.

All judgments rendered on citations, pleadings or findings are deemed to have been heard, even when the lawyers made no oral observations during the hearings.

Judgments that dismiss objections or pleas of inadmissibility and decide the case on the merits are also deemed to have been heard even though the party raising the objection or plea of inadmissibility abstained, in the alternative, from making submissions on the substance.

Any other decision is rendered by default. Decisions are subject to opposition within one (01) month before the courts that issued them. Time limits run from the date of the decisions (judgments or rulings).

13.1.3 The Supreme Court

The Supreme Court is the body regulating the activity of tribunals and courts. The Supreme Court has authority to rule on cassation complaints against final decisions and judgments rendered by courts and tribunals. Complaints for cassation can only be based on pleas in law such as:

- Infringement of essential procedural requirements;
- Omission of essential procedural requirements;
- Lack of jurisdiction;
- Excess of power;
- Violation of domestic law;
- Violation of foreign law relating to the Family Code;
- Violation of an international Convention;
- Lack of legal basis;
- Lack of grounds;
- Shortfall of grounds;
- Conflict between reasons and dispositions;
- Distortion of clear and precise terms of an instrument taken into consideration in the judgment or decision;
- Ruling in non-requested matters or allowance of more than requested;
- Omission to rule on a head of claim;
- Absence of defense for incapable persons.

The time period for filing cassation complaints is two (02) months from the date of the personal service as to the court's contested decision, and three (03) months when the subpoena is delivered at the real or elected domicile.

With regard to decisions and judgments by default, the period for a cassation complaint runs from the day the period for the objection comes to an end.

As for persons residing outside the Algerian territory, the time period for appeal is increased by two (02) months.

Appeals before the Supreme Court shall not suspend enforcement, except in cases pertaining to the personal status and capacity of persons and in proceedings to decide on the authenticity of a document.

The parties shall be represented by lawyers authorized to plead before the Supreme Court. The state, the Wilaya, the municipality and public administrative institutions are exempted from the obligation of representation by a lawyer.

Proceedings before the Supreme Court are essentially constituted by a written application signed by an accredited lawyer. They shall include the following indications, failing which they may be invalid:

- Last name, first name, occupation, status and domicile of the parties;
- A copy of the contested judgment;
- A summary of the facts and the pleas in law put forward in support of the appeal before the Supreme Court.

In the month following the filing of the petition, the plaintiff may present additional instruments elaborating on their pleas in law. Rulings of the Supreme Court are reasoned with reference to the laws being applied. In the event the appeal is allowed, the Supreme Court cancels the ruling under appeal in full or in part, and refers the case back either to the same court for trial by different judges, or to another court of the same order and rank as the one that issued the

overturned ruling. It is the responsibility of the court to which the case was referred following cassation to comply with the ruling of the appeal regarding the point of law judged by the Supreme Court.

Rulings by the Supreme Court are notified by the court's clerk and by registered mail, with acknowledgment of receipt to the parties to the proceedings as well as to the lawyers. The same rulings are also brought to the attention of the court that issued the overturned decision.

13.1.4 Overview of the Appeals System

	Referral	Inquiry	Closure of hearings	Ruling
Supreme court	Cassation complaint by written request signed by the lawyer - (within a 2-month time period following personal service of the contested decision, and a 3-month time period in the case of service at the real or elected domicile)	Judge of the Law	Deliberation	Ruling is rendered, either cancelling or upholding the court's ruling
Court of Appeal	Referral through reasoned subpoena by the unsuccessful party at first instance trial (within a 1-month time period following contested decision – 2-month time period in the case of service at the real or elected domicile)	Inquiry into the case	Deliberation	Ruling is rendered, either confirming or overturning the tribunal's ruling
Ordinary tribunal	Referral by filing a citation at the Registry	Inquiry into the case	Deliberation	Ruling is rendered, and Decision is notified

13.1.5 The Council of State

In accordance with Executive Decree No.98-262 of 29 August, 1998 setting the terms and conditions for transferring all filed and/or pending cases from the Supreme Court's administrative chamber to the Council of State, "all filed and/or pending cases of the administrative chamber of the Supreme Court, except when the state of proceedings permits a decision", are transferred to the Council of State.

The aforementioned Organic Law 98- 01 makes the Council of State the body regulating the activity of the administrative courts. The Council ensures the standardization of the administrative case-law throughout the country and ensures compliance with the law.

The Council of State has complete independence in the performance of its legal powers and has competence to rule at first and last instance with regard to:

- Annulment appeals on regulatory or individual decisions from central administrative authorities, national public institutions and national professional organizations. For instance: Decisions made by the ANDI (the Development and Investment National Agency) are subject to annulment appeal before the Council of State, which is also the case of decisions made by sector regulatory authorities. On the other hand, Decisions made by the Competition Council

should be excluded, as they can only be contested before the Court of Algiers that rules on commercial matters.

- Appeals pertaining to legal interpretation and appeals involving assessment of the validity of acts when the dispute falls under the jurisdiction of the Council of state (for decisions made by a Minister (Secretary of State), by a Wali, or by an independent administrative authority, for instance)

During an appeal trial, the Council of State examines decisions rendered by lower courts (tribunal and court of Appeal). The council also acts as court of cassation with regard to final decisions rendered by administrative courts.

The proceeding before the Council of state shall be governed by the provisions of the CCP which apply to the procedure of judicial nature.

13.1.6 Special Features of the Administrative Procedure

According to Law No.08-09 on the Code of Civil and Administrative Procedure, administrative tribunals are the ordinary bodies of law in the matter of administrative litigation.

They examine, at first instance and appeal, all cases in which one of the parties would be the State, the Wilaya, the municipality or a public administrative institution.

Administrative tribunals are also competent to rule on:

- Annulment appeals, appeals pertaining to legal interpretation and appeals involving assessment of the validity of administrative acts pursued by:
  - the Wilaya as well as any decentralized services of the State within the Wilaya
  - the Municipality and other municipal administrative services
  - local public institutions of administrative nature
- Unlimited jurisdiction appeals;
- Cases conferred on them under particular texts.

The following initiated actions listed as examples shall be brought before the administrative tribunals:

- Actions regarding taxes and duties, at the place of taxation and imposition;
- Actions regarding public works, at the place of performance;
- Actions regarding administrative contracts of whatever nature, at the place of award or performance;
- Actions regarding litigation involving public officials or employees or any other persons reporting to public administrative institutions, at the place of assignment;
- Actions regarding medical services, at the place where they were provided;
- Actions regarding supplies, works, labor and industrial lease, at the place where the agreement was awarded or where it was performed, in the event one of the parties is domiciled there;
- Actions regarding difficulty in implementing a decision rendered by the administrative tribunal, at the place of the tribunal that rendered the decision.

The administrative tribunal with jurisdiction to examine a main claim also has jurisdiction to examine any additional claim or incidental claim falling within the competence of an administrative tribunal. It also has jurisdiction to examine objections coming under the jurisdiction of an administrative court.

Conflicts of jurisdiction between the administrative tribunal and the Council of State shall be settled by the latter, in joined session of both chambers.

The administrative tribunal is seized by a written request signed by the party or by a lawyer registered with the National Bar Council. The request is filed, in accordance with new Law No.08-09, at the administrative tribunal's Registry with payment of legal tax, except where otherwise provided by law. The request shall be accompanied with the contested decision.

Administrative tribunals may be seized by private individuals only by way of appeal against an administrative decision.

The appeal shall be lodged within four months (4) from the date of personal service delivering a copy of the individual administrative act or of publication of the collective or regulatory administrative act.

The courts of appeal's administrative chambers shall be replaced by administrative tribunals. This means that, in administrative matters, the right to a second hearing is maintained. The decisions rendered by the tribunals can only be appealed before the Council of State. The plaintiff in the appeal before the administrative tribunal shall have four (4) months from the date of notification of a copy of the individual administrative act or of publication of the collective or regulatory act to lodge an appeal before the Council of State, or to request a cancellation of the tribunal's decision.

13.1.7 Overview of the Appeals System

	Referral	Inquiry	Ruling
Council of State	Examines in first instance appeals against regulatory or individual decisions of central administrative authorities. Examines appeals pertaining to legal interpretation and appeals involving assessment of the validity of acts. The time period to lodge an appeal against rulings is 2 months (15 days when pertaining to provisional orders.) The deadline to a cassation complaint is 2 months starting from notification of the decision.	Inquiry into the appeal	Overturns and cancels or upholds the decision of the administrative tribunal (the appeal must be lodged within 2 months from the date of notification of the tribunal's decision).
Administrative tribunal	Seized by filing a citation at the Registry	Inquiry into the case and deliberation.	Judgment is rendered and the tribunal's decision is notified

13.2 Competence of courts and tribunals in matters with regard to emergency measures

A significant number of contracts between Algerian corporations and foreign corporations, in particular equipment contracts, and more broadly, service contracts involving sequential performance, at the performance stage, give rise to referral to Algerian courts in order for the latter to enact emergency measures.

Algerian law draws a distinction, in this respect, between emergency measures per se, orders for payment and procedure for interim relief.

13.2.1 Emergency measures

Algerian courts have competence to impose emergency measures when a request for such measures is brought before the court with jurisdiction on the merits. The magistrate to whom the request was referred issues an order acknowledging the emergency alleged by the plaintiff. When the magistrate rejects the request, an appeal may be lodged against the order provided that the order was rendered by the president of the tribunal of first instance.

13.2.2 Orders for Payment

Any request for payment of a liquid, payable and overdue amount is admissible from the moment the request is initiated to achieve an order for payment procedure. In support of their request, the plaintiff must attach all evidence of the existence and of the amount of the debt. In cases where the judge allows the request, he shall notify an order for payment (meaning that the debt was justified). Should this not be the case, the judge shall reject all ways of appeal for the plaintiff, except for their right to resort to ordinary law remedies.

When the decision is subject to appeal, the time limit (30 days) runs from the expiration of the objection or from the pronouncement of the ruling rejecting the objection (the time limit is also 30 days). After this time limit, or if the order is not subject to appeal, it will be sealed by the Registrar to be made enforceable at the request of the creditor (by ordinary letter).

An order for payment is conceivable only in the event the debtor has his domicile or residence in Algeria. The order of payment is notified to the debtor by registered mail with acknowledgment of receipt. The debtor must pay off within 15 days, failing which they shall be compelled to comply by all available legal means in addition to charges and interests for payment delays. The debtor may use the time limit to legally object to the payment order, but shall be required to deposit the charge amounts, failing which a receipt shall not be delivered by the Registrar. If there is not any objection, the debtor is requested to appear before the judge. If the debtor fails to appear, the judge adjudicates ex officio, and the decision is deemed to have been heard by the debtor. If the objection is submitted after the allowed time limit, the creditor only has to demand payment of the debt by simple letter referring to the original of the judge's motion. The effects attached to the order of payment are the same as for a judgment in the presence of all parties.

Any decision including order for payment that is not under objection or that is not referred for implementation within the year of its date shall be deemed outdated and without any effect.

13.2.3 Procedure for interim relief

Whenever sequestration or any precautionary measures must be decided upon, the case may be referred by citation to the president of the court of first instance with jurisdiction on the merits. The magistrate may rule at any time, including on public holidays.

Interim relief orders are not prejudicial to the merits. The court hearing the interim relief case has authority to order all investigative measures needed to resolve the dispute. Interim relief orders are immediately enforceable, with or without a guarantee. They can neither be opposed nor suspended.

The decision can be appealed within 15 days after notification of the Order. The appeal is also judged in accordance with emergency procedures.

13.3 Justice Officials

The Justice personnel consist of three categories: the magistrates, the court officers and the judicial civil servants.

13.3.1 Magistrates

In contrast with the jurisdictional duality between the two orders (judicial and administrative), the body of the magistrates is united under the authority of the Supreme Council of Magistracy. The body consists only of professionals forming two groups: sitting judges and public prosecutors of the department of public prosecutions.

The status of the magistracy was subject to recast in 2004 as part of the reforms aiming at strengthening the independence of the judiciary, such reforms resulting into the rehabilitation of the functions of the Supreme Council of Magistracy that henceforth is entitled to a financial autonomy, and that has witnessed an increase in the number of elected members.

13.3.2 Court officers

The activity of the court officers is carried out in the form of a liberal profession under the direct authority of a Bar Council for each branch and the guardianship of the Ministry of Justice. Court officers include: lawyers, notaries, court bailiffs, auctioneers, and court experts, assignees in bankruptcy, court administrators and translators-interpreters.

The Ministry of Justice has initiated a recast program for all statuses, and joint commissions have been established to ensure the compliance of the legal texts with the developments in the context and with the market liberalization.

13.3.3 Judicial civil servants

Considered as assistants to the judge, they fall into two categories:

1 - The registry, consisting of civil servants responsible for the management of the administrative services and the financial management of jurisdictions.

2 - The judicial police, a body mainly consisting of civil servants of the national safety, the national gendarmerie and other specifically appointed personnel, whose mission is to establish criminal offences, to gather evidence, to identify the perpetrators and implement the deputations of the competent jurisdictions, in compliance with the law, and under the authority

of the public prosecutor. Owing to the latest reform of the Code of Criminal Procedure, the judicial police have witnessed a significant scaling up in their powers, all of which is placed under the judicial supervision of the indictment chamber.

13.4 Customs Litigation

Chapter 15 of the Customs Code deals with customs litigation. It contains several distinctive features stemming from the special character of the Customs Law that derogates, in certain provisions, from the ordinary law.

Customs violations, as defined in Article 240a of the Customs Code, are any violations of the laws and regulations that the customs authorities enforce. Punishable under the Customs Code, these violations need only two (02) elements instead of the three (03) usually required in ordinary law: the material element and the legal element. The intentional element is not taken into consideration, and even judges may not refer to it in accordance with Article 281 of the Customs Code.

Customs fines and confiscations - that assumed the character of civil and penal remedies until 1979, and only the character of civil remedy since then – regain duality in the character with the modifications of Act 98-10 of July 21, 1998 that abolished Article 249 of the Customs Code, with prevalence to the civil action. Fines under tax claim payable to the customs administration are collected by the same administration, and the confiscated merchandise is not stored in the court registry, but rather in the customs revenue office closest to the place of seizure.

13.4.1 Persons Empowered to Record Customs Infringement

And Powers of These Officers

In accordance with the provisions of Article 241 of the Customs Code, the following officers are empowered to record and identify customs violations:

- Customs officers,
- Officers and officials of the judicial police,
- Tax officials
- Officers of the national coast guard service, officers in charge of economic, competition, price, quality and anti-fraud investigations.

Recording a customs infringement entitles the aforementioned officers to seize merchandise subject to confiscation as security up to the legally-incurred penalties, as well as any document accompanying the merchandise. In cases of flagrante delicto, the officers may arrest the defendants and bring them before the public prosecutor immediately after the procedural acts have been completed.

13.4.2 Methods for Customs Infringement Recording

Customs violations, once established, are recorded in seizure reports or certified reports depending on whether the violation was established as a result of a verification conducted in a

customs office or an after-the-fact inquiry at the offenders' place. In accordance with Article 255 of the Customs Code, the customs reports shall mention the following formalities, failing which they shall be invalid:

- Conduct of the seizure and storage of the seized merchandise and documents in the customs office or station nearest to the place of seizure, where the reports must be written immediately,
- Appointment of the customs collector in charge of prosecution as the seized goods custodian,
- Statement, in the reports, of indications permitting the identification of the offenders and of the merchandise as well as the establishment of the relevance of the infringement,
- Date, time and place of seizure,
- Reason for the seizure,
- Statement of seizure to offender,
- Family names, given names, titles and places of residence for the custom collector and the persons conducting the seizures in charge of prosecution,
- Description of the seized merchandise and nature of the seized documents,
- Summons to the defendant to attend the writing of the report and summons follow-up,
- Place of the report writing and closing time,
- Potentially, family name, given name and title of the seized merchandise custodian. Forged or modified documents are seized, and the report shall clearly enunciate the type of forgery, and describe the alterations and extra work. The documents are signed and initialed by the verbalizing agents who attach them to the report.

Moreover, stating reports resulting from investigations or records control shall, in accordance with Article 48 of the Code of Customs, mention:

- Family names, given names, title and residence of the verbalizing officers, as well as dates and places of the investigations led,
- Nature of the findings and information collected, either by inspection of the documents or hearing of individuals,
- Potential seizure of documents with description of such documents,
- Legal and regulatory provisions that were violated as well as the appropriate punitive regulations,
- Statement indicating that the persons owning or living in the places where the inspections and investigations were conducted were informed of the date and place where the report was written, that the report was read to them and that they were requested to sign it.

13.4.3 Jurisdiction of Courts

13.4.3.1 Jurisdiction Ratione Materiae

The jurisdictions ruling in criminal matters examine cases pertaining to customs violations and all customs matters raised as a defense, as well as related customs offences, ancillary to or tied to ordinary law offenses.

This jurisdiction is conferred by Article 272 of the Customs Code. Disputes pertaining to the payment of duties and taxes or their refund, and administrative constraint measures objections fall under the jurisdiction of the courts that rule in civil matters.

