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# Guide to Investing in Algeria

Edition 2015

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# **Guide to investing in Algeria - 2015**

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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<sup>2</sup>, 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 37 900 00 inhabitants <sup>1</sup> (29 276 767 inhabitants according to the general population and housing census of 1998).

From a rate of natural increase (RNI) standpoint, demographic growth is following a favorable evolution, as a net downward trend has been observed over the past twenty years (the rate went from 3.14% between 1971 and 1975 to about 1.44% between 1999 and 2005).

Important changes have taken place with regard to principal characteristics. Life expectancy increased by nearly twenty years over the past thirty years, approaching 75.7 years in 2008. The infant mortality rate, which was above 15% in 1970, went down by two thirds. The fertility index dropped noticeably, going from 8.3 children per woman in 1970 to 2.54 children per woman in 2006, under the combined effect of the lower rate of marriage and a noticeable spread of the use of contraception.

The demographic situation in 2012 is marked by a significant increase in the volume of births (978,000), a growth of 75% compared to 2011, the volume of deaths continues its growth to reach 170,000 deaths, while marriages volume recorded a slight rise compared to what was observed in 2011.

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)<sup>2</sup>.

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<sup>2</sup>. This density drops to less than 1 inhabitant per km<sup>2</sup> in the Great South region, for a national average of 13 inhabitants per km<sup>2</sup>. 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 60% of the population in 2009. The urban population is eleven times larger than it was four decades ago.

### 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), recognized as a national language since 2002, is also widespread through its numerous regional dialects.

The vast majority of Algerians are Sunni Muslims. The country's constitution made Islam the

<sup>1</sup> Figures dating from 1 January, 2013, Algerian Statistics Office.

<sup>2</sup> Source :ONU: Perspective of global population.

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).

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 and revised in 1996 and 2008 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 President of the Republic, Head of the State, embodies the nation's unity. In addition to the powers that other provisions of the Constitution grant him, the President of the Republic holds the following powers and prerogatives:

- He is the commander-in-chief of all the armed forces of the Republic;
- He is responsible for National Defense;
- He is responsible for devising and conducting the country's foreign policy;
- He presides over the Council of Ministers;
- He nominates the prime minister and terminates his duties;
- He signs presidential decrees;
- He has the right to grant grace, to commute sentences;
- He can, with regard to all matters of national importance, poll the people through a referendum;
- He concludes and ratifies international treaties;
- He awards decorations, distinctions and honorific State titles.

In addition to this, the President of the Republic names appointees to:

- the posts and mandates provided for in the Constitution;
- civilian and military posts of the State;
- the designations made by the Council of Ministers;

- the President of the State Council;
- the Secretary General of the government;
- the Governor of the Bank of Algeria;
- the Judges;
- the officers in charge of the security agencies;
- the Walis and the heads of daïra.

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. There are close to 50 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). 47 new political parties have been certified since January 2012 following the adoption of a new law on political parties.

Freedom of association is guaranteed by the Constitution. There are 962 national associations and 77 361 local association<sup>3</sup>.

## 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.

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.

The reform of the system to improve the judicial system is its final stages, and is characterized by the creation, in particular, of specialized courts (land court, commercial court, etc.). The promotion and protection of human rights benefit from a great interest

## 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.

<sup>3</sup> Figures from Ministry of Interior and local authorities.

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.<sup>4</sup>

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-Djazair (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

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<sup>4</sup> Further information in the Expatriate Guide, KPMG Algeria.

possible within the framework of domiciled commercial transactions and is thus subject to official rules.

**The exchange rate** (January 2014)

1 euro = 106. 2432230 Algerian dinars

1 dollar US = 78.43 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 1<sup>st</sup>.

- Labor Day: May 1<sup>st</sup>.

- New Year's Day: January 1<sup>st</sup>.

- Religious holidays (based on the Islamic lunar calendar, which is 10/11 days behind the Gregorian calendar each year).

- Eid-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 Eid-Al-Fitr): two-day holiday.

- Awal Mouharem (Islamic New Year): one-day holiday.

- Achoura, 10<sup>th</sup> day of the lunar month of Mouharem (Holiday for alms-giving): One-day holiday.

- Mawlid en-Nabaoui commonly called "Mouloud," 12<sup>th</sup> day of the lunar month of Rabi'Ul-Awal (celebration of the birth of the Prophet Mohammed): One-day holiday.

**1.9 Economy: key figures<sup>5</sup>**

- **Gross domestic product (GDP):** 137.5 billion USD in 2009, 161.7 billion USD in 2010, 198.7 billion USD, and 209.3 billion dollars in 2011 and 2012.

- **Gross national product per capita:** 3129 USD end of 2005, 3640 USD in 2009, 4820 USD in 2011.

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

95 billion USD in 2009, 105 billion USD in 2010, 127 billion USD in 2011 and 140 billion USD in 2012.

- **Foreign exchange reserves:** 190.7 billion USD in December 2012 and 189. 7 billion USD in June 2013.

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

**Sources:** FMI \* anticipated rate for 2013

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

- **Gold reserves:** 173.6 tons 4. 7% of world reserves (third in the Arab world).
- **Growth rate:** approximately 2.4% for 2009, 3.3% in 2010, 2.4% in 2011 and 3.3% for 2012.
- **Share of hydrocarbons:** 45% of the GDP; 97% of foreign currency proceeds (71,44 billion USD in 2011).
- **Revenues from oil taxes:** nearly 55% of all fiscal revenues of the State (3070.2 billion dinars in 2011).
- **Current account balance:** 3.9 billion USD in 2009, 15.3 billion USD in 2010, 20.1 billion USD in 2011 and 18.2 billion USD in 2012.
- **Trade balance:** about 5.8 billion USD in 2009, 16.5 billion USD in 2010, 26.2 billion USD in 2011, and 27.1 billion in 2012.
- **Total volume of exchanges:**

Years	2009	2010	2011	2012
Imports in billion USD	39.2	40.4	47.2	46.8
Exports in billion USD	45	57	73.4	73.9

**Inflation:** 4.5% in 2011, 8.9% in 2012 (5% anticipation 2013).

- **Unemployment:** 10.5% in 2009, approximately 10.5% in 2010 and 2011 (10% 2013)
- **Outstanding debt:** 4 billion USD in 2011, the debt amounted was reimbursed in its totality. The debt amounted to 32.4 billion USD in 1994.
- **Debt service ratio:** it went from 22% in 2001, to less than 1% in 2008. The ratio was 47.5% in 1998 0,8 in 2011 and 1,1 in 2012
- **National debt:**

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

- **Population:** 38 700,000.
- **Birth rate:** about 1.6% from 1990 to 2000, 1.6% in 2006 and 1.87% in 2010.
- **Fertility index:** 2, 66 children per woman (2004 estimate), 1.75% in 2011.
- **Marriage rate:** 9‰ in 2007
- **Life expectancy:**

<b>Life expectancy</b>	<b>76.4 years</b>
Men	75.7 years
Women	77.2 years

**Population structure:**

	Total pourcentage	Men	Women
0 – 14 years	27.8%	5,318,100	5,072,373
15 – 24 years	18.9%	3,617,642	3,448,260
25 – 54 years	42.4%	8,011,186	7,843,311
55 – 64 years	5.9%	1,114,232	1,072,211
65 years and more	5%	854,036	1,015,875

- **Road network:** 135,000 km, including 2600 km of freeways and expressways.
- **Number of automobiles:** currently, about 5 million units, 70% of which are private vehicles and 30% are considered utilitarian. The market is experiencing very strong growth. More than 300,000 new vehicles were sold in 2011 (155,000 new vehicles sold in 2006 and close to 200,000 in 2008)
- **Airports:** 35, including 13 conforming to international standards.
- **Main seaports:** 13 (Algiers, Annaba, Arzew, Bejaïa, Béni-Saf, Dellys, Djendjen, Ghazaouet, Jijel, Mostaganem, Oran, Skikda, Ténès).
- **Railroad transportation:** 4,600 km (247 operational commercial train stations).
- **Telecommunications:** the network is totally digitalized and a national fiber optic backbone of 15,000 km has been laid out.
- **Fiber optic cabling:** more than 8,500 km.
- **Number of telephone landlines:** 3.7 million subscribers, teledensity about 10%.
- **Mobile telephones:** nearly 35 million lines in February 2011, against only 600,000 in 2001, a teledensity of over 95%.
- **Internet:** the number of subscribers is of the order of 2 million. The short term goal, in 2015, is widely 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 and BlackBerry, Anwarnet, SLC and Icosnet in partnership with Algeria Telecom. Finally, all major OEMs are present in Algeria.
- **Electricity:** 95% of the territory has electricity, 97% of households are connected to the network.
- **Natural gas:** 35% of households are connected to the natural gas distribution network. The 2011-2015 program contains provisions for connecting 1,500,000 new households.
- **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 two networks (02), with the launching, a few years ago of Canal Algérie, whose programs (in French) are just as dynamic as those of Radio Chaîne III. 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

**Note:** Education and training have always been a preoccupation for the Algerian government. Since its independence, Algeria has opted for free, compulsory education until the age of 16.