13.4.3.2 Jurisdiction Ratione Loci

In the case of proceedings resulting from violations established in a written statement of seizure or inquiry, the tribunal of competent jurisdiction is the tribunal with jurisdiction over the customs office closest to where the violations were established. Objections on constraints are brought before the jurisdictions ruling on civil matters where the customs office that originated the order is situated (Article 274 of the Customs Code).

13.4.4 Customs Offenses

There are five (05) grades of minor offenses (infractions) and four (04) grades of misdemeanors. The ranking of these violations was made by distinguishing between violations pertaining to prohibited or heavily taxed merchandise on the one hand, and the ones that are otherwise, on the other hand. Secondly, the law takes into account violations that jeopardize or evade duties and taxes on the one hand, and the ones that have no influence on the collection of duties and taxes for the treasury, on the other hand.

13.4.4.1 Misdemeanors

Any violation of the rules and regulations that Customs Authorities are in charge of enforcing with regard to merchandise that is either prohibited or heavily taxed, established in customs offices or stations during verification operations, is considered a first-class customs offence. This offence is punishable by the seizure of the fraudulent goods and goods used to conceal the fraud, and a fine equal to the value of the confiscated merchandise as well as a prison sentence of 2 to 6 months (Article 325 of the Customs Code).

Smuggling pertaining to merchandise that is either prohibited or heavily taxed is considered a second-class offence. This offence is punishable by the seizure of the fraudulent goods and goods used to conceal the fraud, and a fine equal to 2 times the value of the confiscated merchandise as well as a prison sentence of 6 to 12 months (Article 326 of the Customs Code).

Any violation of the laws and regulations that the customs authorities are in charge of enforcing with regard to merchandise that is either prohibited or heavily taxed, perpetrated by multiple-persons gathering three (03) individuals or more, whether or not they are all in possession of fraudulent merchandise, is considered a third-class offence. This offence is punishable by the seizure of the fraudulent goods and goods used to conceal the fraud, and a fine equal to 3 times the value of the confiscated merchandise as well as a prison sentence of 12 to 14 months (Article 327 of the Customs Code).

The fourth-class offence concerns Smuggling pertaining to merchandise that is either prohibited or heavily taxed perpetrated with the use of firearms, animals, vehicles, aircrafts or vessels under 100 net register tons or under 500 gross register tons. This offence is punishable by the seizure of the fraudulent goods and the means of transportation, and a fine equal to 4 times the value of the confiscated merchandise and of the means of transportation as well as a prison sentence of 24 to 60 months (Article 328 of the Customs Code).

13.4.4.2 Customs Minor Offenses (Infractions)

Any violation of the laws and regulations that the tax authorities are in charge of enforcing, and that is without effect on the prohibitive measures or on the collection of any duties and taxes, shall be considered a first-class infraction. This infraction is punishable by a fine of 5,000 DZD (Article 319 of the Customs Code).

Any violation of the laws and regulations that the tax authorities are in charge of enforcing, and that has effects solely on the collection of the duties and taxes, shall be considered a second-class infraction. This infraction is punishable by a fine equal to double the amount of the duties and taxes that were compromised or evaded (Article 320 of the Customs Code).

Any violation of the laws and regulations that the tax authorities are in charge of enforcing pertaining to prohibited or heavily taxed merchandise imported or exported by travelers or by means of parcel post, as well as violations of Article 22 of the Customs Code, shall be considered a third-class infraction. This infraction is punishable by the seizure of the fraudulent merchandise (Article 321 of the Customs Code).

Any violation of the laws and regulations that the tax authorities are in charge of enforcing with regard to merchandise that is neither prohibited nor heavily taxed, and that is perpetrated with the use of forged documents shall be considered a fourth-class infraction. This infraction is punishable by the seizure of the fraudulent merchandise and a fine of 5,000 DZD, without prejudice to the application of criminal penalties for forgery and the use of forged documents.

Smuggling with regard to merchandise that is neither prohibited nor heavily taxed shall be considered a fifth-class infraction. It is punishable by the seizure of the fraudulent merchandise and a fine of 10,000 DZD.

13.4.5 Main Violations Likely to be Reported Throughout Merchandise Verification Operations

The fundamental principle in customs is the inspection of the Accounting of Goods by the officer in charge of controlling the documents supporting the declarations, and the physical checks of the goods declared in order to verify the accuracy of the information provided on the Accounting of Goods form.

The inspection essentially pertains to the customs value, the nature and origin of the merchandise. The verification of these three (03) elements, called items of charge, not only enables the calculation of the payable taxes and duties, but also the application of potential prohibitive measures on the goods. The inspection may lead to finding and recording violations.

With regard to the customs value, it must be declared in compliance with the provisions of Article 16 et seq. of the Customs Code. It is the price paid or to be paid to supplier corresponding to the calculated invoice price. This value is sometimes contested by the control officer who shall then have responsibility to demonstrate most objectively and by any suitable means the falsity of the declared value. Otherwise, the registrant is entitled to maintain the declared value, and to request, if need be, the arbitration of the control officer's line supervisors as part of an informal appeal. The registrant as well as the customs authorities may also refer to the board of appeal chaired by a magistrate who will render a decision enforceable by both parties. As for tariff ranking, when the product is not namely classified in a heading or subheading, the harmonized system grading rules make it much

easier to have a justifiable classification. In extreme cases, the registrant may also refer to the aforementioned board of appeal.

13.4.6 Prosecution and Punishment of Customs Violations

In accordance with Article 265 of the Customs Code, "persons prosecuted for customs violations are referred to the tribunal of competent jurisdiction to be punished in compliance with the provisions of the present code."

Nevertheless, the same Article allows offenders that so wish to negotiate a settlement allowing ending of the prosecution if the settlement is closed with the customs authorities.

During the court proceedings, the customs authorities and the offender have the same rights. The trial is adversarial. Rulings are subject to ordinary law remedies. Nevertheless, the authorities shall have certain privileges specifically stipulated in the Customs Code.

The judges are prohibited from:

- Excusing the offender with regard to intent,
- Granting the release of goods seized for a customs violation without a deposit for their value, and the release of goods prohibited at customs clearance without prior presentation of the authorizations issued by the relevant authorities,
- Seizing any proceeds from fees and taxes in the hands of the customs collector (Article 296 of the Customs Code).

Moreover, the customs authorities do not make any payment by virtue of judgments contested subject to an appeal (Article 294 of the Customs Code), and the administrative constraints issued in accordance with Article 262 of the Customs Code are enforceable by any legal means, except by imprisonment. Their enforcement is not suspended by a taxpayer's appeal (Article 293 of the Customs Code).

The right to negotiate a settlement

The customs authorities may negotiate with people prosecuted for customs violations if the latter request such negotiation. Obviously, in order to request a settlement, the defendants shall beforehand agree to acquiesce to the service and admit the validity of the infringement established.

The request for negotiation shall be submitted on customs forms as in the case of contentious proceedings in which the offender acknowledges the established violation. The offender deposits a certain amount set by the customs collector. The offender defers to the competent jurisdiction's final decision by filling out a specific form extracted from a portable notebook for travelers. In the other cases, the offender submits a request on a separate sheet of paper in which he acknowledges the prosecuted violation and makes an offer in figures to settle the dispute. This request must be addressed to the competent authorities according to the amounts of duties and taxes the offender evaded or attempted to evade, and that are called prejudiced or evaded duties.

However, settlements are not legally possible in cases of violations pertaining to merchandise that is absolutely prohibited. Settlements occur depending on the prejudiced or evaded duties, either with or without the board's notification. Settlements may occur before or after a ruling

having acquired the authority of res judicata, as the former terminates the fiscal and civil action, while the latter may still allow confinement rulings.

Other Violations Reported and Recorded by the Customs Administration and Not Repressed by the Customs Code:

This mainly refers to the violation of foreign exchange regulations. When carrying audit or control operations, control officers may have to establish a custom violation related to a breach in foreign exchange regulations, particularly in cases of misrepresentation of value and illegal capital transfer or where the banking certificate of domiciliation is not applicable. These offenses are prosecuted in accordance with the provisions of Ordinance No. 96-22 of 9 July 1996 relating to the repression of violations to foreign exchange regulations, amended and supplemented by Ordinance No. 03-01 of 19 February 2003.

13.4.7 Organization of the Head Office of the Customs General Directorate

Executive Decree No. 08-63 was issued on 24 February 2008 with the purpose of determining the organization of the Head Office of the Customs General Directorate. Under the authority of the Minister of Finance, the Customs General Directorate is responsible for participating in the study and development of international conventions' and agreements' drafts relevant to the customs action. It is also responsible for participating in the introduction of legislation or regulations related to customs law and customs administration, and for implementing them. It is also tasked with the implementation of laws and regulations on customs taxation and quasi-taxation applicable to international trade and customs control of foreign exchange and oil, for ensuring the customs supervision of the customs territory, and for ensuring the development and analysis of external trade statistics.

The directorate consists of five (5) directors of studies, seven (7) heads of studies, a general inspection governed by a particular text, and several departments. These are:

- Department of legislation, regulation and trade exchange,
- Department of taxation and tax collection,
- Department of Customs procedures,
- Department of subsequent verifications,
- Department of customs intelligence,
- Department of litigation,
- Department of public relations and information,
- Department of General Administration,
- Department of Training,
- Department of financial resources,
- Department of Infrastructure and equipment.

13.5 Alternative Modes of Dispute Resolution

13.5.1 Conciliation

The administrative jurisdictions may operate conciliation in matters of full remedy actions in litigation falling within their competence.

Conciliation may occur at any time during the proceedings on the initiative of the parties, or on the initiative of the formation of the court after the agreement of the parties.

In the case of conciliation, the chairman to the formation of the court shall prepare an official report in which the terms of the agreement are described, and shall order the settlement of the dispute and the file closure. This order is not subject to any appeal.

13.5.2 Mediation

Except for cases pertaining to family affairs and industrial tribunal, and cases that may affect the public order, the judge shall suggest mediation to the parties. If the parties accept this proposal, the judge shall appoint a mediator that shall hear their points of view and try to reconcile them in order to allow them to find an appropriate solution. Mediation may concern all or part of the dispute. Under no circumstances does it relieve the judge, who may still take any measures deemed by him as necessary at any time.

The duration of the mediation shall not exceed three (3) months, renewable once for the same mission at the request of the mediator and with the agreement of the parties.

Mediation can be entrusted to a natural person or a board. If a natural person is entrusted with the mediation, they shall be chosen from among persons known for their probity and rectitude and shall comply with the requirements of Law No. 08-09 on the code of civil and administrative procedure.

The mediator may be dismissed by the judge when mediation is made impossible by the mediator or the parties.

At the termination of their duties, the mediator shall inform the judge in writing about the fact that the parties could or not come to an agreement.

When the parties come to an agreement, the mediator shall prepare an official report in which the content of the agreement is recorded. The official report is signed by both the parties and the mediator. The case shall be referred back to the court on the predetermined day.

The judge sanctions the agreement report by a ruling from which no appeal shall lie. The ruling shall be an enforcement order.

CHAPTER 14

ARBITRATION

Since Algeria gave itself a new international arbitration law and has ratified the ICSID Convention of the World Bank on the settlement of investment disputes and the Seoul Convention on the Multilateral Investment Guarantee Agency, not to mention the impressive number of bilateral treaties (more than forty) the country has concluded, international arbitration has become the favored method for resolving disputes between Algerian and foreign firms, with both parties favoring institutional arbitration (International Chamber of Commerce or ICSID) and very rarely using ad hoc arbitration.

Therefore, whether it concerns the choice of arbitrators, the location of arbitration, the applicable procedural law, or even of substantive law, the provisions of Law No.08-09 on civil and administrative procedures give greater freedom to the parties directly or indirectly through arbitration regulations which serve to appoint the arbitrator(s), provide the conditions for their appointment, reasons for their dismissal and their replacement. Should the contracting parties be silent on the issue, the arbitrator has greater latitude in the task of determining the applicable regulations.

At the same time, an arbitration ruling pertaining to two foreign firms can only be effective if it is enforced, the prevailing principle in this area being that the execution of the sentence must be voluntary and the losing party being required to graciously accept the sanction imposed by the arbitrators. Often one party, without refusing to execute the sentence that condemns it, deems that it has to exercise the means of appeal authorized by the law before State jurisdictions first.

Under Algerian law, the judge has in principle the obligation of enforcing an arbitration ruling, whether it is in the case of an appeal brought before him (provided that the ruling was handed down in Algeria) or in the case of a request by the winning side to force the execution of the ruling, if the ruling was handed down abroad.

It is mainly with regard to the requirements posed by international public order, to the respect of the rights of the defense and the arbitrator's strict compliance with his mission that the Algerian judge assesses the validity of the ruling from the standpoint of Algerian judicial order. In the few cases of arbitration rulings brought to the attention of an Algerian judge over the past three years (which demonstrates that most arbitration rulings are voluntarily executed), the Algerian judge has adopted a resolutely favorable attitude towards international arbitration, by accepting to enforce foreign and international rulings, which in some cases condemned Algerian firms.

It is increasingly obvious that, with the influx of foreign investors, the jurisdictional clause represents what legal experts call a "determining clause," in other words, a clause whose acceptance by the parties determines the acceptance of all the other clauses of the contract. The very first clause that foreign firms negotiate with their Algerian partners is the arbitration clause. It is not, however, the choice of the method of dispute resolution that is being debated,

but rather the choice between institutional arbitration – where the parties abide by the prescriptions of an arbitration rule – and ad hoc arbitration, set up almost exclusively by the parties.

Moreover, whether the law applicable to the dispute is Algerian or foreign (the law in effect in the country of the foreign partner for instance) is of little importance. Paradoxically, the foreign partner accepts even more willingly the jurisdiction of Algerian law given the fact that it grants more protection to the interests of the seller (in a sales contract) or the contractor (in a job contract) than to those of the Algerian consumer or client. If Algerian partners insist that Algerian law be used, it is because of their deep knowledge of that law and also because Algerian law is usually the law prevailing where the contract is bound to be performed. However, Algerian law remains applicable in the case of the establishment of a shareholders or shareholders' agreement, since the created company will be subject systematically to the Algerian regulations and to avoid any contradictions with the Constitution established by an Algerian notary and duly published in the Official newspapers (BOAL).

CHAPTER 15

THE LEGAL REGIMES FOR HYDROCARBONS AND MINING

15.1 Hydrocarbons[65]

Promulgation of Act 05-07 had three (03) objectives:

- encourage investments in the hydrocarbon sector;
- reduce production costs by controlling operating costs;
- increase tax revenues in the mid-term.

The means implemented to achieve these objectives are:

- a reform of the legislative framework and
- a reform of the tax system and namely the introduction of a tax depreciation system distinct from the accounting depreciation system.

The foreign investor is considered fully subject to taxation in that as the entity legally and actually liable for tax, he is no longer subject to "withholding taxes" on income tax.

Within the framework of Law No.86-14, the tax on remuneration was withheld and then paid back by SONATRACH in the name and on behalf of its foreign partner, even though the latter is subject to taxation and is legally and actually liable for tax.

Also, within the framework of Law No.05-07 amended and supplemented, the foreign investor is required to liquidate and then pay back the taxes for which he is legally liable.

All investors, including SONATRACH, have the same tax status in that each investor is:

- subject to taxation;
- legally liable;
- actually liable, unless contractual provisions stipulate otherwise.

The year 2007 saw the adoption of several texts which further specify the application procedures for implementation of the law including Decree No.07-342, which establishes procedures for granting and the withdrawal of a concession of transport by pipeline, the Decree No.07-294 establishing procedures for granting permission for oil prospection and Decree No.07-297 establishing the procedures to obtain authorizations for construction works and pipeline transportation of hydrocarbons.

Published on the 20th of February 2013, the law 13-01, came in order to modify and complete the aforementioned law 05-07. The mentioned law has introduced new measures to improve

65 This issue is explored in greater detail in the KPMG Algeria's Hydrocarbon Guide, 2007.

the attractiveness of the national mining sector, in order to increase the exploitation effort and therefore highlight new reserves regarding conventional and unconventional hydrocarbons for ensuring the country's economic and social development.

One of the main measures concerns (i) the exclusivity of the national company SONATRACH SPA about the oil and gas pipeline transportation activities and (ii) ensuring priority for the needs of the local oil and gas market.

The law 13-01 provision, in this context, that "the national company Sonatrach SPA can exclusively acquire lands by transfer or expropriation in accordance with the legislation in force".

In addition to the above provisions, the measures introduced by law 13-01 are as follow:

The exclusivity granted to the national company " Sonatrach SPA " or one of its subsidiaries for the concession of pipeline transportation of oil and petroleum products;

The modification of the rights and benefits granted to contractors or owners of pipeline transportation concession;

The New Rules applicable to the transfer of rights and obligations of the contracting parties to transfer a part of their production;

Providing the facilities of conditions for conducting activities of prospecting, exploration and / or exploitation of hydrocarbons;

The introduction of new specific provisions to carry out research and the exploitation of unconventional hydrocarbons ;

Strengthening the involvement of the national company " Sonatrach SPA " in the performance of hydrocarbon research activities;

The introduction of provisions requiring obligation to get a partnership to the national company " Sonatrach SPA " to perform the hydrocarbon processing and refining activities ;

The revision of the methodology for determining the rate of TOR (Tax on Oil revenue) wich is now based on the profitability of the project instead of the turnover;

The introduction of tax incentives measures to encourage activities related to unconventional hydrocarbons, small oil deposit , deposits located in areas sparsely explored including offshore areas, fields with complex geology and / or lack of infrastructure;

The introduction of the additional income tax (ICR) for unconventional hydrocarbons ;

The possibility to operate unconventional hydrocarbons through an addendum of conventional oil contract.

Other decrees were published during 2014 that reinforce the terms of the provisions for hydrocarbons law including among other:

Executive Order 14-77, which defined the terms of the regulation of the principle of free access of third parties to transport infrastructure by pipeline of hydrocarbons;

- Executive Decree 14-94 which establishes the procedures for obtaining authorizations required for the construction of transmission facilities by pipeline of petroleum products and operations;
- Executive decree 14-138, which establishes the list and nature of operating costs allowed the deduction in determining the rate of tax on oil revenues (TOR)
- Executive decree 14-147, which sets the rules for calculating the amounts of provisional

monthly installments worth interim tax on oil revenues (TOR)

- Executive Decree 14-148 which sets the rules for calculating the additional income tax (ICR);
- Executive Decree 14-227 which defines the rules for determining and counting quantities of hydrocarbons subject to the fee and the fee payment methods;
- Executive Decree 14-228 which defines pricing and methodology for calculating the transmission tariff by pipeline of hydrocarbons;
- Executive decree 14-229, which establishes the list and nature of research and development investments to be considered in determining the allowable annual installments for the calculation of the basic tax on oil revenues (TOR) and parameters (Ii) for the purposes of calculating the tax rate on oil revenues (TOR)
- Executive Decree 14-06, which establishes the list of capital goods, services, materials and products exempt from value added tax (VAT), duties, taxes and charges relating to customs in research activities and / or exploitation, pipeline transportation of oil, gas liquefaction and separation of liquefied petroleum gas;

The finance Act for 2015 introduced the new definitions for:

- Natural gas or gas;
- Unconventional hydrocarbons;
- Tank.

Also, Executive Decree 15-282, which establishes the list of activities to be consolidated, the modalities for implementing the consolidation of results and the application of the reduced rate of additional income tax (I.C.R).

15.1.1 The legislative framework

The reform of the legislative framework included the redefinition of:

- the legal regime of exploration/production (upstream) activities and activities related to pipeline transportation, refining, transformation, marketing, storage, the distribution of oil products and the works and facilities necessary to conduct (downstream) these activities,
    - the institutional framework to conduct these activities,
    - the rights and obligations of the persons conducting these activities.
    - Law No.05-07, amended and supplemented, confirms a certain number of rights and obligations to which various operators involved in the hydrocarbon sector are subjected.
    - The activities conducted within the framework of Law No.05-07 amended and supplemented, are commercial acts and consequently the persons conducting those activities are considered to have the status of trader, regardless of their legal status.
    - The contracting party may benefit from:
- the acquisition of land and related rights (Ord. No. 01-10 of July 3, 2001);
- the acquisition of utilization rights of the maritime domain (Ord. No. 76-80 of October 23, 1976)
- expropriation (Act No. 91-11 of April 27, 1991)

However, such benefits were subject to change at the moment of the publication of the 13-01 law, referred to above. Then, the contractor may benefit from:

- The occupation of land and related rights;
- The constraints of access and passage and water easements.

From now on, the exclusivity to acquire land by transfer or exportation is attributed to the national company "Sonatrach Spa."

The foreign contracting party may go to arbitration, after attempting to reach an amicable settlement, as in the case of disputes against SONATRACH and ALNAFT.

Moreover, the reform of the legislative framework gave rise to the establishment of two (02) agencies, ALNAFT (Agence nationale pour la valorisation des ressources en hydrocarbure) ANRH (Agence nationale des ressources hydraulique), whose organization and duties are defined by Articles 12 to 18 of the Law.

ANRH is in charge of ensuring that the following are respected:

- the technical regulation applying to the activities covered by the law;
- the regulation pertaining to the transportation tariffs and the principle of free access to the transportation network;
- the specifications pertaining to the construction of transportation infrastructure;
- the application of the standards applying in this area;
- the review of applications to be awarded transport concession and issue recommendations to the minister.

ALNAFT is in charge of:

1. promoting investments in exploration / production activities;

2. issuing prospection authorizations;

3. conducting calls for tender and evaluating offers;

4. assigning exploration perimeters;

5. following up and controlling the execution of the exploration/production contracts;

6. setting and collecting royalties.

Under the terms of the law 13-01, mentioned above, as well as amendments to the finance Act for 2015, a new kind of hydrocarbons, so called the "unconventional hydrocarbons", was introduced.

The term «unconventional hydrocarbons» means existing hydrocarbons and products from a tank or a geological site occurring at least in one of the following characteristics or conditions:

- Compact -Tank whose permeability to the flow of the oil is less than or equal to 0.1 milli-Darcy, producing from highly deviated or horizontal wells (> 70° per respect to the vertical) with drains drilled in the target formation (producer) with a length of about 500 meters, and require the implementation of a multi-fracturing stimulation massive program to ensure hydrocarbon recovery rates as high as possible.
- Tank Compact that cannot produce that from horizontal wells or highly deviated (> 70° per respect to the vertical) with drains drilled in the target formation (producer) with a length of

about 500 meters, and require the implementation of a multi-fracturing stimulation massive program to ensure hydrocarbon recovery rates as high as possible.

- Geological -Training very low permeability (of the order of a hundred nanodarcies) containing rocks rich in organic matter levels mothers containing hydrocarbons which produce only horizontal wells or highly deviated (> 70 per respect to the vertical) massively stimulated with multiple fractures and the length of the drain drilled in the target formation (or producer) is of the order of 900 meters.
- Geological -Training containing hydrocarbons having viscosities greater than 1000 Centipoise or densities below 15° API (American Petroleum Institute).
- High pressure and high temperature reservoirs having one of the following conditions:
  - background pressure equal to or greater than 650 bars and background temperature greater than 150°C;
  - background temperature greater than 175°C.
- Deep underground veins of coal undeveloped or fully exploited containing coal gas or coal methane, also called "Coal Bed Methane" (CBM).

Coal gas or coal methane (CBM) is adsorbed at the heart of the solid matrix of coal in a process called "adsorption". This coal gas or coal methane is characterized by the use of unconventional means to extraction such as reduced pressure conditions.

During 2015, an executive decree was issued to define the terms and conditions of exercise of storage activities and / or distribution of petroleum products.

It is stipulated that the exercise of these activities is subject to the prior registration in the trade register, subject to prior agreement, issued by the Minister of mining and hydrocarbons, after consulting the regulatory authority of hydrocarbons.

Obtaining prior approval is subject to:

- subscribing of the specifications (model annexed to the decree);
- The presentation of a file (consisting of the documents listed in the Annex to this Decree).

For the effective exercise of these activities, a final approval issued by the Minister in charge of hydrocarbons should be obtained, after consulting the regulatory authority of hydrocarbons.

The final approval is issued at the end of a procedure, detailed in the decree, particularly in terms of required documents and the response time.

Also, any transfer, assignment, extension or modification of aforementioned items should be subject to a declaration notified to the direction of energy related to the place of performance of the activity, within thirty (30) days prior to this modification.

A suspension decision is addressed to the holder of the final agreement within thirty (30) days after notice by way of provisional measures when the established conditions and obligations are not respected.

There shall be a permanent withdrawal of the final approval after notification of the hydrocarbons regulator in one of the two following cases:

- The holder of the final approval is not remedied within a period not exceeding three (3) months to failures giving rise to the suspension;

- It's been a serious failure, including hygiene, security of persons and facilities and quality of petroleum products.

15.1.2 The tax system

15.1.2.1 The upstream (exploration and/or exploitation activities) tax system

Oil companies, whose activities include the exploration and/or exploitation of hydrocarbons, are covered by the tax regime of the amended Law No.05-07.

Therefore, the companies are subject to:

- A surface tax, oil royalties, a tax on petroleum revenues, an additional tax on income, a flaring tax, a property tax, a specific tax on water, a fee on the transfer of ownership interests (farm in, farm out), a specific tax on CO^2 emissions.

Other taxes have been introduced by Law 13-01 including those related to unconventional hydrocarbon system, which are:

- The royalties applicable to non-conventional hydrocarbons;
- Tax on oil revenues for unconventional hydrocarbons;
- The additional tax result for unconventional hydrocarbons.

15.1.2.1.1 The surface tax

The surface tax is an annual tax. It is owed by the operator who liquidates and pays this tax.

The surface tax is a non-deductible charge from a tax standpoint. It is calculated on the basis of the size of the perimeter as soon as the contract becomes effective.

It may be paid in dinars or in dollars.

The amount of the due tax is indexed annually (on 1 January of each year) and then the actual amount due is updated at the time of payment according to the following formula:

(TCHmvn-1) (M /80)

- TCHmvn-1= average exchange rate, upon sale, of the US dollar, in December of each year.
- M = amount of the date set according to the scale of the chart below.

The tax is collected according to the following scale:

YEARS	PERIOD OF EXPLORATION			WITHHOLDING PERIOD AND EXCEPTIONAL PERIOD	PERIOD OF EXPLOITATION
	01 TO 03 YEARS	04 TO 05 YEARS	06 TO 07 YEARS		
ZONE A	4.000,00	6.000,00	8.000,00	400.000,00	16.000,00
ZONE B	4.800,00	8.000,00	12.000,00	560.000,00	24.000,00
ZONE C	6.000,00	10.000,00	14.000,00	720.000,00	28.000,00
ZONE D	8.000,00	12.000,00	16.000,00	800.000,00	32.000,00

15.1.2.1.2 Oil royalties

The royalty is an annual fee is paid monthly in cash or in kind pursuant to the provisions of the contract.

The quantity of oil corresponding to the nature fee is determined by the National Agency for the Development of Hydrocarbon Resources (ALNAFT) on the basis of the royalty in cash.

The royalty in cash is determined from the value of production at the perimeter, calculated in accordance with Articles 90 and 91 of Law No. 05-07, mentioned above, and the royalty rate specified in the contract.

Said quantity corresponding to the royalty in kind, as determined above, are given to the national company Sonatrach-SPA, which must be paid to the National Agency for the Development of Hydrocarbon Resources (ALNAFT), the amount of the royalty in cash corresponding to said quantity.

An agreement is concluded between the National Agency for the Development of Hydrocarbon Resources (ALNAFT) and the national company Sonatrach SPA to define the practical arrangements relating to the assumption by the national company Sonatrach SPA quantities hydrocarbons corresponding to the in kind royalty.

Royalties are deductible from the Additional Tax on Income (Impôt complémentaire sur le revenu, ICR) assessment base and are considered to be a deductible charge.

Installments are paid monthly by the operator without the issuing of a warning. The liquidation process is conducted at the end of the fiscal year, before the annual return is filed. The liquidation balance is paid by the operator.

Excess payments represent tax credits to be applied to the installments of the next fiscal year.

- Level of production < 100,000 boe / day

ZONES	A	B	C	D
0 to 20,000 boe/day	5.50%	8.00%	11.00%	12.50%
20,001 to 50,000 boe/day	10.50%	13.00%	16.00%	20.00%
50,001 to 100,000 boe/day	15.50%	18.00%	20.00%	23.00%

- Level of production > 100,000 boe / day

ZONES	A	B	C	D
> 100,000 boe/day	12.00%	14.50%	11.00%	20.00%

For quantities of unconventional hydrocarbons come from a perimeter of exploitation the applicable royalties rate for the full is set at 5%.

15.1.2.1.3 Tax on oil revenues (TOR)

Tax on revenues is a tax on the revenues derived from hydrocarbon exploitation activities.

It is an annual tax paid in monthly installments. It is liquidated and paid by the person legally liable without warning. The assessment basis for the TOR is made up of the cumulative value of the annual productions, minus legally deductible charges.

The deductible expenses consist of:

- Royalty;
- Annual installment investment tranches approved in the annual budgets. The annuity of amortization relating to these investments is corrected by the UP LIFT coefficient;
- The annual tranches of research investments, corrected by the UP LIFT coefficient;
- Provisions for abandonment and / or restoration;
- Training costs for human resources, Object of the law;
- Cost of gas purchase, for assisted recovery.

The UP LIFT coefficients are as follows:

ZONES	**A and B**	**C and D**	**RECUP/ASSISTEE**
AMORTIZATION RATE	20%	12,5%	20%
UP LIFT RATE	15%	20%	20%

In addition, the TOR is considered as deductible cost and is therefore deductible from the ICR tax base.

The TOR is payable in twelve (12) monthly installments. It is wound up and the balance reversed, without notification, before the filing of the annual declaration.

In case of delay, the sums due are increased by a delay penalty of 1%.

Law 13-01 introduced a new methodology for the calculation of the tax on oil revenue based on the profitability of the project.

For the calculation of the TOR relating to the operating area relating to hydrocarbon research and exploitation contracts, the coefficients R1 and R2 have been introduced and are defined as follows:

- For a given calendar year, the R1 coefficient is equal to the ratio of accumulated gross realized profits (PBI (10%)) from the year the contract's entered into force to the year preceding the determination of the TOR on cumulative (ii) (10%), from the year the contract entered into force to the year prior to the TOR determination year,
- For a given calendar year, the R2 coefficient is equal to the ratio of accumulated gross realized profits (PBI (20%)), from the year of the contract's entry into force until the financial year preceding the determination year of the TOR on cumulative (LI) (20%), from the contract entered into force to the year prior to the TOR determination year.

It should be noted that this revision of the methodology for determining the TOR rate is now based on the profitability of the project instead of the turnover.

Depending on the values of the coefficients R1 and R2, the rates set out in the following table are applied:

TRP RATE	**CASE 1**	**CASE 2**	**CASE3**
R1<1	20%	30%	20%
R1>1 et R2<1	20% +50% *R2	30% +40% *R2	20% +50% *R2
R2 >1	70%	70%	70%

CASE 1: all operating area except the perimeters of case 3 defined below whose maximum daily production is less than 50 000 bep.

CASE 2: all operating area except the perimeters of case 3 defined below whose maximum daily production is greater than or equal to 50 000 bep

CASE 3: all operating perimeter located in areas with very little exploration, complex geology and / or lack of infrastructure.

In case of unconventional hydrocarbons, the calculation of the TOR is made as follows:

- This calculation introduces the coefficients R1 and R2 already mentioned above, the calculation is as follows:
- If the coefficient R1 is less than or equal to 1, the rate of the TOR is equal to 10%,
- If the coefficient R1 is greater than 1 and the coefficient R2 is less than 1, it is equal to 10% + 30% + R2,
- If the coefficient R2 is equal or greater than 1, it is equal to 40%.

15.1.2.1.4 The Additional Tax on Income

The additional tax on income (Impôt complémentaire sur le revenu, ICR) is liquidated under the terms and conditions of ordinary law.

The ICR rate is 30% (initially in Law No.05-07, before it was amended, the ICR rate was indexed to the IBS rate).

Late payment penalties of 1 ‰ per day are added to the sums due.

The practical terms and conditions of the liquidation and payment of the ICR are defined by regulatory text.

However, any person part of unconventional hydrocarbons contract is subject to an ICR rate fixed at 19%, under the conditions in effect at the date of payment.

The related rate is applicable as long as the coefficient R2 is less than 1. When this last coefficient R2 is equal or greater than 1, the ICR rate applicable is set at 80%.

The method of calculating the ICR and the deductible and non-deductible expenses are defined by Executive Decree No. 14-148 of 30 April 2014.

Executive Decree No. 15-282 introduced the modalities for the implementation of the consolidation of results and the application of the reduced rate of additional income tax (I.C.R) for a list of activities that could be consolidated.

15.1.2.1.5 Tax on flaring

The gas flaring is prohibited.

ALNAFT may grant exceptional authorizations for limited periods.

Under those conditions, the operator, benefiting from the authorization, must pay a non-deductible tax of eight thousand (8,000,00 DA) per thousand normal cubic meter (nm^3) to Flared gas.

Are exempted to such specific tax, the quantities of gas flared during the compliance period referred to in article 109, and the quantities of gas flared during the search period during the exploration and / or delineation well testing operations.

Are also exempted to such specific tax, the quantities of gas flared during the start-up period of the installations for periods not exceeding the thresholds set by (ALNAFT).

Likewise, the use of water sourced from public property for the purpose of enhanced recovery is subject to the payment of a royalty of eighty (80,00 DZD) per m^3.

This tax is not considered deductible.

15.1.2.1.6 Property tax

The property tax is liquidated and paid according to the provisions of ordinary law.

15.1.2.1.7 Tax on ownership interest transfers

The transfer of ownership rights in an exploration contract or in an exploration / production contract or a production contract is taxed at the flat rate of 1%.

The taxable base is the value of the transfer. The said tax is not deductible.

15.1.2.1.8 Exemptions

The exploitation and/or exploitation activities benefit from exemptions on:

- value-added tax (VAT),
- customs duties.
- The equipment and services benefiting from VAT and customs duties exemptions are those appearing on a list drawn up by regulatory text.
- In addition, these activities are exempt from:
- VAT,
- any tax on the performance related to those activities and collected on behalf of the State, territorial communities and any public company.