Thanks to sustained budgetary efforts and substantial investments representing about one fourth of the total budget (operations and equipment), Algeria now guarantees access to education to approximately 98% of school-age children and maintains a schooling rate above 85% for children between the ages of 6 and 14 years.

Meanwhile, Algeria’s higher education system spreads across 36 cities comprising 62 university-level institutions, including 17 multidisciplinary universities, which welcome more than 1.1 million students, 54% of whom are female.

It is worth noting that the number of students did not even exceed 3,000 at the time of national independence (1962). The results obtained, however, are not commensurate with the amount of effort invested in the sector however.

Despite the funds allocated to education, which exceed 20% of the State budget, several deficiencies can be observed, namely a disquietingly high student attrition rate which translates into 500,000 students leaving the educational system every year for various reasons.

- **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:<sup>6</sup>

Years	2009	2010	2011	2012
In thousand Barrels per Day	1 216	1 189,8	1 161,6	1 199,8

- Gas: 152.8 billion m<sup>3</sup> in 2007 (4<sup>th</sup> in the world).

Année	2009	2010	2011	2012
In thousand TEP (tones of oil equivalent)	71,6	72,4	74,4	73,4

Sources: OPEP

- Electricity<sup>7</sup>: 8,502 megawatts (numbers of the regulatory commission for electricity and gas)
- 1,18 DA Kilowatt per hourly rate (Sonelgaz price)
- 2,2 DA Kilowatt per hourly rate (producer price).

<sup>6</sup> Source: OPEP.

<sup>7</sup> Ministère de l’énergie et des mines

- Concrete: 11 million tons (consumption 13 million tons).
- Iron: 2.7 million tons.
- Phosphates: 1.4 million tons in 2010, 1.5 million tons in 2011.
- Foundries – Iron and Steel Mills: 700,000 tons (capacity: 2 million tons).
- Cereals: the annual average (1991-2003) is 23.4 million quintals. In 2005, production amounted to 35 million quintals, 26.9 million quintals in 2006, 60 million quintals in 2009 and 51 million in 2012.
- Dates: 420,000 tons in 2003, 516,000 tons in 2005, 500,000 tons in 2011 and 800,000 tons in 2012.
- Tomatoes: 900,000 tons (2004 estimate). 1.4 million ton in 2010.
- Oranges: 600,000 tons (2005). 800,000 tons in 2010.
- Livestock: 28 million head, including 18 million sheep and 2 million cattle.
- Wines: 650,000 h/1.
- Meat<sup>8</sup>: red meat 298,554 T, white meat 260,000 T.
- Eggs: 5 billion unit.
- Fisheries: 130,000 tons.
- Olive oil: 18.5 million liters (2010).
- Milk<sup>9</sup>: 2.92 billion liters (2011).
- Fresh vegetables: 45 million quintals in 2004, 56 million quintals in 2007.
- Potatoes: an average of 210,000 tons in 2007 (around 500.000 in 2012).
- Refrigerating capacity: 140,000 m3.

The agricultural sector now accounts for nearly 10% of GDP. Its contribution to overall growth went from 0.6% in 2002 to about 2% in 2004, 3% in 2007.

### **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

<sup>8</sup> Source : National Agency for Investment Development (Agence nationale de développement de l'investissement, ANDI), Guide Pratique de l'Investisseur en Algérie (2008, in French).

<sup>9</sup> Id.

**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.

### c) Social security contributions and taxes

Taxes Social security contributions (base: payroll):

Sectors	Share of the employer	Share of the employee	Total
Social security	12.5 (%)	1.5 (%)	14 (%)
Industrial accidents and illnesses	1.25 (%)	-	1.25 (%)
Retirement	10.5 (%)	6.75 (%)	17.25 (%)
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).<sup>10</sup>

<sup>10</sup> Finance act law of 2013



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.

#### **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: SONEGAS (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<sup>11</sup>: Users bulk prices (AD)*

<b>Products</b>	<b>Unit of Measure</b>	<b>To dealers</b>	<b>To consumers</b>	<b>Price at the pump</b>
Premium gas	1	21,50	23,25	23,25
Regular gas	1	19,00	21,20	21,20
Gas-oil	1	11,65	13,70	13,70
LPG fuel	1	6,80	9,00	9,00
Unleaded super	1		22,60	22,60

<sup>11</sup> Prices fixed by decree (Decree no. 07-60 dated 11 Feb 2007).

### c) Water

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

Water tariffs<sup>12</sup>:

Categories of consumers	Consumption bracket in m <sup>3</sup>	Price in AD
Households	1 to 25	6.30
	25 to 53	20.48
	54 to 82	34.65
	> 83	40.95
Local administrations and communities	single bracket	34.65
Tertiary sector	single bracket	34.65
Industry – Tourism	single bracket	40.95

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

### **Postal services and Telecommunications<sup>13</sup>**

Four service providers: Algérie Poste, Algérie Télécom and two private operators, OTA and Watania "Ooredoo".

Postal establishments = 3,605 post offices.

Number of postal account (CCP): 17.5 million until June 2014.

Location of the GSM network subscriber base: 37,258 million at 30/11/2014. The mobile segment experienced the actual introduction of 3G mobile telecommunications services including 3 operators on the market have received license exploit December 2, 2013 and launch marketing December 15, 2013.

**Situation of the park 3G subscribers:** 8.231 million at 30/11/2014.

**Total Internet subscribers:** 9,816,143 at 30/11/2014

### **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%+ 17% VAT on interest.

*Different types of credit*

- Commercial discount credit;
- Overdraft facilities;

<sup>12</sup> Prices fixed by decree (Decree no. 05-13 dated 9 January 2005).

<sup>13</sup> Source Rapport « autorité de régulation de la poste et des télécommunications dossier de presse 27 Décembre 2014 »

- Overdraft;
- Seasonal credit;
- Advances against receivables;
- Advances against securities;
- Advances against merchandise;
- Advances against government contracts;
- Prefinancing of export transactions;
- 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 4.5% in 2003. It is currently at 4%<sup>14</sup>.

### **VAT and customs duties on imported equipment**

<b>VAT and customs duties on imported equipment</b>	<b>Common law</b>	<b>Ordinance 01-03 on Investments</b>
Customs duties on equipment	0 to 30%	0%
VAT	0 to 17%	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

<sup>14</sup> Source: Bank of Algeria, 2010.

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 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.

Today, 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:

- Law 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 alleviate 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.

A program to upgrade the companies is provided in the stimulus package, with an initial budget allocation of around 30 million euros. Another program involving 20,000 larger scale SMEs is being launched in the 2010-2014 program. In 2012, only 6,000 SMEs are in line with this program (a budget of 4 billion euros).

### **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. With about 135,000 km, the Algerian road network is the largest of the Maghreb with a ratio of 3.7 km per 1,000 inhabitants.

Though the road network is relatively well thought out, it suffers from congestion and saturation, which, for the government, highlights the urgency of accelerating the implementation of the proposed east-west highway. that will cover 2,000 km. Included in the priority programs of government, this ambitious project is being implemented and should be completed in 2012.

The railway network covers a large part of the country. It stretches over nearly 4,500 km and has over 200 operational commercial stations. 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 stated objective is to increase the number of seat-km offered (SKO) from 800 million in 2004 to 3.2 billion by the end of 2014. 10 billion USD are devoted to this.

The airport infrastructure includes 35 airports. The new airport in both Algiers and Oran, with a large capacity, is well-equipped and has been operational since 2006 and 2012.

On the maritime front, Algeria has 13 main ports including 9 diversified ports and 4 specialized in oil. 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.

In the transport sector, the strategy set out in the 2001-2004 Recovery Plan combines rehabilitation investment / expansion with the opening to the private sector (including commercial ports and airports), the concession for the management of progressive ports, in addition to significant investments in roads and railways.

The supplementary program to support growth (PCSC) and the new 2010-2014 program provide for the end of 2014 the construction of high-speed lines, completion of the subway

and the Tramway of Algiers, the terminal and the construction of new airport and port facilities and tram lines to five other cities in Algeria.

### **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<sup>3</sup>/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.

According to the latest statistics from the regulatory authority, the turnover in the telecommunications sector is estimated at 495 billion dinars,

The contribution of the telecommunications sector to gross domestic product (GDP) for 2013, it is estimated at 2.8%.

## **Mining - Energy - Oil**

On the world energy scene, Algeria occupies the 15<sup>th</sup> place in terms of oil reserves, the 18<sup>th</sup> in the production and 12<sup>th</sup> in exports. Algeria's refining capacity is 27 million tons/year in 2011. .

Algeria ranks 7<sup>th</sup> in the world in terms of proven gas resources, 5<sup>th</sup> in production and 4<sup>th</sup> in LNG exports<sup>15</sup>.

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 unparalleled in the Mediterranean region.

Investments amounting to several billion dollars are underway in the petrochemical sector. Algeria is the third largest supplier of the European Union (EU) in natural gas energy and its fourth overall energy supplier. An EU-Algeria agreement is being negotiated in order to sustain this relationship.

The Algerian mining sector (some 1.5 million km<sup>2</sup>) is still largely under exploited. Its proven (hydrocarbons) reserves come to about 45 billion tons in oil equivalents.

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

<sup>15</sup> Source: BP Statistical Review of World Energy, 2009.

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. Overall investments in this sector for the 2000-2010 period are estimated at 12 billion USD. A huge 2,000 megawatt project, of which 1,200 are earmarked for exportation to Europe, is currently underway. The 2011-2015 investment program aims at increasing the production of electricity to 15,000 megawatts, and the electric and gas network to 14,200 and 9,100 Kms. 90 billion USD are devoted to this program.

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 new Mining Law on July 3, 2001 encouraging investments from both Algerians and foreigners.

Moreover, two texts pertaining to the application of the Mining Law of July 2001, one pertaining to the terms and procedures regarding the allocation of mining claims and the other pertaining to their award, were published.

### **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.

The total number of SMEs/SMIs in Algeria is estimated at 600,000 businesses in 2011. It was estimated at about 180,000 in 2001.

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.

The banking sector now numbers more than 29 banks and financial institutions, including 6 public and 14 private 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.

## **New information and communications technologies (NICT)**

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 1.3 doctors for every 1,000 inhabitants<sup>16</sup>.

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.

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<sup>16</sup> Source: international Statistics.

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;
- 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<sup>17</sup>, 36 in 2008<sup>18</sup>.

**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.

In this process, measures have been taken recently 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.

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<sup>17</sup> For more details, see below the summary table under « privatization and industrial restructuring ».

<sup>18</sup> 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.

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 of 20 July, 2008 (amending and supplementing Law No. 85-05 of 16 February 1985) 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<sup>19</sup> 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.

### **Privatizations and industrial restructuring**

Just six years after establishing the basis for privatizations, with Ordinance No. 95-22 of 26 August 1995 on the privatization of public enterprises, public authorities have been urged to develop even further with Ordinance No. 01-04 of 20 August 2001, amended and completed<sup>20</sup> on the organization, management and privatization of large state-owned companies, EPEs (Entreprises publiques économiques).

The legislature no longer distinguishes between businesses and the strategic sector. Both categories are eligible for privatization as well as companies providing a public service mission. However, in companies seen by the State as flagships in the economic or industrial sectors, specific action may be issued by the State, on a provisional basis, to protect them against foreign interests and in order to preserve their original activity.

The Algerian privatization policy aims, through the sale of public assets to private investors, to improve the management and acquisition of new technologies and to reduce the Treasury debt vis-à-vis the Bank of Algeria. For this reason, the State, through companies that manage foreign investment in and in cooperation with state enterprises (SGP), proves a tough negotiator for transfer prices of companies in order to ensure that privatization transactions provide new revenue to the Treasury.

Government policy tends to favor “positive privatization.” This is apparent in Article 17 of Ordinance No. 01-04 of 20 August 2001 amended and completed, under which “privatization transactions in which buyers agree to return or upgrade the company and / or maintain all or part of the salaried jobs and keep the firm in business, can benefit from specific incentives negotiated on a case by case basis.”

<sup>19</sup> See Chapter 19.

<sup>20</sup> Ordinance 08-01 of 28 February 2008

In other words, privatization considered useful to the nation allows existing businesses to benefit from an external contribution (financial, technological, and managerial) in order to grow, build productive capacity and create new jobs. Furthermore, so that Algeria respects the commitments made to the international financial community in general and the Bretton Woods institutions, in particular, the privatization policy excludes saving ailing companies whose manufacturing facilities are obsolete, inefficient and prove too costly for the taxpayer.

In parallel with the privatization policy, and without undermining it, Algeria, in order to diversify its economy, has taken steps to create thirteen major companies (known as economic development corporations or SED) for the purpose of allowing the development of an industry, both competitive and efficient in terms of skills development of human resources, technology, and in terms of management methods. This industrial policy is headed by the Ministry of Industry and Investment Promotion (MIPI). The sectors that have been identified as the most promising are the petrochemical, pharmaceutical, engineering and automotive, construction, steel, aluminium and food and agricultural industries.

The objective involves the association of an industry group much like Sonatrach and Sonelgaz, around a core group composed of public and private companies in one industry. These companies could open their capital to foreign investors.

### **- Preparation for privatization**

Under Article 18 of Ordinance No. 01-04 amended and completed: "Prior to any privatization operation, the concerned assets and securities should undergo an expert evaluation, based on methods generally accepted in the field."

Article 19 states that "the conditions of transfer of ownership are governed by special specifications that will be an integral part of the contract of assignment that defines the rights and obligations of the transferor and the acquirer."

The methods of evaluation of the companies are a central aspect in the preparation of the privatization.

Three evaluation methods are currently implemented by the financial and accounting expertise:

- the assets method based on adjusted net assets (ANCC);
- methods which are based on the value of the company from future free cash flows;
- methods based on stock exchange transactions.

Previous experience based on the evaluation of public enterprises since 1998 (year of the effective start of privatization operations) clearly shows that the asset method is the baseline value and the method of discounted cash flow, whether future, projected or desirable. The assets method is used in more than 90% of cases to determine the value of a company.

The evaluation of public enterprises does not always come down to a simple technical problem. Political and economic considerations may also be taken into account.

Under Article 22 of Ordinance No. 01-04 amended and completed, the Minister for Investments, in relation to the implementation of the privatization program adopted by the Council of Ministers:

- estimates the value of the business or assets to be divested;

- studies and proceeds to select tenders and prepare a report on the successful tender;
- safeguards information and establishes procedures to ensure the confidentiality of information;
- submits to the CPE (an advisory body on State investments) the record of sale, including the assessment and the range of prices, terms of transfer of ownership retained, and the proposal of the purchaser.

### - Privatization methods

Under Article 26 of the Ordinance, privatization transactions may be carried out:

- by the use of financial market mechanisms (stock exchange or public offering fixed-price);
- by tender;
- by mutual agreement;
- by offering share ownership on the public market.

In addition, a section of the Act is devoted to the special provisions for employees. Take three measures to facilitate the takeover by workers of their company (the takeover remaining an option):

- through the acquisition gratis of 10% maximum of company capital;
- a right of first refusal;
- a reduction of 15% maximum on the resale price.