Note: the 2011 Finance Law (art 28) extends the exemption of value added tax on goods, services, and works devoted to the construction of refining infrastructures purchased or constructed by the Sonatrach company or those purchased or constructed on its behalf, as well as associated oil companies and their subcontracting entrepreneurs operating in the sector.

15.1.2.1.9 Legal and fiscal regime governed by Law No. 86-14 of 19 August 1986 for association contracts

The rights and obligations of the foreign partner under contracts signed under the Law No. 86-14 remain unchanged, including taxes on the profits from production of foreign partners.

This tax, established by Ordinance No. 2006-10 of 29 July 2006 and whose rate varies from 5 to 50%, is due when the average price of crude is over 30 USD per barrel.

The tax rate depends on price levels, production levels for a given deposit and the remuneration arrangement stipulated in the contract.

15.1.2.2 Downstream fiscal regime (gas pipeline transportation, liquefaction and transformation)

Downstream activities are taxed at the rate of 23% on corporate income (IBS) and at the rate of 2% on sales (Tax on Business Activities - TAP).

Consequently, downstream activities are excluded by Law No. 05-07 from the tax regime pertaining to upstream activities. They are covered by the ordinary tax system.

Those activities benefit from VAT and customs duties exemptions however.

In addition, and as per the 05-07 Act, exemptions on social security contributions on the salaries of the employees of foreign oil companies are made when those employees continue to be covered by the social security organization that covered them before their arrival in Algeria.

15.2 The mining system

15.2.1 Mining

Law No. 01-10 of July 3, 2001 was abrogated and replaced by Law No. 14-05 relating to the Mining Act.

The provisions of this Act apply to geological infrastructure, research and exploitation of mineral or fossil substancesexcept of water, deposits of oil and gas and shale oil and gas fuels.

Mining activities are considered as commercial acts and may be exercised only pursuant to a mining license.

Mining research comprises two phases: a prospecting phase and an exploration phase

The exploration phase:

The mining exploration activity is an operation defined according to the extent of the survey area (tactical exploration on small areas and strategic exploration over large areas) and the nature of the desired mineralization (specialized prospecting or searching for clues of a specific mineral exploration and versatile or clues of several minerals).

It consists of topographic examination, geological, geophysical, location scouting and other specialized research of mineral showings located on the surface to determine the mineralogical and geological attributes of a field.

The exploration phase:

The mining exploration activity is the execution of geological and geophysical studies of the structures and the underground geology, excavation assessment work, boring and drilling, definition and analysis of textural criteria makers, mineralogical, physical and chemical, mineral processing testing, definition of the upgrading process, the development of the study of technical and economic feasibility of the development and exploitation of the deposit, including the detailed timetable of work to be done, taking into account the environment as well as aspects of the post-mining.

The operator must provide proof of technical and financial capacity to carry out the research and mining.

There shall be two national agencies with legal personality and financial autonomy called "mining Agencies"

- an agency for managing geological infrastructure called : Agency Geological Survey of Algeria "ASGA";

- an agency for the management of mining assets and control of the designated mining activities called: National Agency of mining "ANAM".

15.2.2 Assignment of mining claims for mining research

For exploration:

- The mineral exploration license is issued to the applicant for the realization of a tactical or strategic exploration program to search for a specific mineral or to search for clues of several minerals.
- The permit is issued after payment of the right of establishment act.
- The permit may not exceed one (1) year. The licensee may request a maximum of two (2) extensions of six (6) months each, provided they have complied with the obligations under the exploration license for the previous period.

It gives the holder the right to access the authorized scope, to carry out geological reconnaissance and all work of investigation and exploration mining area, but does not confer any right to carry out work which may harm the interests the owner of the land, the actual rights holder or assigns.

For mining exploitation:

Mining exploration cannot be carried out pursuant to a mining exploration licenses.

The duration of an exploration license may not exceed three (3) years. The holder may request the maximum of two (2) extensions of two (2) years at most each.

Renewal may be granted if the license holder has met all its obligations and it offers in its extension request a work program adapted to the results of the previous period, representing a financial effort deemed sufficient by ANAM.

15.2.3 Tax advantages granted

The investments relating to the exploitation mining including those for the creation, expansion capabilities, rehabilitation or reorganization, are subject to the provisions of the laws and regulations relating to the development of investment.

Exemptions are granted for:

- Exemption for (VAT) relating to good, materials and products, to be directly and permanently assigned to the activities of the mining license holders themselves or on their behalf;
- Exemption for (VAT) on the services, including studies and other leasing operations carried out by the mining license holders themselves or on their behalf;
- Exemption from duties, taxes and customs duties, on imports of goods, materials and products to be assigned and used directly and permanently to activities of mining license holders themselves or on their behalf;

The list of goods, services, materials and products for the realization of the above mentioned activities enjoying exemption shall be determined by regulation.

CHAPTER 16

THE ELECTRICITY AND GAS ACT

Act No. 02-01 of February 5, 2002 pertaining to electricity and the distribution of gas by pipelines aims to establish the rules applying to activities linked to the production, transportation, distribution and marketing of gas.

The distribution of electricity and gas is a public service. However, the legislator lays down the general principle of free competition for activities linked to the production of electricity.

In order to guarantee the effectiveness of the various methods for managing the production, transportation, distribution and marketing of electricity and gas, the Commission de régulation de l'électricité et du gaz (CREG) was created to regulate electricity and gas, which is an independent organization endowed with a legal personality and financial autonomy.

The commission's fundamental mission is to ensure that the electricity market and the national gas market function in a competitive and transparent manner in the interest of both consumers and operators.

Foreign operators should pay special attention to those provisions in the law that deal with their participation in the share capital of public entities in charge of various activities linked to electricity and gas.

First, Sonelgaz, which had the status of a state-owned industrial and commercial enterprise until the law was promulgated, is transformed into a joint-stock holding company. The State remains the majority shareholder.

The capital of Sonelgaz SPA's subsidiaries is open to partnerships, as well as to scattered private shareholding or to both, in addition to employee stock ownership.

It is worth recalling that the essential pillars of the normative system of 2003 are as follows:

- the separation of electricity production, electricity transportation and gas transportation activities under legally independent and specific subsidiaries having their own assets,
- the subsidiarization of distribution activities and the implementation of the concession regime,
- the designation of clients capable of sourcing from the producer according to a level of consumption determined by regulation and set to gradually decrease,
- third-party access to the network.

The implementation of a regime assumes:

- a supply spread between electricity producers independent from one another;
- several clients (distributors, commercial agents, etc.);
- the existence of a system operator and a market operator;
- a strict regulation able to both guarantee reasonable rates and estimate costs for the regulated activities.

CHAPTER 17

TELECOMMUNICATIONS REGULATIONS

Three operators are now involved in the telecommunications sector: Algérie Télécoms (AT), the incumbent public operator, and two private operators, Orascom Algérie (OTA) and El-Watania Télécom Algérie (WTA) «OOREDOO».

Since 2004, following major investments primarily made to modernize its GSM network; AT has managed to perform a satisfactory service upgrade.

Pursuant to the 2009 Finance Law, a new tax for prepaid mobile phones was introduced. The tax is applicable to prepaid charges. It is due monthly by the mobile operators irrespective of the charging mode.

The tax rate is set at 5%. It applies to the monthly charging amount. The tax is paid by the operators involved in regional tax collector within the first twenty (20) days of the month. The aforementioned tax is applicable to the monthly sales amount of the mobile phone operators. The tax is recovered as direct taxes. The payment is due monthly, either on the income taxes and duties paid in cash or by withholding tax, mode "serie G No.50," at the collector of the Directorate of Large scale Enterprises (Direction des grandes enterprises, DGE)[66].

With regard to Internet connections, there were 9,816,143 ADSL accounts as of the end of November 2014, The balance of the deployment of 3G operators to December 27, 2014[67] is as follows:

- ATM covers 25 Wilayas;
- WTA covers 25 wilayas;
- OTA covers 20 Wilayas.

39 Wilayas are now covered by at least one operator;

- 17 Wilayas are currently covered simultaneously by two operators;
- 10 Wilayas are currently covered simultaneously by the three operators;

Law No. 2000-03 of August 5, 2000 which set the rules pertaining to postal services and telecommunications created an "independent regulatory body endowed with a legal personality and financial autonomy."

The twenty or so tasks assigned to this institution essentially include:

- Ensuring effective and fair competition in the telecommunications market
- Ensuring that telecommunications infrastructures are shared.

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66 See Inter-Ministerial Order of 1st April 2010 fixing the terms of application of this tax provisions established by the Suppl - mentary Finance Law for 2009.

67 Source Rapport « autorité de régulation de la poste et des télécommunications dossier de presse 27 Décembre 2014 »

- Granting authorizations to operate.
- Ruling in disputes pertaining to interconnections.
- Mediating disputes pitting operators against one another or against users.

In addition, the Post and Telecommunications Regulatory Authority (ARPT) is asked by the minister in charge of postal services and telecommunications to:

- prepare any proposed regulatory texts pertaining to the post and telecommunications sector;
- Prepare the specifications.

In addition, the Regulatory Authority gives its opinion on:

- all matters pertaining to postal services and telecommunications;
- establishing maximum tariffs for universal post and telecommunications services;
- the adoption of regulations pertaining to post and telecommunications;
- the development strategies for the post and telecommunications sectors.

Finally, the Postal Services and Telecommunications Regulatory Authority (ARPT) is empowered to:

- formulate any recommendation to the competent authority;
- propose the amounts of the contributions to finance universal service obligations;
- conduct any verification required as part of its duties, in conformity with the specifications.

Two other points should be noted here with regard to the operation of the Regulatory Authority according to the rule of law. First, by virtue of Article 17 of the afore-mentioned law: "Decisions rendered by the Council of the Regulatory Authority may be appealed before the State Council within one month after notification."

Secondly, to ensure respect for market competition and protect users and consumers, the Competition Council may be petitioned with regard to practices involving the telecommunications sector, in which case, the council must send a copy of the file to the regulatory authority asking for an opinion. That obligation comes from the general principle laid down by the legislator, which is that "the Competition Council shall develop relations based on cooperation, consultation and exchanges of information with the regulatory authorities."

Competition has increased over the past few years among the three mobile phone carriers, namely, Watanyia Telecom Algérie "OOREDOO", Mobilis and DJEZZY. The prefixes (05), (06) and (07) each include a block of 10 million numbers.

After Djezzy used up all available numbers, the ARPT granted the carrier a new prefix (09), which Djezzy does not use exclusively as it is also used by Mobilis. OTA protested the ARPT's decision, claiming that it created some confusion in the minds of subscribers; to which the ARPT answered that it was the scarcity of available numbers that forced it to adopt the measure. To solve that problem and allow the three carriers to increase the number of subscriptions, the ARPT decided to introduce an extra digit in mobile telephone numbers. The change took place on February 22, 2008.

Moreover, number portability is still not in effect in Algeria: the number is neither the subscriber's nor the operator's property, it belongs to the State, which awards blocks of numbers to operators who then put them at the disposal of their subscribers.

Note that for security reasons during 2008, the ARPT through decision 11/SP/PC/ARPT conducted an extensive customer identification operation for holders of prepaid cards to establish a database on each operator.

CHAPTER 18

INSURANCE

The insurance sector[68] has evolved in three stages since the country's independence (1962).

The first stage took place just after Independence and was characterized by the takeover of the existing insurance companies, which fell under the control of the Ministry of Finance, and by the introduction of the principle that risks incurred in Algeria can only be insured by accredited organizations.

A second stage saw the establishment of a State monopoly, which translated into the nationalization of existing insurance companies and the creation of certain companies, such as the Central Company for Reinsurance (Centrale de réassurance, CCR), and the introduction of mutual insurance with the creation of the National Agricultural Mutual Fund (Caisse Nationale de la Mutualité Agricole, CNMA) .

The third and last stage was characterized by the liberalization of the insurance sector, which was essentially sanctioned by the promulgation of Ordinance No. 95-07 of January 25, 1995 pertaining to insurance. Insurance market activities are open to private investments.

Finally, the dispute between Algeria and France, which originated in 1966, at the time of the creation of the state monopoly on the insurance business, was amicably resolved in 2008 following a Franco-Algerian agreement. Now the French insurance companies which have signed the Convention are deemed to have reconciled their accounts (settled their debts) and are therefore fully accredited to conduct insurance operations in Algeria. They are also deemed to have discharged all liabilities, their management and transfer, including tax on insurance operations and real estate assets, in Algeria.

18.1 Configuration of the Algerian insurance sector

There are currently 24 public or private insurance companies in the Algerian insurance sector (see the list of companies below).

These companies are organized in the form of joint stock companies (JSC) or mutual benefit associations.

Insurance companies market approximately 100 insurance products in the various insurance and reinsurance categories.

The 24 companies on the Algerian market generated an annual turnover of 460 million euros in 2006 and close to 538 million euros (+16%) in 2007.

Pursuant to laws governing the revaluation of fixed assets, certain companies benefited, in 2007 from an increase in equity following the incorporation of a revaluation adjustment, which resulted in a significant improvement in the solvency margins of these companies and the market as a whole.

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68 For a detailed study of the sector, see KPMG Algeria's "Insurance Guide".

Insurance companies are represented in a professional organization called "UAR" (Union des assureurs et réassureurs / Union of Insurers and Reinsurers).

Insurance products are distributed through a network made up of 797 insurance intermediaries, including general agents and 28 brokers against 1024 direct agencies. In 2015 the list of approved brokers is expanding the number of 35 active brokers and 26 accredited foreign reinsurance brokers..

General insurance agents (Agents Généraux des assurances, AGA), considered "insurance" intermediaries linked by a representative's contract, are assigned by one or more companies and belong to an association.

As for brokers, the profession is considered a commercial activity, and as such is subject to registration with the Commerce Register. Plans to create a professional association in this category are currently being formalized.

The activities of these various economic actors take place within the framework of a National Insurance Council (CNA), chaired by the Finance Minister.

The assignments of this organization concern all aspects pertaining to the situation, organization and development of insurance and reinsurance activities.

Within the council, four commissions are given the responsibility of examining the accreditation application of insurance companies and brokers.

18.2 The legislative framework and qualifying conditions for accreditation

18.2.1 Legislative Framework

The funding text is the Ordinance 95-07 of January 25, 1995 pertaining to insurance (Official Gazette No. 65 of March 8, 1995) modified and completed by Ordinance No.06-04 of February 20, 2006, the 2007 Finance Law, by Supplementary Finance Laws for 2008 and for 2010, as well as by the 2011 Finance Law. In addition to the Ordinance pertaining to insurance, the following application texts are added:

- Executive Decree No. 95-344 of October 30, 1995 pertaining to the legal capital requirements of insurance companies (Official Gazette No. 65 of October 31, 1995), amended and supplemented,
- Executive Decree No. 96-267 of August 3, 1996 setting the terms and qualifying conditions for accreditation of the insurance and reinsurance companies (Official Gazette No. 47 of July 7, 1996),
- Order of January 28, 2007 setting the terms and conditions for opening the sales offices of insurance and/or reinsurance companies (Official Gazette No. 20 of March 25, 2007),
- Executive Decree No. 07-152 of May 22, 2007, amending and completing executive Decree No. 96-267 of August 3, 1996 setting the terms and conditions for granting accreditations to insurance and/or reinsurance (Official Gazette No. 35 of May 23, 2007),
- Executive Decree No. 07-153 of May 22, 2007, setting the terms and conditions for the distribution of insurance products by banks, financial institutions and equivalents, and other distribution networks (Official Gazette No. 35 of May 23, 2007),
- Order of August 6, 2007, establishing which insurance products can be distributed by banks, financial institutions and equivalents, as well as the maximum levels of the distribution commission (Official Gazette of No. 59 of September 23, 2007),

- Order of February 20, 2008 establishing the participation rate of banks and financial institutions in the share capital of an insurance and/or reinsurance company,
- Order of February 20, 2008 establishing the conditions for opening branches of foreign insurance companies,
- Executive Decree No. 09-13 of January 11, 2009 establishing the status of corporate-type mutual insurance,
- Executive Decree No. 09-111 of 7 April 2009 laying down detailed rules for the organization and operation and financial conditions of the guarantee fund provided,
- Executive Decree No. 09-375 of 16 November 2009 amending and supplementing Decree No. 95-344 of the Executive Decree of 30 October 1995 concerning the minimum capital of insurance companies.
- Order of October 20, 2009 laying down the annual rate of subscription of insurance companies and/or reinsurance, and branches of foreign companies agreed at the guarantee fund of insurance, as well as the methods of payment and recovering delay.
- Decree of 8 October 2013 fixing the procedure for the calculation of the cash surrender value "life insurance"
- Decree of 8 October 2013 fixing the applicable mortality tables and the guaranteed minimum rate for personal insurance contracts;
- Decree of 8 October 2013 defining the content and form of notices of information about the people and capitalization insurance policy;

18.2.2 The qualifying conditions for accreditation

1) incorporation under Algerian law in the form of a joint stock company (JSC) or in the form of a mutual benefit association,

2) the exclusive performance of the insurance operations defined in the accreditation,

3) companies are required to choose a branch of insurance – either life or property/casualty (non-life) insurance (articles 203, 204 and 204 bis of Ordinance 95/07, amended and supplemented).