The use of market mechanisms could also include an IPO or lead to a public offering at a fixed price. In the first case, this will entail offering listed shares to institutional and individual investors. Listed shares will already have market value and the price will be fixed according to the valuation method of choice. This method remains theoretical, since trading activity is low on the Algiers Stock Exchange which currently counts only three listed stocks each representing only 20% of the capital of the companies concerned.

In the vast majority of cases, shares are not listed. Therefore, reference documents on companies eligible for privatization have to be made available to the market in accordance with securities regulations. The mission of the COSOB<sup>21</sup> is very important since it determines the prices and quantities transferable. It is only after the publication of the COSOB rating that investment transactions begin. The institutions in charge of the operation to floating the securities also charged with seeking institutional investors or individuals.

The public offering (OPV) option for the public entity eligible for privatization entails floating part of its capital on the public market at a price that is fixed in advance.

The mutual agreement option consists of the State divesting a public enterprise to a private buyer, negotiating the price directly with the buyer and, where appropriate, the conditions attached to privatization. The option of share ownership to the public essentially comes in two forms:

- an employee share ownership plan (directly or to group of shareholders) of a certain percentage of shares.
- the proposed sale of shares to the public, through the Exchange Securities or the adoption of

21 COSOB : Surveillance Commission on Stock Exchange Transactions (Commission d'Organisation et de Surveillance des Opérations de Bourse).

the privatization method through bond issuances, the latter having the advantage of encouraging public interest in the equity market as it monitors price movements of shares it owns and thus tangibly participating in the process of economic transformation.

Among other, that have been introduced on the Exchange and amounting to 20% of capital are those of the El-Aurassi Hotel and SAIDAL (pharmaceuticals).

When the proposal is negotiated, it is submitted for approval by the CPE, which then has full powers to approve or reject the offer. If accepted, the act of transfer is negotiated and the company sold.

From 2003 to 2007, 417 privatizations, irrespective of the mode of privatization were carried through. According to figures from the Ministry of Industry and Investment Promotion (see table below) full privatization is the mode of privatization that has been the most successful, and joint ventures the option least used.

<b>Number of operations</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008* (August)</b>	<b>Total</b>
Full privatisations	5	7	50	62	68	18	210
Partial privatisations (>50%)	1	2	11	12	7	1	34
Partial privatisation (<50%)	0	3	1	1	6	2	13
Management Buyout (MBO)	8	23	29	9	0	7	76
Joint-ventures	4	10	4	2	9	1	30
Share transfers to private buyers	2	13	18	30	20	7	90
<b>Total</b>	<b>20</b>	<b>58</b>	<b>113</b>	<b>116</b>	<b>110</b>	<b>36</b>	<b>453</b>

*Source: Industry, Small and Middle Enterprise and Investment Promotion Ministry.*

**\* Source: Industry, Small and Middle Enterprise and Investment Promotion Ministry, see note N°17**

Macroeconomic equilibriums of the Algerian economy remain well in 2013 and allow Algeria to be classified on the top list on the African economies.

However, these equilibriums remain highly dependent of the oil sector since it contributes to more than 30% of the GDP and represent 97 % of export revenues and 60% of State revenues through oil tax revenues.

Under these conditions, the main risk in the short and medium term for the Algerian economy, remains in a prolonged decline of oil prices which pushed the governments, have made considerable efforts for diversifying the economy, especially with a ambitious program of modernization and infrastructure development with an amount of USD 286 billion during 2010-2014 as well as various measures to encourage national, foreign, public and private investments.

These efforts will continue in 2013, for example, loans given by banks to the national economy, estimated to 6 000 Billion AD and increased by 30% compared to 2012.

More than 50% of those credits which correspond to 2,160 billion dinars have been allocated to the private sector with 71 % from the full were medium and long term, i.e. directed towards productive investments.



This proactive political program combined with the strength of the medium term macroeconomic indicators and the country's institutional stability are beginning to show results since the amount of foreign direct investment (FDI) recorded during the first half of 2013 reached 2.280 billion Euros, which correspond to five times more than what was recorded during 2012 (Source: ANDI) thus confirming the FDI positive growth forecasts between 2013 and 2015 for Algeria as reported in the World report on foreign direct investment in 2013 edited by UNCTAD ( United Nations Conference on Trade and Development).

## **1.11 Economic development outlook 2010–2014**

### **- Public works**

Within the framework of Algeria's economic and social development and in the wake of the Economic Revival Support Plan (2001-2004), the public works sector benefited from fairly important programs with regard to infrastructures development.

The sector was given the same attention in 2005-2009 and 2010-2014. Significant credit lines have been devoted to public works within the framework of the PCSC (Complementary Plan for the Support of Growth) and the investment and equipment program 2010-2014 with a credit line of 250 billion USD.

In this regard, the public works action program pertains to the construction of 3,000 Kms of highways, 19,000 Kms of roads, and 2,000 works of engineering, 50 maritime, and 30 airport projects.

### **- Energy - Electricity**

Sonatrach's and Sonelgaz's investment programs over the next few years are worth tens of billions of USD and will go towards developing the exploitation of new deposits, increasing of the hydrocarbon recovery rate from operating deposits, constructing new gas transmission lines, increasing petrochemical production, etc.

For Sonelgaz (electricity), working in partnership or through direct investment, the goal is to achieve or support a growth plan that would increase electrical output by about 6,000 megawatts (current capacity) to reach 15,000 megawatts in 2015.

### **- Pharmaceuticals and medical products**

Estimations of cumulative future needs in medicine, medical consumables and devices amount to over 2.5 billion USD a year. Local production covers less than 20% of the market's needs.

### **- Industry**

The Algerian market for industrial products as a whole shows great vitality. National production covers only part of the needs of a market estimated at more than 5 billion USD for industrial products (spare parts for cars, machine tools, semi-finished products, electronics, etc.).

Annual steel consumption amounts to 2 million tons. Production only meets 30% of demand, with an installed capacity of 2.5 million tons.

### **- Food processing**

Though agricultural production has a significant growth potential of more than of 12% of GNP and imports of nearly 11 billion USD include cereals, milk and dairy products, sugar, coffee and pulses, the food processing industry suffers from a major deficit and offers great investment opportunities.

### - Infrastructure

Besides the activities linked to housing (1,045,269 housing units were built over the period of 2004-2009)<sup>22</sup>, major infrastructure programs were implemented, especially the construction of the 1,250 km long East-West highway, as well as dozens of projects pertaining to road transportation, ports, airports, bridges, aqueducts, dams, new cities, railway and tram lines.

The Complementary Plan for the Support of Growth (2010-2014) contains provisions calling for:

- 15 to 20 billion USD for hydraulics works (new dams, desalination plants, sewage plants, etc.).
- 30 to 50 billion USD for public works (completed East-West Highway, new bypasses, upgrading of airports, new fishing ports etc.)
- 20 to 30 billion USD for transportation (completed subway of Algiers, trams for Algiers and other major cities, rail electrification, expansion of the Air Algeria fleet etc.);
- 5 to 10 billion USD for restructuring and industrial upgrading as well as support to upgrade 20,000 SMEs;
- Energy, housing, agriculture and fisheries, research, education and health sectors under the 2010-2014 program have been attributed large investment credits.

### - New technologies

Algeria currently represents one of the biggest new information and communications technologies (NICT) markets of the Euro-Mediterranean area. A major equipment acquisition program has been launched: 10 million mobile telephone lines, 3 million additional landlines and around 3 million computers to equip educational establishments, banks, communities, administrations and households. Fifty billion AD in funds have been allocated to the program by the State as part of the Complementary Plan for the Support of Growth (2005-2009).

In the 2010-2014 program, substantial funds are being mobilized to implement e-Algeria 2013, which aims to start the industrialization of ICTs in Algeria and bringing the country up to speed in new information technologies.

## 1.12 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<sup>23</sup>, on conditions for conducting business that provides inter alia, the basic rules on registration with the trade register;

<sup>22</sup> Source: Housing and Urban development Ministry. See the Ministry website: <http://www.mhu.gov.dz/>

<sup>23</sup> Ordinance 10-01 of 26 august 2010 and Law n° 13-06 of August 14, 2004

- 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.

### **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<sup>24</sup>, 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.