4) the sound moral character and professional qualifications of the principal managers of the company,

5) the establishment of share capital or a establishment fund in the case of mutual benefit associations with a minimum, excluding contributions in kind (82 These amounts are those resulting from the Executive Decree No. 09-375 of 16 November 2009):

- One (1) billion DZD for Joint Stock Companies (JSC) performing and health insurance and capitalization operations;- Two (2) billion DZD for Joint Stock Companies (JSC) dealing with casualty insurance;
- Five (5) billion DZD for Joint Stock Companies (JSC) working exclusively in reinsurance (83 Imports of services performed under the reinsurance transactions are exempt from tax debit of 3% on imports of services as laid down in the supplementary finance law for 2009 (Section 62 Finance Act 2012).;
- Six hundred (600) million DZD for companies engaged in the mutual-type companies for personal insurance and capitalization operations;
- One (1) billion DZD for mutual-type companies engaged in damage insurance.

Existing companies will have to comply within one year after the publication of the Decree in the Official Journal, (in this case, in the Official Gazette No. 67 dated 19 November 2009).

The accreditation application must be filed with the Insurance Department of the Ministry of Finance and requires the favorable opinion of the accreditation commission created within the National Insurance Council.

The accreditation is granted on the basis of the elements in the application that make it possible to assess the feasibility and solvency of the company.

The accreditation is issued by order of the minister in charge of finance and is published in the Official Gazette.

The refusal to grant accreditation, addressed to the applicant, must be accompanied by a decree duly outlining the rationale for the decision and may be appealed before the State Council.

18.3 Reforms and development prospects

18.3.1 The system put in place by Act No. 06-04

The objective reasons leading the public authorities to make substantial changes to Ordinance of January 25, 1995 were, primarily:

- the insurance sector's nominal contribution to the GDP (only 0.60%),
- the market's lack of transparency,
- competition almost exclusively limited to the amount of premiums,
- insufficient supervision by the public authorities,
- the limited scope of the insurance portfolios,
- the low level of professionalization among insurance agents,
- the need the further liberalize the market.

The National Insurance Council has sought to impose three necessary items since 2005:

- real market growth by stimulating activity within the sector,
- financial security and better corporate governance,
- a more sophisticated supervision of the market.

The main issues on which the debate between the public authorities and members of the industry centered throughout 2005 may be summed up as follows:

- the specialization of foreign firms in a specific product (life insurance for instance),
- transparency upon creating an insurance company (namely full payment of capital),
- the role of the insurance market regulatory authority (namely with regard to the origin of the funds used to establish the firm),
- the level of the stakes that banking institutions have in the capital of insurance companies,
- the terms and conditions for appointing the administrators of insurance companies,
- the need to designate a provisional administrator to look after the interests of the insured,
- the need to maintain funds to guarantee liabilities,
- the establishment of a regulatory authority to supervise the insurance sector, which would be given a specific status and would be financially independent,

Eleven years after Ordinance No. 95-07 of January 25, 1995 took effect, lawmakers decided to give the insurance market quantitative and qualitative impetus, to frame it in a way that complies with market economy principles and to significantly increase the supply of insurance in order to face the risks associated with the development of commercial activities. The most striking aspect of the new legislation is the strengthening of the institutional components, through the organizations responsible for regulating and framing the insurance market.

First, there is the establishment of a central risk checking body whose primary purpose is to centralize information that insurance companies and the branches of foreign insurance companies must provide. Then there is the Insurance Supervision Commission (Commission de supervision des assurances, CSA), whose role is to make sure that insurance companies and the branches of foreign insurance companies abide by the legislative and regulatory provisions, as well as ensure that those corporations are able to honor their commitments to the insured, and finally to verify the information regarding the origins of the funds used to create or increase the capital of the insurance and/or reinsurance company.

The commission is assisted by accredited insurance inspectors. These inspectors have the authority to verify documents and conduct on-the-spot verifications of all operations connected to insurance and/or reinsurance activities. The role of the Insurance Supervision Commission intervenes when an insurance and/or reinsurance company's management threatens to jeopardize the interests of the insured. To this effect, the Commission may resort to three types of measures:

- restrict the activities of the company in one or more segments,
- restrict or prohibit the firm from freely disposing of a portion of its capital until remedial measures have been implemented,
- designate a temporary administration empowered to request an expert assessment of all or part of the assets or liabilities linked to the insurance and/or reinsurance company's commitments as well as of the branches of foreign insurance companies.

18.3.2 The primary role of the Finance Minister

The minister grants accreditations allowing insurance and/or reinsurance companies to open sales offices in Algeria. Moreover, the opening in Algeria of branches of foreign insurance companies is subject to compliance with the principle of reciprocity. The minister also grants accreditation to an association of professional insurers incorporated under Algerian law, which foreign insurance and/or reinsurance companies are required to join. Likewise accreditation to a professional association of general agents and brokers comes from the minister, as does the discretionary power to decide which documents insurance and/or reinsurance companies must provide the CSA. The same goes for insurance brokers.

18.3.3 The legal provisions on insurance

In 2009, the legislature continued to develop the legal framework for the insurance sector:

1) Executive Decree No. 09-13 of January 11, 2009 establishing the status of corporate-type mutual insurance has come to indicate the mandatory provisions contained in the articles of mutual insurance companies. They contain provisions relating to admission, resignation, exclusion and deregistration of members.

2) Executive Decree No. 09-111 of 7 April 2009 laying down detailed rules for the organization and operation and financial conditions of the guarantee fund for the insured, complementing Article 213 bis of the Ordinance No. 95-07, as amended and supplemented. The guarantee fund of the insured (GTF) mission is to bear all or part of debts relating to insurance contracts of an insolvent insurance company, where the latter's assets are insufficient. It is applicable upon referral to the Insurance Supervisory Commission and after a reasoned report of the trustee administrator noting the lack of assets has been issued.

3) Executive Decree No. 09-375 of 16 November 2009 amending and supplementing Decree No. 95-344 of the Executive 30 October 1995 concerning the minimum capital of insurance companies fixing the share capital increase of insurance companies and ensuring the compliance of existing companies.

4) The Decree of October 28, 2009 laying down annual rate of contribution, at the guarantee fund, of accredited insurance and/or reinsurance companies and of accredited branches of foreign companies, as well as the terms of its reversal and the time limit of its payment. The annual rate of contributions of the abovementioned companies is fixed to 0.25% of the insurance premiums, net of cancellations, fixed at December 31 of the fiscal year preceding the fiscal year considered. Contributions must be transferred to the account, open for this purpose by the guarantee fund of insurance and recovered, at the latest, on September 30, of the fiscal year considered.

In 2010, according the Supplementary financial law for 2010, the foreign brokers of reinsurance cannot participate to treaties or transfers of reinsurance of accredited insurance and\or reinsurance companies and accredited branches of foreign insurance companies in Algeria except after the obtaining a permit to exercise the activity of insurance on the insurances Algerian market issued by Insurance Supervision Commission (Commission de Supervision des Assurances) and approved by executive decree (article 204 new Ordinance No.95-07 of January 25, pertaining to insurance).

Foreign reinsurance brokers who obtained a license from Insurance Supervision Commission are listed by the same Commission on a list delivered to accredited insurance and/or reinsurance companies, and to accredited branches of foreign insurance companies in Algeria.

In 2011, according to 2011 Finance Law, amending and supplementing the tax procedure Code, insurance or reinsurance companies, the insurance brokers, as well as any organism usually exercising activities of movable or real estate insurances, are obliged to deliver, quarterly, to tax authorities, a statement of insurance policies contracted at their agencies by individual and legal entities and by administrations.

The listing is transmitted, via computerized or electronic medium, within the first 20 days of the quarter in question. Any derogation to this provisions is punished by a tax penalty stipulated by article 192-2 of the Direct assimilated tax Code, as many times as insurance contracts/policies haven't been declared.

18.4 Insurance company structures and operations

There are two types of insurance and/or reinsurance companies:

- those that make commitments whose implementations depend on policyholders,
- those that make commitments of another type.

Insurance and/or reinsurance companies must have capital or minimum initial capital whose amount is set by regulation. The amount is fully paid up in cash upon subscription. A security deposit at least equal to the minimum capital requirements is required to establish the branches of foreign firms as the case may be. Insurance and/or reinsurance companies must publish their balance sheet and income statement every year sixty (60) days after their approval by the company's managerial body at the latest in at least two national daily newspapers, one of which must be in Arabic.

Any stake in the capital of an insurance and/or reinsurance company exceeding 20% is subject to the authorization of the CSA. The same applies when the stake exceeds 20% of the insurance and/or reinsurance's shareholder equity. As for the maximum stake of a bank or a financial institution in the capital of an insurance and/or reinsurance company, it is set by the Finance Minister. The insurance and / or reinsurance undertakings and foreign insurance branches should at any time be able to justify the evaluation of regulated commitments they are required to provide pursuant to the provisions of Ordinance No. 95-07 amended and supplemented by the supplementary Finance Act for 2011.

18.5 Sanctions applying to insurance and/or reinsurance companies

There are two types of sanctions: those that are passed by the CSA (monetary sanctions, warnings, censure, and temporary suspension of executives); those that are passed by the Finance Ministry (partial or total withdrawal of accreditation, immediate transfer of all or some of the insurance contract portfolio). The insurance and/or reinsurance companies that fail to transmit the activity report, statistical financial statements and other documents required by the CSA may be fined 10,000 AD per day of default. Failure to publish their balance sheet and income statements incurs a 100,000 AD penalty.

Insurance and/or reinsurance companies that fail to abide by the rates set for mandatory insurance may pay fines up to 1% of overall sales. Likewise, failure to abide by the terms of Article 225 of the Law (regarding the upkeep of regulatory registries and books), may incur a fine of 100,000 AD. In addition, five main obligations are placed on insurance and/or reinsurance companies and failure to fulfill those obligations carries a possible fine of one million dinars. These obligations are as follows:

- abiding by the procedure with regard to membership in the association of professional insurers,
- abiding by the legislative and regulatory provisions with regard to the constitution of the representation of technical debts, technical provisions and reserves,
- obligations regarding approvals linked to general policy conditions,
- obligation linked to communicating alternative insurance rates project commission to the CSA,
- obligation to communicate the appointment contract of the general insurance agent.

Finally, the insurer may be fined five (5) million AD fine for any insurance contract concluded in violation of the provisions of the Law (this concerns insurance "in the event of death," for which minors under 13 years without the approval of the child's parents or legal guardian) and is also required to return all premiums paid.

CHAPTER 19

DEVELOPMENT AND URBAN PLANNING

Act No. 04-05 of August 14, 2004 pertaining to development and urban planning largely contributed to clarifying regulations that were long overdue, more specifically since Act No. 90-629 of 1 December, 1990 became effective.

The new legislative text delineates the concept of buildable lots or parcels of land, defines the zones subject to a special regime, given their special characteristics and construction projects, strengthens the control of public authorities and establishes special rules for non-compliant building permits.

19.1 The concept of buildable parcels of land

It includes five categories:

1. those that respect the urban economy, when they are located on areas of the district that may be developed;

2. those located on farm land, but which do not threaten the viability of agricultural activities;

3. those located on natural sites, but which are not likely to upset the basic ecological balance;

4. those that do not hinder the preservation of archeological and cultural sites;

5. those that are not exposed directly to technological and natural risks.

Moreover, any construction for residential purposes must have a proven drinkable water supply source and be equipped with sewage works so that effluent discharge is not carried out on the surface.

19.2 Areas subject to a special regime

Instruments governing development and urban planning have led to measures limiting or prohibiting construction projects.

There are two categories of zones where construction is subject to strict conditions.

- seismic zones identified according to their exposure;
- zones exposed to technological risks whose protection perimeters are determined beforehand.

19.3 The content of construction projects

It is drafted by a builder and an accredited architect, within the framework of a project management contract.

The architectural plan includes:

- the plans and documents pertaining to the implementation of the works;
- the plans and documents pertaining to their organization;
- the plans and documents pertaining to their volume measurement;
- the plans and documents pertaining to façade design;
- the plans and documents pertaining to the choice of material and colors highlighting the local specific characteristics and traditional preferences of Algerian society.

In addition to the architectural plan, there are technical studies that namely cover the civil engineering aspects as well as the parceling of secondary lots.

An Executive Decree No. 15-19 of 25 January 2015, repealing the provisions of Executive Decree No. 91-176 of 28 May 1991 as amended and supplemented, establishing the instruction and issuance of the planning permission procedures, of the permit, fragmentation certificate, building permit, certificate of conformity and the demolition permit.

The developer may now undertake sustainability works by separate lots. The permit is issued as a decree by the president of the Communal People's Assembly, the wali, or the Minister responsible for town planning. Previously, only the wali was authorized to issue such order.

The decree subdivision permit is issued at the office of land registration by the authority that approved the subdivision the applicant's expense, in the month following its notification to the applicant and in accordance with current legislation relating to land information.

Upon completion of development and sustainability works, the beneficiary of the permit may apply for a certificate of compliance and completion. This certificate is required for the constitution of the building permit dossier.

Regarding the building permit if the permit is issued for the achievement of any new construction or transformation relating to construction whose work on the change: footprint, template, front, vocation or destination, supporting structure, and collective networks through the property, on application completed and signed by the owner or his agent or authorized by the tenant or the organism or assignee field service or construction.

In general, the issuance of building permits falls within the competence of the president of the municipal people's congress. However, in derogation from this rule, the competence belongs to the wali or the Minister of planning is responsible for certain public and private projects of interest provided by Executive Order No. 15-19.

Upon completion of the construction work as well as if any, of the development works, the recipient of the construction permit shall be issued a certificate of conformity of the work done with the provisions of the building permit. Surrender of the certificate is the responsibility of the president of the territorially competent municipal people's congress or the wali, as the case

19.4 Strengthening the control of public authorities

In order to strengthen controls, the government extended the categories of personnel accredited to look for and record violations to the provisions of the Law. They include urban planning inspectors, community agents in charge of urban planning and civil servants of the urban planning and architectural administration.

When a violation is recorded, a notice of infringement is issued which must be signed by both the reporting officer and the offender. The violation may either lead to modifications to ensure that the construction is in compliance with the legislation when it has been built, or to its demolition.

In all cases where the construction is built without a permit, the president of the APC with jurisdiction is required to issue a demolition order within eight days, from the date of the infringement notice. If the president of the APC fails to do so, the Wali then issues a demolition order within a time limit which shall not exceed thirty (30) days.

Demolition is carried out by district services. If the district does not have the means to carry out the demolition, the Wali requisitions all the means necessary to implement the order. Execution of the decision to demolish is not suspended when the offender initiates legal action.

Demolition costs are borne by the offender.

To make this control more effective, an Executive Decree No. 09-276 of 30 August 2009 on the national register of urban planning deeds and related offenses, along with the conditions for registering acts, has been adopted.

Pursuant to the provisions of Law No. 08-15 of July 20, 2005, this Decree establishes the procedures for keeping the national register of urban planning deeds and related offenses.

Urban planning deeds include the planning and subdivision, parceling, demolition and building permits, building permit as part of compliance regulations, completion licenses and completion licenses as part of compliance regulations, the issue date, the issuing authority, the identification and address of the recipient, the period of validity of the permit, amended permits and the related deadline. In addition, administrative decisions rendered by courts concerning urban planning-related violations are also listed. The information contained in this file is confidential.

19.5 Lake of compliance or Non-compliance with building permit requirements

Under article 113 of the Finance Act for 2017, buildings that are constructed without construction permit and/or those that are not complying with the construction permit may be subject to regularization in accordance with:

- Neighborhood rights in terms of location and opening;
- Construction and safety standards;
- The deadlines for the completion of the works laid down by the modifying permit as regularization granted after agreement of the committee set up to decide on applications for regularization.

Regularization is established by paying a fine ranging between 20% and 50% of the value of the property and depending on the nature of the offense. This provision shall take effect from 1 January 2018.

A regulatory text will be published to define the modalities of application.

19.6 Access to the private domain of the State

Access to the private domain of the State is governed by Ordinance No. 08-04 of 1 September 2008 covering land that is part of private state domain for the realization of investment projects. This Ordinance had establishing the concession as the only mode of access and repealing all other texts contrary to his provisions.

The text sets out the terms and conditions for concession of land in the private domain of the State for the realization of investment projects. The concession is granted for a minimum renewable period of 33 years, and a maximum of 99 years either through open or restricted public auctions or mutual agreements.

The Finance Law for 2012 (section 15 CFLs) amends sections 3 and 5 of Ordinance No. 08-04 establishing the terms and conditions of grant of land in the private domain of the State for projects of investment.

The lands covered by the Ordinance are granted for under the new provisions of the Finance Law for 2012 under the mutual agreement procedure.

The concession by public auction (scheduled in ordinance No. 08-04) is no longer a form of concession of land in the private domain of the State. The provisions of Ordinance No. 08-04 relating thereto are revoked.

The beneficiaries are companies and public institutions as well as the physical or legal persons of private law.

The principle of concession agreement shall also apply to real property constituting the residual assets of public enterprises dissolved and excess of public economic enterprises.