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<sup>24</sup> 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 General definition of investment

The rules applicable to domestic and foreign investments made in the economic activities of production of goods and services are included in Ordinance No. 01-03 of 20 April 2001, as amended and supplemented<sup>25</sup>, on investment development (herein after Ordinance). It covers both domestic and foreign investments. The scope of activities includes the production of goods and services but excludes goods purchased for resale. The Ordinance makes reference however when the activity is import activity (foreign trade activities).

- Under the Ordinance, are investments: acquisitions of assets which fall within the framework of the creation of new activities or which are likely to expand production capacity, or to renovate or restructure manufacturing facilities;
- participation in the capital of enterprises (in the form of in-kind or cash contributions);
- buy-out of activities within a total or partial privatization.

Investments that are made by awarding concessions or licenses are also covered by Ordinance N. 01-03 of August 20, 2001 pertaining to the development of investment.

Various activities are eligible to provisions relating to the development of investment: among them cultural activities, especially cinema and book industry have been recently qualified eligible<sup>26</sup>.

#### 2.1.2 Freedom to invest and Algerian partnerships

##### 2.1.2.1 Freedom to invest

Article 4 of the Ordinance stipulates that investments are made freely, "subject to the legislation and regulations pertaining to the regulated activities and while respecting the environment. They benefit by rights of statutory protection and guaranties provided by current laws and regulations. Investments benefiting from tax incentives mentioned by the present Ordinance are subject, prior to their implementation, to an investment declaration at the national agency for the investment development (ANDI)".

Encouragement of foreign investments, that contributes to the transfer of know-how and / or producing goods with a greater than 40% rate of integration.

By this measure, the government encourages foreign investment or partnership that contribute to the transfer of know-how and / or producing goods with an integration rate of over 40%. This encouragement that will be translated by the granting of tax benefits is decided by the National Investment Council "CNI", in respect of the rule of capital allocation 51/49%.

The procedures for granting these benefits will be determined by regulatory.<sup>27</sup>

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25 Amended and supplemented by Ordinances No.06-08 of July 15 2006, and 2009 complementary finance act law 2010 finance act law, 2010 complementary finance act law, 2011 finance act law, 2011 complementary finance act law, 2012 finance act law, 2013 finance act law and 2014 finance act law. .

26 These activities have been considered eligible to the benefits of provisions of the Ordinance No. 01-03 of August 20, 2001 pertaining to the development of investment by the 2010 Finance Law.

27 Principe of integration introduce by finance act law of 2014

By "Regulated activities" is meant all activities governed by special rules organized by the laws and regulations defining them. According to the Decree N.97-40 of January 18, 1997 modified and completed, related to the criteria for the determination and framing of regulated activities and professions subjected to their registration to the trade register, is considered as regulated activity or profession, any activity or profession subjected to its registration in the trade register, and requiring, by its nature, content, object and means used, a number of necessary particular conditions to authorize its exercise. The classification of an activity or a profession in the category of regulated activities or professions depends on the existence of important concerns or interests which require a legal frame and appropriate techniques. The concerns and interests must be included in the field of, or linked to one of the domains related to public safety, particularly the safety of properties and persons, the preservation of public health, the preservation of natural resources and public property included in the national heritage, to the protection of environment, of protected zones and sites and the living environment of the population as well as the protection of national economy.

By "environment protection" is meant all the scope of activities that don't interfere with the principals of the Law of February 05, 1983, modified and completed, pertaining to environment. Sustainable development represents one of the main concerns of the public authorities as stated by Algeria before the ratification of the Rio de Janeiro Convention on Biodiversity on June 5, 1992. The creation of a High Council on the Environment and Sustainable Development, on December 25, 1994, shows the fundamental importance that the Algerian State attaches to the preservation of natural resources and its ecological heritage. Algeria ratified the Kyoto Protocol of December 11, 1997 with the presidential Decree of April 28, 2004.

### **2.1.2.2 Partnership**

Provisions for the framing and the establishment freedom principle have been enacted by the Supplementary Finance Law for 2009 in its article 04. They place partnership as the unique modality for investments in general and foreign investment in particular.

According to Article 4a of the Ordinance amended foreign investment for the production of goods and services, the import business for resale in the same condition or distribution, can be achieved through a partnership with the resident national (domestic) shareholding that represents at least 51% of the share capital. Domestic ownership may include several partners.

The partnership rule is applied to every field of activity, including banking and insurance.

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 provisions of the Ordinance shall also apply to investments made in partnership with public economic enterprises (EPEs) and to the opening of their capital to foreign ownership (article 4ter of the Ordinance).

The new rules of setting-up of foreign investments in terms of shareholding can also be applied to foreign investments which have been settled before their promulgation, in cases restrictively planned by the legislator. Indeed, according to article 4 bis of the Ordinance, “any modification of registration the trade registry involves a preliminary compliance of the company with the rules of capital share structure,” except under the following modifications:

- Modification of share capital (increase or decrease) which doesn't involve a change in shareholding structure or in the proportion between the shareholders;
- the transfer or exchange, between former and new directors, of guarantee shares provided under Article 619 of the Commercial Code and without that the value of such shares exceeds 1% of the share capital of the company;
- Suppression or addition of a related activity;
- Modification of the activity coming from a modification of the nomenclature of the activities;
- Appointment of the manager or legal representative of the company; Change of headquarters address.

### 2.1.2.3 State first refusal right

The government and EPEs now have a right of first refusal on all share transfer made by foreign shareholders or for the benefit of foreign shareholders (article 4 quinquies).

This right is extended to sales initiated outside the national territories of companies holding shares in Algerian law companies, having received advantage or facilities at their implementation, shall be subject to prior consultation with the Algerian Government.

#### **- Concerning sales initiated on the national territory:**

Government may waive the exercise of its right of first refusal: any transfer is submitted, hardly of nullity, to the presentation of a certificate of renouncement delivered by the qualified department of the ministry of industry.

It's the notary who is in charge of establishing the act of transfer who must present to the appropriate department the request of the certificate of renouncement. The act of transfer must specify the price and conditions of transfer. If the first refusal right is used, the price is fixed through a valuation.

The certificate of renouncement is delivered to the notary in a maximum deadline of three months<sup>28</sup> as from the date of deposit of the application. The government keeps, for a period of one year the right to exercise his first refusal right if he recognizes that the price is insufficient.

The absence of answer from the appropriate services during at least three months deadline means giving up of the refusal right, except when the amount of the transaction exceeds a fixed amount determined through a decree issued by the minister in charge of industry. The same procedure is used when the transaction concerns shares of a company activating in one of the activities described by the same decision. This Decree defines modalities of appeal to expertise as well as the model of the certificate. The decree of application hasn't been published yet.

#### **- About transfers abroad, total or partial, of shares of companies, holding shares, shares in companies of Algerian law:**

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<sup>28</sup> The deadline are modified by art 57 of LF for 2014

These transfers, when the companies concerned benefited from incentives or other flexibilities when they were settled, are subject to a preliminary consultation of the Algerian government. For reasons of sovereignty, the Algerian state or public enterprises preserve their right to purchase the shares of the subsidiary company concerned with direct or indirect transfer. The purchase price is fixed through a valuation.

***The legal entities of foreign law holding shares in companies which have settled in Algeria must give information concerning their shareholders:***

This obligation completes the purview regime of foreign investments. The legal entities mentioned in subtitle above have to provide a yearly list of their shareholders, certified by the department in charge of the management of the trade registry of the state of residence. This would apply to every company, legal entity of foreign right (article 4 septiès, Ordinance N.01-03) and not just to companies which have benefited of incentives or other flexibilities.

Following the rewriting of Article 4bis of the Ruling, the submission of foreign direct investments or investments in partnership with foreign capital to the examination of the CNI, is no longer required.

As a reminder, in its previous text, each foreign direct investment or investment project in partnership with foreign capital should be subject to the examination of the CNI.

Examination of CNI is now required only for cases expressly, mentioned by the Ruling N° 01-03. The period of validity of an extract of trade registry may be subjected to a limitation for a number of activities.

### **2.1.3 Guarantees - Protections - Agreements concluded by Algeria**

The Ordinance establishes the principle of equal treatment of investments and the protections and safeguards, in accordance with the provisions of international law.

As for the equality of treatment issue, it is brought up by Article 14, paragraph 1, which states that "foreign physical and legal persons shall receive treatment identical to that awarded to Algerian individuals and legal entities with regard to their rights and obligations in connection with the investment."

A nuance is introduced in the following paragraph however which states that "Individuals and legal entities all receive the same treatment, subject to the provisions of the treaties concluded with the countries of which they are nationals."

Algeria has concluded 45 bilateral treaties to protect investments, in addition to the multilateral treaties to the same effect.

Country	Date of signature	Date of ratification	Period of validity	JORA Ref
Arab countries	10/07/1995	10/07/1995	05 years	N°59 – 1995
Arab Maghreb Union	07/23/1990	12/22/1990		N°06 – 1991
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
Belgium-Luxembourg Economic Union	04/24/1991	10/05/1991	10 years	N°46 – 1991

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Bulgaria	10/25/1998	04/07/2002	15 years	N°25 – 2002
China	10/20/1996	11/25/2002	10 years	N°77 – 2002
Czech Republic	09/22/2000	04/07/2002	10 years	N°N°N°25 -2002
Denmark	01/25/1999	12/30/2003	10 years	N°N°N°02 -2004
Egypt	03/29/1997	10/11/1998	10 years	N°76 – 1998
Ethiopia	05/27/2002	03/17/2003	10 years	N°19 – 2003
Finland	01/13/2005	12/11/2006	20 years	N°N°N°06-469
France	02/13/1993	01/02/1994	10 years	N°01 – 1994
Germany	03/11/1996	10/07/2000	10 years	N°58 – 2000
Hellenic Republic	02/20/2000	07/23/2001	10 years	N°41 – 2001
Indonesia	03/21/2000	06/22/2002	10 years	N°45 – 2002
Iran	10/19/2003	02/26/2005	10 years	N°N°N°15 – 2005
Italy	05/18/1991	10/05/1991	10 years	N°46 – 1991
Jordan	08/01/1996	04/05/1997	10 years	N°20 – 1997
Kingdom of Spain	12/23/1994	03/25/1995	10 years	N°23 – 1995
Kingdom of Sweden	02/15/2003	12/29/2004	20 years	N°N°N°84 – 2004
Korea	10/12/1999	07/23/2001	20 years	N°40 – 2001
Kuwait	09/30/2001	10/23/2003	20 years	N°N°N°66 – 2003
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
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
Poland	09/15/2004	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
Romania	06/28/1994	10/22/1994	10 years	N°69 – 1994
Serbia	02/13/2012	90/30/2013	10 years	N°334-2013
South Africa	09/24/2000	07/23/2001	10 years	N°41 – 2001
Sudan	10/24/2001	03/17/2003	10 years	N°20 – 2003
Sultanate of Oman	04/09/2000	06/22/2002	10 years	N°44 – 2002
Swiss Federal Council	11/30/2004	06/23/2005	15 years	N°45-2005
Syria	09/14/1997	12/27/1998	10 years	N°97 – 1998
Tunisia	02/16/2006	11/14/2006	10 years	N°73 – 2006
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
Yemen	11/25/1999	07/23/2001	10 years	N°42 – 2001



With regard to guarantees, it is worth noting a general provision which states that, once approved; the foreign investment regime is inviolable. By virtue of Article 15, revisions or repeals likely to take place in the future do not apply to investments already made unless the investor specifically asks that they be applied.

Moreover, by virtue of Article 16, requisitioning through administrative channels is only possible if there are provisions in the law allowing it. In any event, it leads to a fair and equitable compensation.

Another safeguard especially appreciated by foreign investors (as it has been requested consistently since the 1970s) is the submission of all disputes between them and the Algerian State to arbitration. The general principle, of course, grants jurisdiction to local courts, considering that the dispute regarding the investment occurred on the territory of the state of destination, namely Algeria, and that Algerian rules regarding matters of jurisdiction automatically designate Algerian tribunals. However, since Legislative Decree No. 93-09 of April 25, 1993, the State is now authorized to include arbitration clauses in its international contracts (either organizing ad hoc arbitration, or institutional arbitration). Prior to the adoption of the Decree, Algeria abided by the New York Convention of June 10, 1958 for the recognition and enforcement of foreign arbitration rulings (Act No. 88-18 of July 18, 1988).

Subsequent to a law on arbitration (the first law on international arbitration since independence in fact), Algeria ratified the Convention of June 18, 1965 for dispute resolution (ICSID – International Center for Settlement of Investment Disputes) pertaining to investments between countries and nationals of other countries (Ordinance No. 95-04 of January 21, 1995), and the Convention of September 1986 pertaining to the creation of the Multilateral Investment Guarantee Agency (MIGA), which came into effect in 1988 (Ordinance No. 95-05 of January 21, 1995).

## **2.1.4 Capital transfers in Algeria**

### **2.1.4.1 The principle**

Article 31 of Ordinance No. 01-03-states that: “Investments made from capital contributions in freely convertible currencies, quoted regularly by the Bank of Algeria which duly takes note of said currency imports, benefit from the guarantees pertaining to invested capital transfers and associated income. This guarantee also pertains to the real net product from transfer or liquidation, even if that amount exceeds the invested amount.”

However, activities related to goods purchased for resale does not entitle the seller to transfer the income generated by such sales.

The situation was largely clarified with the adoption of Bank of Algeria Regulation No. 05-03 of June 6, 2005 pertaining to foreign investments.

This regulation defines the terms and conditions for transferring dividends, earnings and real net proceeds from the sale or the liquidation of foreign investments made within the framework of the aforementioned Ordinance No. 01-03.

While Regulation No. 2000-03 stated that “a prior transfer authorization was granted by the Bank of Algeria within a time period that could not exceed 2 months from the time the application was filed,” Regulation No. 05-03 have now delegated the requirement to accredited banks and institutions, which, since its adoption, have been obligated “proceed without delay with the transfer of dividends, earnings, proceeds from the transfer of foreign investments, as

well as attendance fees and percentages of profits for foreign directors.” To this end, concerning capital increases by incorporation of reserves or profits, it is sometimes difficult to have the resulting distributed profits recognized as coming from foreign contributions, as the capital used is not considered to qualify under conditions of capital made through freely convertible currency, which is regularly listed and recorded by the Bank of Algeria when it is imported.

It is therefore recommended that profits be distributed and transferred either overseas or to a foreign currency account opened in Algeria then imported into Algeria in order to allow the Bank of Algeria to register the capital imports by means of freely convertible currencies.

In practice, upon the request for transfer of profits, the bank calls for the submission of all bank statements relating both to the receipt of initial capital and capital increases.

Regarding investment disposals and liquidation, the transfer is for an amount equal to the purchase price or value of net liquidation proceeds accruing to foreign investors.

As for controls, only the Bank of Algeria runs a verification of transfers made by primary banks. Nevertheless, these checks remain extremely thorough.

### 2.1.4.2 Transfer procedures

Instruction no. 01-09 of February 15, 2009 on the dossier submitted in support of the request for transfer of income and proceeds from sales of foreign investments, defines the contents for the record for the transfer of profits, dividends, royalties, attendance fees and actual revenues net of the sale or liquidation of foreign investments. For each type of transfer, the instruction provides a list of required documents<sup>29</sup>.

The statement provides, with regard to the transfer of shares to non-residents of the proceeds of the sale or liquidation, in whole or in part that the operation be carried out by an accredited intermediary up to the actual value, net of tax, of the goods sold.

The instruction mentioned above prohibits, in addition, the transfer of advance payments on profits or dividends to any shareholder, and confirms that goods purchased for resale are not eligible for transfer unless they have entailed significant investment efforts.

**Note:** according to article 58 of the Supplementary Finance Law for 2009<sup>30</sup> (paragraph 5) direct investment or in partnership must present a foreign currency surplus for the benefit of Algeria throughout the life of the project. A Bank of Algeria-issued regulation dated October 18, 2009 on the balance foreign exchange on foreign direct investment or in partnership, includes more detailed conditions of application.