The concession is authorized by order of the wali Committee's proposal for assistance in locating and investment promotion and regulation of land (CALPIREF) or the management organization of the new town for land under their jurisdiction, but only after a favorable opinion of the National tourism Development for lands within an area of tourism expansion.

In all cases, the permission of the wali is granted approval by the Minister competent sectorally. For the record, under the old regime, the concession agreement was authorized by the Council of Ministers and the proposal of the National Investment Council.

Payment of the rental fee has been reorganized.

The amount of the annual rental fee is maintained at 1/20 of the market value of the land granted. Under the new provisions introduced by the LFC, rebates on the amount of the fee have been clarified and determined according to a schedule distinguishing between periods of production and operating periods of the investment.

This general regime is added with reliefs and exemptions for maturities of investment projects located in areas of Southern Highlands and Far South.

For the general regime, tax allowance provided are:

- 90% during the period of realization of the investment;
- 50% during the operating period.

For the derogation regime, the rental fee is structured as follows:

- the symbolic dinar per square meter for a period of ten years and 50% of the amount of State fee beyond this period for investment projects located in the wilayas used for running programs in South and Highlands;

- the symbolic dinar per square meter for a period of fifteen years and 50% of the amount of State fee beyond this period for projects implemented in the provinces of the Far South.

Investment projects can benefit on the proposal of National Investment Council (CNI) and after the Council of Ministers decision of a further reduction in the amount of the rental fee.

The annual fee is still under updating at the end of each period of eleven (11) years.

Under the Finance law referred to above, these provisions apply to investment projects "was granted by decision the Council of Ministers."

The wording of that provision would indicate, subject to accuracy of the administration, that the concessions granted under the procedure by mutual agreement under the old regime also receive the abatements laid down by Article 15 of the CFL (general or derogatory regime).

The contract holder is entitled to building permits. The concession allows him, moreover, to establish for the benefit of the credit agencies, mortgages under real property law resulting from the concession and constructions built on land granted as collateral for loans exclusively to finance the project.

Upon completion of the investment project, ownership of the constructions carried out by the investor on the ground conceded is confirmed, by the latter, through the establishment of a deed.

Two types of concessions are possible:

1) The concession by public auction by:

- Order of Minister of Tourism when the land concerned is buildable tourist land, upon the proposal of the organization in charge of tourist areas on the basis of specifications that define the concept of the future project and the criteria it should meet,
- Order of Minister of Industry and Investment Promotion when the land in question is controlled by state-run institutions in charge of land regulation and intermediation land,
- Order of the Minister of Urban Planning where the land falls within the scope of the new town, upon a proposal from the organization in charge of management in accordance with the development plan of the new city,
- Order of the Wali with territorial jurisdiction, upon a proposal by a committee whose organization, composition and operation are set by regulation.

2) In the case of a lease by mutual agreement, the Council of Ministers approves the proposal of the National Investment Council.

The new law excludes agricultural lands, lands within mining and oil prospecting perimeters, the parcels of land for property development and land benefiting from state assistance, and perimeters of archaeological and cultural sites.

The implementing rules of this new order were specified by two statutory instruments, as provided by Ordinance, namely Executive Decrees 09-152 and No. 09153 of May 2, 2009.

The first decree defines the procedures for public auction and mutual agreements, sets the specifications or the terms and conditions applicable to land grants in the private domain of the State and to implement investment projects. The model specifications, depending on whether the concession was awarded by public auction or mutual agreement, are included in the appendix.

The second decree determines the conditions and special rules relating to the granting and management of residual assets of dissolved autonomous and non-autonomous public undertakings and the surplus assets of large public companies (EPEs). Again, the standard model of specifications, according to whether the concession is granted by public auction or by mutual agreement, is annexed to the decree.

The scheme allowing access to the private domain of the State is organized around two bodies-Aniref (National Intermediation and Land Regulation Agency) and Calpiref (Localization, Investment Promotion and Land Regulation Assistance Committee). Under the reform prescribed by Ordinance 08-04, it appears that the activities of the Agency and the Committee have been interrupted since then, pending legislation, not yet published when this guide was being updated. It is possible, however, to present these two organizations which are still governed by their respective legislation and still in force.

Executive Decree No. 07-119 of April 23, 2007 created the National Intermediation and Land Regulation Agency.

This agency has the status of land developer and is empowered to acquire real estate and land assets in order to transfer their ownership after subdividing and developing them so that they may be used in the production of goods and services.

Its missions are to carry out a land management, development, intermediation and regulatory mission for each component of the public land portfolio:

1) To carry out a land management and development mission of its land and real estate portfolio with the goal of increasing its value as part of its investment promotion efforts.

2) Also to carry out a real estate intermediation mission, managing assets with the owner's agreement and on the latter's behalf, regardless of the legal status of the assets.

3) To carry out an observation mission for the public land segment. As such, the agency provides the relevant local decision-making body with any data pertaining to land and real estate supply and demand, land market trends and outlooks. The agency's role, as far as regulation, consists of contributing to the emergence of a free land and real estate market for investment.

4) To ensure the free flow of information with regard to real estate assets and available land and to ensure that they are promoted to attract investors. In order to do so, the agency is to set up a data base grouping the national supply of real estate assets and economic land base, regardless of their legal status.

5) To draw up a list of market prices for economic land, which the agency is to update every six months.

6) To prepare periodical studies and situational assessments regarding real estate and land market trends. The market price list can serve as a reference for establishing prices when assets are sold or assigned.

The agency is empowered to take all actions that enhance its development, namely those that consist of:

- conducting any land or real estate, financial, or commercial operations linked to its mission,

- concluding any contract or agreement linked to its mission,
- developing exchanges with similar institutions and organizations active in the same field.

Executive Decree No. 07-120 of April 23, 2007 provides details on the organization, make-up and operation of the Calpiref (Localization, Investment Promotion and Land Regulation Assistance Committee).

The missions of the committee:

1) To create a land supply data base at the wilaya level.

2) To assist investors in localizing land to implement investment projects.

3) To encourage all public or private land development initiatives to produce developed and serviced land intended to accommodate investments.

4) To contribute to the regulation and the rational use of land intended for investment as part of the wilaya's chosen strategy, taking public equipment into account.

5) To put forth information on available land for investment at the disposal of investors through all existing means of communication.

6) To evaluate the operating conditions of the local land market.

7) To propose the creation of new industrial or activity zones.

8) To follow and evaluate the implementation and execution of investment projects.

19.7 Procedure for confirming real estate ownership rights

Act No. 07-02 of February 27, 2007 pertaining to the establishment of a procedure for confirming real estate ownership rights and issuing ownership deeds by way of land survey was published, with the intent of establishing a procedure for confirming real estate ownership rights and issuing ownership deeds by way of land survey:

- to any real estate property not subject to general cadastre operations, regardless of its legal nature,
- to real estate properties whose owners do not hold ownership deeds or for which ownership deeds were established before March 1st 1961 and which no longer reflect the current land situation.

This procedure does not apply to governmental land, including land formerly referred to as arch, and to wakfs assets.

In 2008 a new text is promulgated pursuant to the provisions of Law No. 07-02 on land surveys. Executive Decree No. 08-147 of 19 May 2008 on the land survey operations and the issuance of title deeds strengthens provisions of the law No. 07-02 and facilitates the issuance of a title to owners without deed, his right to transfer or operation of the property concerned.

A land survey is addressed to the person in charge of land conservation services of the wilaya with territorial jurisdiction, in order to confirm ownership rights and issue an ownership deed.

The land survey is conducted by a land surveyor designated by the person in charge of the wilaya's land conservation services among agents of the government land inspector corps. The surveyor prepares a duly justified draft report in which he records the conclusions of the survey on the basis of statements made by the concerned person at the site. A copy of this

decision is forwarded to the Chairman of the concerned APC for display at the headquarters of the district for a period of fifteen days.

The land surveyor, after investigating the area, provides provisional minutes duly reasoned, in which he shall record the findings, based on the statements in question, recorded at the site.

After recording all possible objections or opposition, a copy of the minutes shall be notified to the public by means of posters, for thirty (30) days, within the district in which the building is situated, and no later than eight (8) days after its date of establishment. If no protest or objection has been made, the land provides an investigator final minutes in which he shall record its findings on the land survey conducted. Minutes of boundary determination is drawn up by the expert surveyor and signed by the land surveyor.

The land surveyor sets a conciliation session. At the end of the session, minutes are drafted accordingly. The contesting party may, within two (2) months from the date of the receipt of the non-conciliation minutes, under penalty of rejection of his request, initiate legal action before the competent court. The procedure is suspended until the judgment is rendered.

Definitive minutes including the results of the land survey are established.

If the analysis of gathered declarations, statements and testimonies, as well as that of presented documents and surveys conducted by the land surveyor, shows that the applicant manages the property in a manner entitling him to ownership rights, by acquisitive prescription, in compliance with the provisions of the civil code, ownership of the property targeted by the land survey shall be granted to the applicant. This gives rise to a decision to instruct the land conservation officer with territorial jurisdiction to register the property in the name of the person determined to be the owner.

Land registration consists of publishing the rights confirmed during the land survey in the land book. After completing this procedure, the officer prepares a title of ownership which is transmitted to the person in charge of the wilaya's land conservation services for delivery to the applicant.

If the land survey proves inconclusive, the person in charge of the wilaya's land conservation services makes a justified and notified decision to reject the land registration application within a maximum of six (6) months from the date of application. That decision can be appealed before the competent administrative court within the legal time frame.

With regard to registration made on the basis of false statements or falsified documents, the person in charge of the wilaya's land conservation services files a complaint with the public prosecutor of the republic in order to initiate legal action.

19.8 Terms and conditions for implementing the tourism development plan of expansion areas and tourist sites

Executive Decree No. 07-86 of March 11, 2007 was published in order to set the terms and conditions for implementing the tourism development plan (plan d'aménagement touristique, P.A.T.) of the expansion zones and tourist sites.

The tourism development plan as defined in this Decree refers to all general and specific rules pertaining to the development and use of a tourism expansion zone, the specific prescriptions or urban planning and construction, as well as the applicable easements as to the use and protection of the assets and buildings built in accordance with the tourism-related purpose of the site.

The tourism development plan includes:

1) The introductory report, which highlights the current state of the tourism expansion zone for which the plan is established and lists the measures taken to showcase, develop and manage it.

2) Regulations pertaining to the right to build, which sets the general rules on the use of land and easements and operations considered part of the development and investment project. Within this framework, all measures to reconstitute the land base must be apparent in order to ensure the development and investment.

3) The technical plans of the facilities and the basic infrastructure, which include graphic documents showing the conditions set by the regulation and highlighting the homogenous sub-zones.

4) The appendixes, which include all or part of the graphic and written documents required for a land use plan in cases where the site is located close to an urbanized area or an area that can be turned into an urbanized area.

The development plan is formulated in 3 phases:

- **Phase I:** diagnosis and formulation of development options
- **Phase II:** drafting of the tourism development plan
- **Phase III:** execution of external works

The implementation and management of the tourism development plan are approved by the Minister in charge of Tourism, in consultation with the concerned wali.

The tourism development plan, having received regulatory approval, equates a permit to parcel buildable portions.

Acting under the control and supervision of the Minister in charge of Tourism, the National Tourism Development Agency (Agence nationale de développement du tourisme, ANDT) is responsible for the acquisition, development, promotion, return or rental to investors of the land located on buildable portions set aside by the tourism development plan and earmarked for the construction of tourism infrastructure.

Any document prepared in compliance with general development and urban planning regulation and approved as part of procedures conducted prior to the approval date of the plan, remains in effect when it is not included in the buildable portion of the tourism expansion zone or does not comply with provisions stated in the plan.

However, all applications presented in connection with a permit to build and parcel and all applications for the authorization to modify, develop and redevelop part or all of the buildings included in the buildable portion of the zone may give rise to a stay of decision.

The stay of decision is issued by the relevant local authorities for the period between the publication of the decree pertaining to the delineation of the tourism expansion zone and that of the publication of the decree approving the tourism development plan.

CHAPTER 20

REGULATION PUBLIC WORKS CONTRACTS

20.1 Overview of public works contracts regulation

The Presidential Decree No. 15-247 of September 16th, 2015 bearing the public works contracts regulation and public service delegations («public works contracts Code») repeals the Presidential Decree provisions No. 10-236 of October 7th, 2010 modified and completed. Therefore, this chapter will be based solely on the decree in force since December 20th, 2015, that is to say, three (3) months after its publication in the official Journal. In this framework, the main novelties introduced by this text will be highlighted (through a bold type).

It should be noted that the implementing texts adopted under the above mentioned presidential decree n ° 10-236, remain in force until the publication of the texts made under the Decree No. 15-247 of 2015. In this regard, in particular, must be considered the relative decrees:

(i) To the implementation terms of the preference margin to products of Algerian origin and / or companies of Algerian rights,

(ii) To the investment engagement model,

(iii) To the Direct payment terms of the subcontractors, the contents and updating the economic operators files conditions

(iv) To the model of the submission letter of the statement to be subscribed and integrity statement,

(v) To the registration terms and the list removal of prohibited economic operators from bidding for public works contracts

(vi) And to the participation exclusion terms to public works contracts[69].

The three general principles that public works contracts should respect remain the access freedom principle to Public order, equal of candidate's treatment of and procedures transparency.

20.2 Definition and public works contracts scope

20.2.1 Definition elements

Public works contracts «are written contracts within the meaning of current legislation, passed by onerous title with economic operators, in the conditions provided in this Decree, to meet the needs of the contracting service, with regard to works, supplies , services and studies». They are concluded before any services execution beginning, and are not final until their final approval by the competent authority (by the head of the public institution, the minister, the

69 JO n°18 dated on Avril, 20 2011

Wali, President of APC (popular assembly council) or the general director or the public establishment director, or by delegation of these authorities).

The definition of each deal type has been remodeled in the public works contracts code in the most "legal" and "practical" manner:

- The public works contracts of works aims to the building of a structure or building or civil engineering works, respecting the identified needs by the contracting service, project owner. Concretely, it is about the construction, renovation, maintenance, rehabilitation, planning, restoration, repair, reinforcement or demolition of a structure or part of the work, including the necessary associated equipments for their operation.
- The public works contracts of supplies aims to the purchase, rental or hire purchase, with or without purchase option, by the contractor service, of materials or products, whatever their form, to meet the associated needs with its business, from a supplier. The supply public works contracts may be goods of complete equipments or production facilities used whose running time is guaranteed or renovated under warranty.
- The public works contracts of studies aims to achieve intellectual services. It is given a detailed definition of mastery of work in the building of a structure, an urban or landscaping project in the article 29.
- The public works contracts of services, concluded with a service provider, aims to make services. It is about a residual concept.

If the contract is for more of these services, a global contract may be awarded in the following cases:

- The contracting authority may, exceptionally, use the "study and creation" process where technical reasons make it essential association of the Contractor of the book design studies.
- Where technical or economic reasons justify it, the contracting department may use a market of "study, construction and operation or maintenance" or market of "construction and operation or maintenance".

The list of projects that can be subjected to a global market is fixed by decision of the Service contractor after notice of the competent tenders' board. Their application procedure will be specified as required, by order of the Minister of Finance.

20.2.2 Implementation Scope:

Positive definition of the scope: The Code's provisions are applicable only when the contracting services:

- The State;
- The local authorities;
- Public administrative institutions;
- Public institutions subject to the law governing commercial activities, when they are responsible for the realization of a financed transaction, wholly or partially, on temporary or permanent assistance of the State or local authorities. Otherwise (without funding from the State or communities), these institutions are only required to adapt their procedures and control device to the Public works contracts Code and do not adopt their authorized bodies.

It is clearly stated that the public economic companies are not subject to the Code, a dependent for the last however to adapt and adopt by their governing bodies procedures respecting the three general principles commander public works contracts (freedom of access, equality of treatment and transparency). This obligation applies to any body not subject to public accounting and public works contracts code using public funds. To recall, the economic public company is defined in the Article 2 of the Ordinance 01-04 as' commercial companies in which the State or any other legal entity under public law directly or indirectly holds the majority of the share capital ".

Negative definition of implementation scope: The following contracts are not subject to the Public works contracts Code:

- Awarded by the institutions and public administration, and public institutions between them;
- Concluded with public institutions subject to the laws governing commercial activities, while performing an activity that is not subject to competition;
- Of delegated project. However, the contracts concluded by a client representative in the name and on behalf of the contracting authority under that delegated contracting authority are subject to the Public works contract Code.
- Purchase or lease of land or real estate;
- Concluded with the Bank of Algeria;
- Awarded under the procedures of international organizations and institutions or under international agreements, where required;
- Relating to the conciliation service benefits and arbitration;
- Concluded with lawyers for assistance and representation services;
- Concluded with a central purchasing body on behalf of the contracting services.

20-2-3 Specific Procedures

Series of specific procedures is dealt with in the Public works contracts Code (only one part of which will be specifically detailed below):

(i) Procedures in cases of extreme urgency

Subject to compliance with the exposed conditions of extreme urgency, the authority may allow upon a motivated decision, the beginning of execution before the conclusion of the public works contracts, only on exchange of letters embodying the agreement of the Parties. Within six months, a regularization market will be concluded when the thresholds specified below are met.