The balance of foreign currency for each project is developed taking into account the elements that should appear under credit and debit of the account in question as follows:

**Under debit:** transfers overseas as: imports of goods and services, profits, dividends, royalties, fees, salaries and allowances for expatriate staff, partial sales of investments, servicing of outstanding external debt and all other overseas payments.

**Under credit:** the repatriation of foreign currency from all contributions for investments including share capital, revenues from exports of goods and services, the share of production sold on the domestic market as a substitution of imports, exceptional external loans. In addition, the value of any imported contributions in kind, should be included.

The balance of foreign exchange must be presented in Algerian Dinars.

<sup>29</sup> For a detailed list, see KPMG Review No. 1, 2009.

<sup>30</sup> Amending article 4bis of Ordinance 01-03.

### 2.1.4.3 Investment financing

Except the capital, the investment financing cannot be operated through foreign loans.

Henceforth, in accordance with the new Executive Decree No. 13-320, the resident company has the possibility to have the necessary funding for the realization of foreign investment, direct or in partnership with foreign funding without interest under certain conditions.

### 2.1.5 Tax incentives likely to be granted to investors

Incentives may be granted to investors are those prescribed by the Ordinance 01-03 of 20 august 2001.

It provides for two types of regimes: one being a general regime, the other being a special dispensatory regime. In order to benefit from these incentives, investors must submit a specific request for incentives at ANDI.

Likewise, he is required to reinvest, in the framework of the investment project, the equivalent of the incentives granted. Failure to adhere to this obligation entails the reversal of the tax incentives granted and the application of a 30% penalty.

Failure to fulfill the new conditions in terms of share ownership prevents access to the incentives scheme.

Regarding investment, the amount of which is equal or more than 2,000 million dinars, the granting of benefits under the general scheme is now subject to a mandatory decision of the National Investment Council.

CNI is empowered to grant, for a period not exceeding five years, exemptions or reductions of taxes, and taxes duties, including value added tax levied on the price of goods produced by the investment within the scope emerging industrial activities.. The statutory instrument which will specify the conditions for implementation has not been issued yet.

Taxpayers who receive exemptions or reductions for all taxes, customs duties, taxes and other incidental benefits are required to reinvest the percentage of profits corresponding to exemptions and / or tax on corporate profits and tax on professional activity reductions granted during the operational phase.

Exemptions from customs duties and VAT are not subject to reinvestment.<sup>31</sup> The reinvestment in question must be made within a period of four (04) years from the closing date of the financial year subject to preferential treatment. The investor may be exempted from this requirement by decision of the National Investment Council.

The reinvestment (en français = réinvestissement) must be made in respect of each financial year or over as many consecutive years. If applied over several years, the period of four (04) years starts from the closing date of the first year.. Failure to respect this obligation results in repayment of the tax benefit and the application of a tax penalty of 30%.

The Finance Act laws for 2015 introduce, among other additional exemptions:

Exemption from customs duty or charges having equivalent effect and other charges and VAT exemption for equipment related to research and development acquired in the local market or imported, in the creation of a research and development department. A supported by the Treasury for the bank interest relating to the investments made by the industrial sector, for the acquisition of technology and his mastery in order to strengthen the rate of industrial integration of their products and competitiveness.

<sup>31</sup> Art 5 of finance act law of 2014

Exemption of (i) registration duties, (ii) the cadastral taxes and (iii) the Domaniale compensation of administrative acts issued by the service concession areas and bearing of built and unbuilt real property granted under of Ordinance No. 08-04 relating to the grant of land, subject to the investment declaration to the ANDI.

Temporary exemptions for a period of five (05) years, for IBS or IRG and/or TAP for investments in certain industrial sectors and activities listed below:

- Steelmaking and metallurgy,
- hydraulic binders,
- Electrical and electrical household,
- Industrial chemistry,
- Mechanical and Automotive,
- Pharmaceutical,
- Aerospace,
- Shipbuilding and repair,
- Advanced Technologies,
- Food industry,
- Textiles and clothing, leather and related products,
- Leather and derivatives,.
- Wood and furniture industry.

A bonus of 3% on interest rate for bank loans was also introduced.

The arrangements for implementing shall be defined by regulation.

### 2.1.5.1 General scheme tax incentives

Since 2006 these incentives are automatically granted to all investments that have not been “blacklisted”, as stipulated by Executive Decree No. 07-08 of January 11, 2007, amended and supplemented. To qualify for benefits, CNI approval is required for investments worth over 1 500 million DZD (article 9b of the Ordinance).

#### 1) Incentives

They are granted in connection with implementing and operating the investment.

##### a) Incentives granted in connection with implementing the investment<sup>32</sup>

**The incentives are of three kinds:**

- Customs duties exemptions for imported equipment not excluded and going directly into implementing the investment;
- VAT (Value Added Tax) exemption for goods and services not excluded and going directly into realization of the investment;
- Exemption of the property transfer tax in return for all property acquisitions made as part of the investment.

##### b) Incentives granted in connection with operating of the investment:

Incentives provided under the operation of the investment and incentives are specifically designed to promote job creation:

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<sup>32</sup> Art 58 of Finance act law of 2014

- A tax exemption on corporate income (IBS) and the tax on professional activities (TAP) are granted for a maximum of three (03) years for investments that create up to 100 jobs at start-up activity.
- This period may be extended three (03) years to five (05) years for investments that create over 100 jobs at start-up activity. These provisions apply to investments declared to the ANDI as of 26 July 2009.
- Concerning the investment in strategic sectors listed by the CNI, the exemption from IBS and TAP are granted for period extend to five (05) years without any condition for job creation.

The condition of job creation is not applicable to investments implanted in places that are eligible to the Special Fund for the South and Hauts Plateaux region. Failure to meet the requirement necessary to benefit of these incentives entails their withdrawal.

## 2) Incentive-excluded activities

Different types of exclusions:

- The list of activities enumerated in appendix 1 of the Decree dated 11 January 2007. Some of the activities on this list include all trading or distribution activities. There are, however, exceptions for certain exclusions. For example, the restaurant and catering industries are excluded but chain restaurant activity is eligible for incentives;
- Activities not subject to registration with the trade registry.

The following are also excluded from the incentives:

- Activities which, by virtue of special legislation, fall outside the scope of the application of the Ordinance,
- Activities governed by their own incentives scheme,
- Activities which, by virtue of a legislative measure, cannot benefit from tax incentives.

## 3) Incentive-excluded goods

In addition to activities excluded from ANDI benefits, the Decree also provides a list of goods excluded from the scope of benefits.

These goods fall within Class 2 of the National Chart of Accounts (NSCF) including investments other than specifically excluded goods; consequently this excludes raw materials, building materials and other types of stock from ANDI incentives.

The Supplementary Finance Law for 2009 provides that: "except if otherwise provided, customs clearance is allowed for new capital equipment, including machinery required for construction works (chapter 84), raw materials and new spare parts in order to pursue the activity of producing goods or services, and goods purchased for resale" which implies the prohibition of used goods imports.

### 2.1.5.2 Dispensatory scheme tax incentives

The following may enjoy the incentives under this scheme:

- Investments made in those zones that require a special contribution from government in order to be developed,

- Those zones that hold special promise for the national economy, namely those that use clean technologies likely to help preserve the environment, protect natural resources, save energy and lead to sustainable development.

### 1) Implementing the investment

Investments benefit from the following:

- Transfer tax exemption, for valuable consideration, for all real estate purchases made for the specific purpose of the investment;
- Tax and land registration exemption on property concession granted for the implementation of the investment
- Application of a fixed registration fee at the reduced rate of two per thousand (2‰) for the registration of the articles of incorporation and the capital increases of the company benefiting from the incentives;
- Partial or total coverage of expenditure for infrastructure works necessary to implement the investment;
- VAT exemption for goods and services directly involved in project implementation, whether imported or acquired locally, when those goods and services are destined to be used to conduct operations subject to VAT;
- Exemption of customs duties on imported equipment going directly into the implementation of the investment.

### 2) Operating the investment

Benefits are as follows:

- Exemption, for an effective 10-year period of activity, of corporate income tax (IBS) and professional activity tax (TAP);
- Exemption, for a period of ten years beginning on the acquisition date, of the property tax on real estate properties acquired within the framework of the investment;
- Additional benefits likely to improve and/or facilitate the investment, such as loss carry-forward and depreciation period extensions.