(ii) Appropriate procedures

The contracts whose values do not exceed a certain threshold are not subject to the procedure of public works contracts. These thresholds were identified in the Article 13 as follows:

- For contracts for works or supply the threshold from eight million (8 000 0000) to twelve million (12,000,000) dinars.
- For construction and service contracts the threshold goes from four million (4,000,000) to six million (6,000,000) dinars

In this case, the contracting department develops internal procedures or adopts for one of the procedures provided for in this Code. In the latter case, the contracting department will track the entire award by the same procedure.

Orders including the cumulative amounts during the budget year do not exceed one million (1,000,000) dinars for works or supplies and five hundred thousand dinars (500,000 DA) for studies or services, are not necessarily the subject of a consultation. Previously, the thresholds were 500 000 AD and 200 000 AD respectively.

(iii) Procedures requiring a prompt decision

Import markets requiring prompt decision is subject to a special procedure provided for in the Article 24.

(iv) Procedures for specific services

In the case of transport services, hotel and catering, and legal services, regardless of their amount, the contracting department may use appropriate procedures. If the amount of the order exceeds the above thresholds, the market is subject to review by the competent committee board

(v) Procedures for utilities (water, electricity, gas, telephone and internet)

In the latter case, these markets are with the order.

20.3 Key elements of the public works contracts conclusion

Way of public works contracts conclusion

Deals are concluded according to the tender procedure (i), which is the general rule or mutual agreement procedure (ii)

(i) The tender

The tender allows the competition between several tenderers and the award of the contract without negotiation with the one who submitted the most economically advantageous. There is a statement of fruitless in the absence of tenders, where the offers are not consistent with the purpose and content of the specifications or that funding needs cannot be assured. The call can be national and / or international; it can be in one of the following forms:

- The open tender;
- The open tender with requirement for minimum capacity;
- Restricted tender;
- The competition.

(ii) Mutual agreement procedure

This is a diagram of a market award without a formal appeal of competition.

Regarding the simple mutual agreement procedure, it should be noted that it is now scheduled for the promotion of the production and / or national production tool, not only "for the promotion of the tool national public production. The article 50 provides guidelines to be followed by the service contractor under this procedure (from determining its needs to the choice of the economic operator).

The mutual agreement procedure after consultation is now open including being declared unsuccessful for the second time (once before), or when the specific market (excluding those

works) does not need to call for tender taking care to specify that stems from its "object, limited competition or its secrecy.

Qualification and bid submission

Regarding the qualification of candidates or tenders, the Article 57 of the Code introduces the possibility previously rejected[70] for any bidder or candidate, single or group, to avail themselves of other companies' capabilities. To do so, there must be a legal relationship in subcontracting, co-contracting or statutory (subsidiary or parent company of a group of companies) between the participants in the public works contracts procedure conclusion.

As a reminder, it is expected that when the interest of the operation justify it, the opportunity to bid as part of a consortium must be provided in the specifications of the tender. In this case, bidders must intervene in the form of solidarity group (may be imposed if dictated by the nature of the market) or joint group. The contractors' partners, acting in group, jointly and severally undertake to the project.

The group is secured when each member of the group is committed to the implementation of the entire market. The group is linked when each member of the group agrees to perform the service or services that may be assigned to him in the market.

Regarding the offer itself, it must contain an application, a technical offer and a financial offer. It should be noted that the financial offer must now contain the breakdown of the overall price (TMP), and it may be asked further detail in unit price (SDPU); the itemized bill of quantities (DDED). In this respect and in accordance with effective regulations, it is specified that the contractor service failed to request the legalization of documents without exception.

It is now clear that the same body is in charge of the opening and examination of bids, ie the Commission of bid opening and evaluation of bids.

Finally it is essential to account for the Article 73 of the Public works contracts Code which states that "The contracting authority may, for reasons of general interest throughout the conclusion phase of a public contract, declare the cancellation of the procedure and / or temporary contract award. Bidders cannot claim any compensation in the event that their offers have not been accepted or if the procedure and / or the provisional award of public works contracts were canceled. "

The Article 75 provides for cases of exclusion from participation in public tenders including non-compliance with the investment obligation laid down in the Article 84 or the operators registered in the national database of fraudsters serious offenders customs and trade tax laws and regulations,

The choice of contracting partner

Already initiated in the previous decree, there is a clear desire to improve the competition in the choice of contracting partner.

The rules in question are organized around three fundamental axes:

- the nature of the rules governing the choice of contracting partner;
- the rules governing the choice of contracting partner;
- the choice of the partner being temporary at first, has a right to appeal besides markets board from bidders who believe they have been unfairly rejected.

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70 Article 39 Décret n°10-236 dated on Octobre, 7, 2010 modified and completed

In addition, the objectivity of this selection through the obligation of the contracting department to operate in two phases:

- the first choice covers all bidders whose bids meet the technical requirements of the work, supply, delivery of services or studies related to the contract to be concluded;
- the second choice, which becomes final after the exhaustion of remedies, pertains to the bidder whose financial offer is the most favorable; exceptions, this choice is automatic.

The entire Section 7 is now devoted to aspects relating to "the promotion of national production and national production tool. Beyond the reaffirmation of a series of protective rules, it introduced a requirement to subcontract locally up to thirty percent (30%) for selected markets:

(i) The "25% rule": a margin of preference of 25% is given to products of Algerian origin and / or Algerian companies whose capital is mostly held by domestic residents, for all types of markets. In case the bidder is a consortium consisting of Algerian companies (whose capital is mostly held by domestic residents) and foreign enterprises, the benefit of this margin is subject to the justification of the shares held by company under Algerian law and the foreign company, in terms of tasks to perform and their amounts. In this context, foreign contractors partners who have benefited from this margin of preference are required to use the goods and services produced locally.

(ii) Obligation of Investment in partnership: Books of specifications of international tenders must include a commitment to invest in partnership, for foreign bidders, when it comes to projects whose list is determined by a decision of the authority of the national institution of State sovereignty, the autonomous national institution or the Minister concerned for their projects and that of institutions and subordinate institutions. Failure by the foreign bidder, commitment to invest in partnership, leads the notice, the implementation of financial penalties; termination of the contract; the registration of the foreign company, having failed in its commitment on a list of companies banned from bidding for public contracts. A joint bylaw of the Minister of Finance and Minister responsible for the investment will be issued to clarify the rules for implementing this commitment.

(iii) Call for the national competition, where national production or national production facilities are able to meet the needs to meet the contractor's service.

(iv) General obligations borne by the contractor Service: The service contractor when he calls for national and / or international tenders must:

- Consider, when establishing eligibility conditions and the tender evaluation system, Algerian law in business potentials, especially SMEs, to enable them to participate in public works contracts procedures in respect optimal conditions for the quality, cost and implementation time;
- Favor the integration of the national economy and the importance of batches or outsourced products or acquired on the Algerian market;
- Provide in the specifications book a device for the training and transfer of knowledge in relation to the contract;

- Provide in the specifications book, in the case of foreign companies bidding alone, except in duly justified impossibility, the requirement to subcontract at least thirty percent (30%) of the original contract price to Algerian law firms. This is a significant novelty.

Whatever the chosen procedure, the contractor must provide services in the specifications book, measures do not allow using the imported product if the local equivalent product is not available or of a quality that does not meet the technical standards required. In addition, the contracting department should allow using foreign subcontractors when Algerian law firms are not able to meet its needs.

(V) In addition, national production is favored through crafts and micro-companies.

Finally Section 8 deals with the fight against corruption. To be noted, the new regulatory authority for public contracts and public service delegations developing a code of ethics and professional conduct. The legislature determines the corruption criteria and recalls the obligation for the contractor to take probity statement. In doing so, he puts this obligation as aggravating factor in the event of a corruption or attempted corruption.

20.4 The execution of public works contracts and contractual provisions

The mandatory information to be included in public works contracts is developed in the Article 95 of the Code. It should be mentioned including the revision clause in prices, adding entries for the "professional integration of people excluded from the labor market and the disabled" or insurance related to statements and the secret and confidentiality.

Prices

Articles 96 following the fixing of public contracts price. The compensation of the other party involved partner as follows:

- In the overall price;
- Slip on price;
- On monitored expenditure;
- Mixed price.
- The price can be firm or adjustable. It should be noted in this regard the innovative nature of the attachment provisionally price[71] in the following cases: procurement of project management work, concluded on the basis of a target cost
- Public contracts signed by single option, in the case of extreme urgency;
- Additional services, as part of a works contract.

In the case of complex contracts, concluded on the basis of performance to be achieved, the contracting department may incorporate an incentive clause in the market to obtain the co-contracting partner a better price / quality / delay.

Public contracts for amounts below the thresholds for the application of the conclusion procedures (Article 13 para 1) or whose time is less than three (3) months, are not subject to updating or revision of prices. The Code of public contracts excluded the concluded contracts by mutual agreement of the price update.

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71 Article 97 of new code of public contract

The price indices included in the price revision formulas are detailed in the Article 103 which clarifies that indexes combining several indices can be used in the works, and that the revision can be delayed in pending the publication of indices.

Payment terms

Under the regulation, the financial regulation of the market is achieved by advance payments and / or installments and regulations to balance.

The all inclusive advances and on supply are recovered through deductions made by the contracting department on amounts paid as advance payments or settlements for sale. The novelty lies in the fact that the repayment of those advances by deduction must begin no later than when the amount paid reached thirty five percent (35%) of the original contract price. As was customary repay these advances must occur at the latest when reaching the amounts paid eighty percent (80%) of the original contract price. It is worth highlighting that the partial repayment of advances can now result in the equivalent partial release of the security for repayment of advances.

Payment period of installments and the balance may not exceed thirty (30) days from the receipt of the situation or invoice.

In addition, as a counterweight of late penalties charged to the co-contracting partner, it is entitled to payment by the contracting department of default interest, which is calculated automatically and without further formalities once a delay of payment is registered. This default interest is now calculated at the interest rate of the Bank of Algeria increased by one (1) point from the day following the expiry of that period until the fifteenth (15th) day included after the date of entrustment of the deposit.

It should be noted in addition, the possibility for the contractor to be paid directly by the contracting department.

Guarantees

The bid bond greater than one percent (1%) of the bid amount is required for works contracts, the amount of the administrative needs assessment exceeds one billion dinars (1,000,000,000 DA) and supplies that exceed three hundred million dinars (300 million DA) the foreign company bid bond must be issued by a bank of Algerian right, covered by a guarantee issued against a foreign bank first order.

A performance bond shall be provided by the contractor partner. Exceptionally some study contracts (excluding the prime contracting of the work) and services are exempted when:

- The contracting department can verify the performance before the payment of benefits
- Or in the case of contracts concluded through single agreement or those signed with public institutions.

The amount of the performance bond is between five percent (5%) and ten percent (10%) of the contract price, depending on the nature and extent of services to be performed. For contracts that do not reach the above thresholds, the amount of the performance bond is between one percent (1%) and five percent (5%) of the contract.

In the case of works contracts that do not reach the thresholds of competence of the National Commission for works contracts and sectoral markets commissions, withholding of performance of five percent (5%) of the amount of the situation jobs can be substituted for performance bonds. The provision by all of performance deductions is transformed to the provisional acceptance of the market, holdback.

The amendment

The contracting department may use the conclusion of endorsement to the contract, which constitutes a contractual accessory market document. The endorsement comes raise or lower benefits, and / or modify one or more provisions of the contract. The endorsement cannot change in an essential way the market economy and cannot change the purpose or scope of the contract.

The public works contracts Code circumscribe more accurately the conditions for recourse to the endorsement. The financial implications in currencies other than those resulting from the amendment of the amounts of benefits must be of an administrative certificate by the contracting department sent to the Bank of Algeria and the commercial bank.

Endorsement can cover "additional" benefits (formerly "new) entering in the global scope of the contract.

1- Where the quantities laid down in a works contract does not allow the realization of its purpose in a particular works contract (excluding cases in the corporate responsibility), the contracting department may issue orders ordering service, additional services and / or additional pending finalizing the endorsement. As for additional services with new price, service orders may disclose provisional prices. When the total amount of items benefits the endorsement reaches 10% of the original contract price, it should establish an amendment and submit it to the Commission on relevant markets. The benefits that have not been subject to service orders are not regularized by the endorsement.

2- Un avenant à un marché de services ou fournitures, dont l'objet a été réalisé mais avant sa réception définitive, peut être conclu pour prendre en charge les dépenses indispensables à la continuité d'un service public déjà établi après décision de l'autorité compétente. Pour se faire, les circonstances à l'origine de la prorogation doivent un caractère imprévisible et ne soient pas le fait de manœuvres diatoires (erreur sur le mot) du service contractant. En outre, le délai de l'avenant ne peut dépasser trois (3) mois et les quantités en augmentation ne peuvent dépassent dix pour cent (10%) du marché initial.

An endorsement to a contract for services or supplies, the purpose has been achieved but before final acceptance can be found to support the expenses necessary for the continuity of a public service already established after decision of the competent authority. To do so, the circumstances on the basis of the extension are an unpredictable and are not the result of maneuvers diatoires contractor service. In addition, the time of the endorsement may not exceed three (3) months and increasing amounts cannot exceed ten percent (10%) of the initial contract.

When the value of the endorsement related to an increase in benefits or the aggregate value of several endorsements, with the exception of the aforementioned unforeseen technical constraints, exceeds fifteen percent (15%) of the original contract price in the case of markets

supplies, education and services and twenty percent (20%) in the case of works contracts, the contracting department must justify to the competent tenders board that the original terms of competition are not challenged and the launch of a new procedure for the services increasing, does not carry out the project under optimal conditions of time and price.

Subcontracting

The partner of contracting party may appoint a subcontractor executing a part of the market, through a sub-contract. It is now clear that:

- Subcontracting cannot exceed forty percent (40%) of the total market.
- Current supply contracts are excluded from subcontracting

The subcontractor involved in the execution of a public contract is required to report his presence to the contractor service. If it turns out that he has not been declared, the contracting department shall put the contracting partner to remedy the situation within a week, and otherwise enforcement action will be taken against him.

The article 143 provides for cases of recourse to subcontracting as follows:

- "The main field of action of subcontracting, by reference to certain essential tasks to be performed by the partner contracting party, must be expressly provided in the contract documents, where possible, and in the market. The contractor may be declared in the tender or during performance of the contract. The statement of the contractor during performance of the contract and acceptance of its terms of payment shall be made according to the model set by order of the Minister of Finance;
- The choice of the subcontractor by the contractor and partner payment terms are obligatory and approved in advance by the contracting department, in writing, and after checking his professional, technical and financial. The authorized subcontractor under the above conditions is paid directly for the services specified in the contract, which shall ensure the implementation, in ways that are specified by order of the Minister of Finance;
- A copy of the subcontracting contract must be delivered by the partner co-contractor, to the contractor service;
- The amount of transferable share corresponding to benefits subcontracted to Algerian law firms, must be identified in the tender concerned. "

Finally, the Article 144 sets out the mandatory information of subcontracting contracts. It is useful to mention the fact that a section1 is dedicated to the receipt of market

20.5 The bad performance of public contracts

20.5.1 Penalties

The rates and terms of application of these penalties are specified as appropriate in the public contract in accordance with specifications.

The payment exemption is the responsibility of the contracting service, and can intervene when the delay is not attributable to the other party or by force majeure (stop orders and times of service in these cases). This exemption gives rise in any event to the establishment of an administrative certificate.

20.5.2 Termination

It is expected the following event of termination:

- Termination for fault of the contractor partner. As such, a partial termination of opportunity is now scheduled
- Unilateral termination by the contractor Service, for reasons of general interest, even without fault of the contractor partner (Article 150)
- The contractual termination as expressly provided for this purpose (Article 151)

It is also clear that the service contractor may be opposing the termination of the public works contracts during the implementation, by itself, contractual clauses and guarantees proceedings for compensation for the damage caused by the fault of the other party. Furthermore, the additional costs of the new market are borne by this latter.

20.5.3 Dispute settlement

The Public works contracts Code favors the amicable settlement of disputes which may arise in the award and execution of public contracts.

In case of failure of this procedure, the parties may now submit the dispute arising from the execution of public contracts with national partners to amicable settlement of disputes competent Committee (Articles 153) Which gives a motivated opinion fact and in law. The scope of those opinions is not specified at this stage.

As for disputes arising from the execution of public contracts with foreign partners; recourse to international arbitration body has now submitted the proposal of the Minister concerned to a prior arrangement with the Government meeting (Article 153). It should nevertheless be noted that such disputes fall within the remit of the Regulatory Authority for public contracts and public service contracts (Article 213).

20.6 The control of public works contracts

Without going into the details of the types of control, it should be noted in particular the establishment of the following control bodies:

(i) The Board of bid opening and evaluation of bids

It is now clear that the same body is in charge of the opening and examination of bids, ie the Commission of bid opening and evaluation of bids.

(ii) The regulatory authority of public works contracts and delegations

It is created within the Ministry of Finance and includes within an observatory of public order and the national body for settling disputes.

The authority shall be to:

- develop and monitor the implementation of the regulation of public works contracts and public service delegations. It shall, as such notices to contracting services, control bodies, markets commissions, committees settlement of disputes and economic operators;
- to inform, disseminate and popularize all documents and information in its field of competence;

- to initiate training programs and promote training in their area of competence;
- to annually conduct an economic census of public works contracts.
- analyze data on the economic and technical aspects of public order and make recommendations to the Government;
- to provide a forum for consultation, within the framework of the Observatory of Public Order;
- to audit or to audit the conclusion procedures of public works contracts and public service delegations and their execution at the request of any competent authority
- to rule on disputes arising from the execution of public contracts with foreign contractors partners;
- manage and operate the information of the public works contracts system;
- maintain cooperative relations with foreign institutions and international institutions operating in its area of competence.

20.7 Public service delegations

It is now expected under current regulations a whole Title to public service delegations (Title 2). Without going into the details of these measures, it is necessary to specify the principles. The legal entity of public law responsible for a public service, may, unless otherwise legislative provision, entrust its management to a delegate.

The remuneration of the delegate is ensured substantially by the operation of the public service. The delegating authority, acting on behalf of the legal person of public law entrusts the management of the public service agreement.

As such, the delegating authority may entrust to delegate the execution of works or the purchase of goods necessary for the functioning of public service. At the expiration of the public service delegation agreement, the total investments and public service property becomes the property of the legal entity of concerned public law.

The public service delegation can take depending on the level of delegation of risk taken by the delegate and control the delegating authority the following forms:

- Concession ;
- The lease
- The party management;
- Management,
- Or other forms in the terms and conditions defined by regulation.

Have intended to apply the three fundamental principles of public works contracts

It should be noted last and residual way, that title 3 is devoted to the training of civil employees and public agents.

CHAPTER 21

INTELLECTUAL PROPERTY LAW

Intellectual property is governed by several legal and regulatory texts in Algeria. These texts protect industrial property rights, as well as literary and artistic property rights.

21.1 Industrial property rights

Industrial property rights protect industrial and technological creations. These creations are varied and concern many areas, ranging from inventions in the industrial field, industrial drawings and models, distinctive signs such as trademarks and service brands, or registered designations of origin (appellations d'origine).

Information that should not be disclosed also benefits from special protective measures.

All protection standards are also accompanied by rules against unfair competition.

Algeria is a member of:

- The Paris Convention of 1883 relative to the Protection of Industrial Property (since 1966),
- Madrid Agreement concerning the international Registration of Marks (since 1972),
- Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (since 1972).

21.1.1 Patents

Industrial inventions are protected by Ordinance No. 03-07 of July 19, 2003, pertaining to patents and by Decree No. 05-275 of August 2, 2005 setting the terms and conditions for the filing and issuance of patents.

Protected inventions are new inventions resulting from an invention and likely to be used industrially. The protected invention may pertain to a product or a process.

The inventions meeting the afore-mentioned criteria are granted a patent giving its holder exclusive rights to prohibit:

- the manufacturing, use and sale of the product.
- the use, sale and importation of a product obtained with his process.

Patentable inventions pertain to a variety of fields on the basis of the afore-mentioned criteria, especially food products, cosmetics, pharmaceutical products or microorganisms.

The protection of the patented invention is ensured for a non-renewable period of twenty (20) years, from the application filing date. Patents of addition expire with the initial patent.

Holders of foreign patents are protected by Algeria's participation in international agreements, especially the Paris Convention for the protection of industrial property of March 20, 1883, amended, which Algeria joined in 1966.

Invention patents are filed with the Algerian National Institute of Industrial Property (Institut National Algérien de la Propriété Industrielle, INAPI) and are published in the Official Bulletin of Patents (Bulletin officiel des brevets), formerly the Official Bulletin of Industrial Property (Bulletin officiel de la propriété industrielle).

The National Institute of Industrial Property is a state-owned commercial and industrial enterprise placed under the authority of the Minister of Industry. The institute is governed by Executive Decree No. 98-68 of February 21, 1998.

By application of Executive Decree No. 08-344 of 26 October 2008 amending and supplementing Decree No. 05-275 of 2 August 2005 laying down the procedures for filing and granting of patents for invention, published in the Official Gazette of 16 November, 2008[72], applicants residing abroad can now be represented by an authorized representative of the institutions concerned so that procedures may be carried out on the spot. The procedure is done according to procedures laid down by decree of the Minister responsible for industrial property.

21.1.2 Trademarks

Trademarks in Algeria are governed by Ordinance No. 03-06 of July 19, 2003 and by Executive Decree No. 05-277 of August 2, 2005 setting the terms and conditions for filing and registering trademarks.

A trademark is a distinctive sign which aims to distinguish the products or services of a physical or legal entity from those of others.

A trademark may include "any signs that may be represented graphically, particularly words, including personal names, letters, numbers, drawings or images, the characteristic shape of goods or of their packaging, the colors, alone or in combination, that distinguish the goods or services of one physical or legal entity from those of others."

The trademarks may have the shape of a sign of one or more dimensions.

Only signs that can be perceived visually are likely to constitute trademarks.

In Algeria, the trademark is mandatory for any product or service offered, sold or put up for sale on the national territory.

Registration with INAPI is also mandatory before the trademark can be used on the national territory.

Priority is given to the first person to file when the filing is made validly.

Categories of trademarks

By virtue of Ordinance No. 03-05, there are several categories of trademarks:

- product or brand name,
- service mark,
- trademark,
- collective marks,
- certification marks,
- well-known trademarks.

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72 See later. The same right is provided to applicants of procedures for filing and registering trademarks and filing and registering layout designs of integrated circuits.

Term of trademark protection

The trademark is protected for a period of ten years, renewable indefinitely.

Trademarks must be registered at the Algerian National Institute of Industrial Property (INAPI).

Applicants for registration domiciled abroad[73] may be represented by an agent to perform the registration procedure in accordance with procedures laid down by decree of the Ministry responsible for industrial property.

In order to do so, the filer must:

- present a duly filled trademark registration application form supplied by INAPI;
- submit a 9 X 9 cm reproduction of the trademark;
- submit a complete list of products and services set in accordance with the Nice classification;
- prove payment of the filing and publication taxes.

The owners of a trademark may assert their rights and exercise their prerogatives through industrial property agents.

Trademark rights

A validly registered trademark gives its holder a right of ownership over that trademark.

This right includes the use of the trademark only after prior authorization by the owner.

Sanctions

Counterfeiting a trademark is punishable by:

- a prison sentence of between six (06) months and two (02) years,
- and a fine ranging between two million five hundred thousand (2,500,000) and ten million (10,000,000) dinars or one of the two sentences.

21.1.3 Industrial drawings and models

Industrial drawings and models in Algeria are governed by Ordinance No. 66-86 of April 28, 1966 and by Executive Decrees No. 66-86 of April 28, 1966 and No. 66-87 of April 28, 1966.

Condition of protection

An industrial drawing entails "any composition of lines, of colors, aimed at giving a special appearance to a product of industry or handicraft, whereas a model is any plastic shape associated or not to colors and/or products of industry or handicrafts which can serve as a pattern to manufacture other units and which distinguishes itself from similar models by its configuration."

Only original and new drawings and models are protected.

Ownership of an industrial drawing or model belongs to the first person to file.

Foreign nationals may also file in Algeria, subject to being represented by an Algerian agent residing in Algeria.

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73 Official Gazette, 16 November 2008, Executive Decree No. 08-346, 26 October 2008, amending and supplementing Decree No. 05-277 of 2 August 2005 laying down the procedures for filing and registration of trademarks.

Filing procedures

In order to be protected, industrial drawings or models must be filed or addressed to INAPI by registered mail with acknowledgement of receipt.

The filing must include:

- four copies of a filing declaration written on a form supplied by INAPI,
- six identical copies of the representation or two specimens of each object or drawing,
- a signed power of attorney, if the filer is represented by an agent
- a receipt for the payment of due taxes.

Period of protection

An industrial drawing or model validly filed with INAPI is protected for a period of ten (10) years from the date of the filing.

That period is subdivided in two:

- a first period of one year,
- the second period, which lasts nine years is subordinated to the payment of a maintenance fee.

Sanctions

The infringement of a drawing or model is punishable by a fine ranging between five hundred (500) to fifteen thousand (15,000) dinars and in the event of a repeat offence, the infringer is punished by a prison sentence ranging between one (1) to six (6) months, with the seizure of the objects violating the rights of the patent holder.

21.1.4 The layout designs of integrated circuits

The layout designs of integrated circuits are governed by Ordinance No. 03-08 of July 19, 2003 and by Executive Decree No. 05-276 of August 2, 2005.

The layout designs of integrated circuits are protected when they are original.

Patent holder's rights

The layout designs of integrated circuits grant the patent holder the right to prohibit third parties from: reproducing the layout partially or totally; the importation, sale or distribution of this layout for commercial purposes.

Filing procedures

In order to benefit from the protection, the layout design of integrated circuits must be filed with INAPI directly by its author or through an agent[74].

The application must be accompanied by the payment of prescribed fees.

The registration of the layout design of an integrated circuit is subject to the publication of a notice in the Official Bulletin of Industrial Property

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74 Executive Decree No. 08-345 of 26 October 2008, amending and supplementing Decree No. 05-276 of 2 August 2005 laying down the procedures for filing and registration of layout designs of integrated circuits.

Sanctions

The infringement of layout designs of integrated circuits is punishable by:

- a prison sentence ranging from six (06) months to two (02) years and a fine ranging between two million five hundred thousand (2,500,000) and ten million (10,000,000) dinars,
- or one of those two sentences.

The court hearing the case may also order the destruction and the ban from commercial distribution networks of the infringing goods and the confiscation of the instruments used to manufacture them.

21.1.5 Registered designations of origin (appellation d'origine)

Registered designations of origin are governed by Ordinance No. 76-65 of July 16, 1976.

An "appellation d'origine" is a "geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors."

The following may not be considered designations of origin:

- the generic names of products,
- names contrary to public order and good morals.

Parties entitled to create appellations of origin

Appellations of origin are created by the ministerial departments affected by the product, possibly in coordination with interested ministerial departments and at the request of:

- any legally constituted institution;
- any physical or legal entity conducting activities of production in the geographical area in question.

Period of protection

Appellations of origin are protected for a period of ten (10) years, renewable indefinitely.

Registration procedures

To benefit from the protection, the appellation of origin must be registered with INAPI.

The registration application may originate from an Algerian national or from a foreign national represented by an Algerian agent residing in Algeria.

- The application must include:
- the name and address of the filer, as well as his activity,
- the appellation of origin in question, as well as the relevant geographical area,
- the list of products meant to be covered by this appellation,
- the part of the text pertaining to the appellation, especially the part including:
  - the special characteristics covered by the appellation of origin,
  - the terms and conditions regarding the use of the appellation of origin, especially with

regard to the method of labeling defined by the rules pertaining to use,

- the list of authorized users, if need be.
- The registration of an appellation of origin is subordinated to the payment of a tax.

Sanctions

Infringement of an appellation of origin is punishable by:

- a fine ranging between two thousand (2,000) and twenty thousand (20,000) dinars and a prison sentence ranging between three (3) months and three (3) years,
- or one of these sentences.

21.1.6 Industrial property agents

A Decree of 12 May 2009 sets out the terms of accreditation for industrial property agents.

The activity of industrial property agents is subject to accreditation, which is granted by the Ministry responsible for industrial property. It may be attributed to any individual who meeting the necessary conditions:

- possessing Algerian nationality. However, foreign nationals whose country grants similar rights to Algerians are not subject to this condition.
- residing in Algeria
- providing justification of a business address by a deed or lease,
- possessing appropriate training in industrial property law and/or professional experience of three years in the field.

The agent is authorized to file on behalf of others, whether individuals or legal entities, all drawings, designs, trademarks, appellation of origin, patent and layout design of integrated circuits. The agent carries out with the relevant services all procedures for obtaining rights for his/her client.

Agents already practicing at the date of publication of the Official Journal are not subject to the provisions of the Decree.

21.2 Literary and artistic property rights

Literary or artistic property rights protect creation in the literary and artistic fields, including computer programs.

They are subdivided into copyrights and related rights.

Literary and artistic property rights are governed by Ordinance No. 03-05 of July 19, 2003 pertaining to copyrights and related rights.

21.2.1 Copyrights

Copyrights protect creation in the literary and artistic fields.

In particular, the following are protected:

- written or oral literary works, whether literary, scientific, poetic, etc.
- computer programs,

- original data bases,
- cinematographic works and other audiovisual works,
- dramatic works or musical dramas,
- works in fine arts or graphic arts,
- architectural works, as well as the blueprints and the models associated with them,
- creations in clothing, fashion and ornaments etc.

Recognized rights

The author of an intellectual work possesses moral and economic rights over his work.

- Moral rights

Four moral rights are recognized to the author:

- the right to disclose his work at the time of his choosing,
- the right to the integrity of his work,
- the right to have his name on his work,
- the right of withdrawal.

- Economic rights

These are the economic rights granted to the author by virtue of his exclusive right to authorize or prohibit the use of his work and receive remuneration for its use.

The recognized rights are:

- the right of reproduction of the work in any form,
- the right of communication of the work to the public,
- the right of performance of the work,
- the right of rental,
- the resale royalty right for creators of works of plastic art,
- the right to remuneration,
- the right of translation, adaptation, arrangement or other alterations of the work.

Term of protection

Moral rights are permanent, inalienable and transmissible to heirs upon the author's death.

Economic rights are generally protected throughout the lifetime of the author and fifty (50) years after his or her death.

This time period is valid for all categories of works. However, the starting point of this period varies according to the category of work.

Exceptions

There are two exceptions to the protection of copyright:

- the compulsory translation licenses,
- the compulsory reproduction licenses.

Compulsory translation licenses may be granted to meet basic and higher educational needs when a work has not been translated or reproduced on the national territory one (01) year after first publication.

Compulsory reproduction licenses may be granted if the work was not published on Algerian territory at a price equal to prices of national publications, three (3) years for scientific works, seven (7) years for works of fiction, five (5) years for other works.

Limitations

The reproduction of all or part of a work in a single copy without the authorization of its author is possible:

- for the purpose of quoting, borrowing and demonstrating, provided that the name of the author and the source are mentioned,
- strictly within family circles,
- for the purpose of safeguarding and protecting the information,
- for the presentation of evidence as part of legal or administrative proceedings.

Transfer of copyright

The transfer of copyright must be done by a written contract. Three main types of contracts are provided for in Ordinance No. 03. 05:

- the public communications license,
- the publishing contract,
- the performance contract.
- Mandatory minimum clauses are provided for in these contracts.

Sanctions

The infringement of literary and artistic works is punishable by severe sanctions:

- a fine ranging between five hundred thousand (500,000) dinars and one million (1,000,000) dinars,
- a prison sentence ranging between six (6) months and three (3) years, or one of these two sentences,
- the destruction of the equipment used to manufacture the illicit material,
- the destruction of illicit material,
- the publication of the ruling in the press,
- the temporary (up to six months) or permanent closing of the establishment operated by the violator or his accomplice.

21.2.2 Performing rights

Performing rights are the rights recognized to the auxiliaries of the creative process: the performers, the producers of phonograms and videograms and broadcasting organizations.

Recognized rights

- Moral rights

Only performers enjoy moral rights. Those rights are:

- the right to preserve the integrity of the performance,
- the right to be identified as the performer with regard to his performance.

- Economic rights

The performer enjoys the right:

- to authorize the communication or the reproduction of his performance,
- to be remunerated for the use of his performance.

The producers of phonograms enjoy the right:

- to authorize communication to the public or the reproduction of their phonograms,
- to be remunerated for the secondary commercial use of their phonograms.

Broadcasting organizations enjoy the right to authorize communication to the public or the reproduction of their programs.

Term of protection

Moral rights are permanent, inalienable and transmissible to heirs upon the death of the performer.

Economic rights are protected for a period of fifty (50) years from.

- the end of the calendar year of the performance, for the performers,
- the end of the calendar year of the release of the phonogram, for producers of phonograms,
- the end of the calendar year in which the broadcast took place, for broadcasting organizations.

Exceptions and limitations

The exceptions and limitations to performing rights are the same as the ones for copyrights.

Sanctions

The sanctions for infringement of literary and artistic works also apply to performing rights.

The following must pay copyright royalties and performing rights fees:

- establishments playing music in public spaces,
- the owners of Internet sites playing music,
- advertising agencies for the use of music in commercials,
- organizations using music on their telephones lines for callers on hold,
- concert and show organizers,

- movie theatres, video rental stores and cybercafés,
- producers of phonograms and videograms,
- audiotex,
- makers and importers of recording devices and recording mediums (including digital mediums).

- The calculation of royalties

Royalties are calculated as follows:

in proportion to recorded sales with a guaranteed minimum, with applied rates ranging between 1 and 10%;

in a lump sum in cases stipulated by collection rules;

pursuant to the provisions of the Order of May 16, 2000 of the Minister of Culture pertaining to royalties for private copies.

- The administrative obligations of licensees subject to payment of royalties

The main obligation consists of declaring the titles of the works that were used to the National Office of Copyrights and Related Rights (Office National des droits d'auteur et des droits voisins, ONDA).

Applications for copyright licenses and authorizations may be presented to ONDA agencies whose addresses and other contact information are available on the site: **www.onda.dz**

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