### 3) Investments bearing special importance for the national economy:

- In the case of investments bearing special importance for the national economy (a regulatory text is expected to define this type of investment), the investor is encouraged to seek an agreement with ANDI in order to benefit from certain benefits within the framework of the special regime. The aforementioned agreement, usually follows negotiations between ANDI and the investor who must demonstrate the special importance of his project with a study of the technical and economic impacts.<sup>33</sup>
- With regard to the investment phase, the texts provide for an incomplete list of incentives, namely including customs duties, VAT and registration fee exemptions for no limited duration.
- As for the operating phase, IBS, TAP tax and land registration exemptions, among other incentives, can be considered for a period maximal (not limited).

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<sup>33</sup> Art 60 of Finance law of 2014

### 2.1.5.3 Procedures to obtain incentives

Two new decrees were issued in 2008 setting up a new procedure for requesting and obtaining benefits: Executive Decree No. 08-98 of 24 March 2008 ruling on the form and conditions of the investment declaration, the request and the decision to grant incentives and the Inter-Ministerial Order of 25 June 2008 on the confirmation of entry into operation of investments reported under the Ordinance No. 01-03 of 20 August 2001 concerning investment development. An order dated 18 March stipulated the contents of the dossier and the introduction procedure for the investment declaration.

This declaration of investment is detailed in the afore-mentioned Decree of 24 March, 2008. It is signed by the investor or his representative with a proxy under conditions also specified by the Decree.

ANDI's website also provides a model of the declaration and another, an information sheet on the details of the investment.

In the case of an application for incentives, the declaration must be accompanied by the application and a list of goods and services on forms in accordance with details provided by the Decree.

Where the investment provides for contributions in kind, those details are also provided on a form which is outlined by the Decree.

The application for benefits is established by the investor bearing his/her authenticated signature.

The application for benefits is presented in two steps; the implementation stage and the operating stage. Each request is made on a form established by decree.

In the application for benefits for the implementation phase, the investor must specify the benefits sought.

At the date of filing the statement of investment and the application for benefits, ANDI sends the investor a receipt attesting to the filing of the declaration.

The qualifying list of goods and services for which incentives are granted is countersigned on every page.

The list of goods and services may be amended or modified.

The forms pertaining to a statement of investment, to application for benefits...etc can be downloaded from the website of the ANDI ([www.andi.dz](http://www.andi.dz)).

## 2.2 Implementation of incentives

### 2.2.1 Incentives at the implementation phase

These benefits take effect from the date of registration of the company with the National Trade Registry Office (Centre National du Registre du Commerce), and from the date of its notification if the company is already registered.

Note that if the investment has not been implemented a year after registration, the decision to award benefits is considered null and void.

The onset of activity is defined according to the Decree by:

a) The obtaining of permits for regulated activities, the approval of the impact for those covered by the legislation on classified installations and the establishment of the register of trade for the remaining activities, in the case of start-up investments;

b) A first acquisition of asset(s) receiving tax benefits for investments devoted to expansion, renovating and restructuring.

The exemption certificate from VAT related to the acquisition of qualifying goods and services shall be issued upon presentation of the following documents to services of the relevant tax office with appropriate jurisdiction:

- Register of Trade,
- Tax registration card,
- Positive decision to grant benefits and the list of goods and services benefiting from tax benefits.

Tax administration issues the certificate of VAT exemption on the spot.

The investor shall deliver the certificate either to local suppliers of those goods or services or to customs services if the goods are imported.

The presentation of the certificate of VAT exemption to customs entails the exemption of customs duty.

### 2.2.2 Incentives at 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<sup>34</sup>.

With this document the investor is entitled to ask for ANDI's decision to grant production-related benefits.

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.

The Decree of 25 June, 2008 establishes that the document must be issued by tax authorities within thirty days.

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<sup>34</sup> Décret 13-207.



The request for the document established by the investor and report of the document established by tax services are drawn up according to the models specified in the Order.

The investor's request should be accompanied by:

- a copy of the statement of investment;
- a copy of the decision to award benefits;
- a copy of the list of goods and services eligible for tax benefits;
- a statement of purchase of goods and services mentioning the dates and invoice numbers and/or a D10 customs form, for imported goods and references of the VAT exemption certificates, specifying exemptions acquired under a preferential tax regime;
- progress report(s) on the project<sup>35</sup>.

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

A provision of the Supplementary Finance Law for 2008 stipulates that investors enjoying benefits ANDI (or other measures to support investment) are under obligation to reinvest the profits ensuing from the investment that would have otherwise been taxed.

The obligation to reinvest is planned over a period of four years. It takes effect from last year of benefits. The obligation applies to earnings in 2008 or pending assignment from the date of enactment of the Act.

The reinvestment may be made for each financial year or over consecutive years.

Failure to comply with this requirement may entail the reimbursement of benefits in addition to a 30% penalty charge.

The 2009 Finance Law provides for sanctions: the loss of benefits in the event of breach of undertakings or if the investor is guilty of fraudulent tax offences recognized by a court decision having *res judicata*.

The 2014 Finance law introduce the obligation of reinvestment is limited to exemptions and / or tax on corporate profits and tax on professional activity reductions granted during the operational phase, (exemptions from customs duties and VAT are not subject to reinvestment), within a period of four years from the closing date of the year subject to preferential treatment. The investor may be exempted from this requirement by decision of the National Investment Council.

<sup>35</sup> Interministerial Order of 24 February 2009 on the annual progress of investment projects. The state of progress is completed and filed by the investor with the tax services.

By provision of the Finance Law of 2013, foreign investors, partners with national companies are now exempt from the obligation to reinvest profits corresponding to exemptions or reductions granted in case the incentives were injected into the price of finished products and services.

## **2.3 Institutions governing investment promotion**

### **2.3.1 The National Investment Council (CNI)**

The council<sup>36</sup> 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<sup>37</sup>, 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 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 (établissement public à caractère administratif, EPA) endowed with a legal status and financial autonomy. It has been placed under the authority of the minister in charge of promoting investments.

<sup>36</sup> Executive Decree No. 01-281 of 24 September, 2001 defines the composition, organization and activities of the CNI.

<sup>37</sup> Under the new 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.

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 database<sup>38</sup> 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.

### 2.3.3 One-stop service

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.

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<sup>38</sup> Refer to ANDI website: [www.andi.dz](http://www.andi.dz)

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, nineteen decentralized services (GUD) have been established throughout the national territory (Adrar, Alger, Annaba, Batna, Bejaia, Biskra, Blida, Chlef, Constantine, Jijel, Khenchela, Laghouat, Oran, Ouargla, Saïda, Sétif, Tiaret, Tizi Ouzou, Tlemcen).

# 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%<sup>39</sup>.

##### - 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<sup>40</sup>.

When the corporate object under consideration does not correspond to any activity code listed in the Economic Activity List, 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.
- 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.

<sup>39</sup> For more details, see the Chapter 2 of this guide.

<sup>40</sup> See point 4.2, Regulated activities, chapter 4

**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<sup>41</sup>, 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.

### *- Documents usually required by notaries to incorporate a firm*

- 1 Certificate of non-registration in the Trade Register of the corporate name used by the newly-established company,
- 2 The notarized commercial lease at the address of the headquarters,
- 3 Proof of payment of cash contributions in the case of non-resident shareholders (bank certificate).

For each shareholder or partner that is a legal entity:

- 1 Minutes of the company's governing body authorizing its representative to purchase shares in a company,
- 2 Registration certificate of the corporate shareholder,
- 3 Special notarized power of attorney, if the representative of the corporate shareholder does not have the statutory capacity,
- 4 Copy of the Articles of Association of the corporate shareholder,
- 5 Copy of the passport of the company's legal representative, as well as that of its proxy, if any.

For each shareholder who is an individual:

- 1 Copy of birth certificate,
- 2 Copy of police background report less than three months old.

For the directors or members of the supervisory board or managing director, as the case may be:

- 1 Copy of birth certificate,
- 2 Copy of police background report,
- 3 Copy of piece of identification.

### **- The company as a legal entity**

Registration<sup>42</sup> 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

<sup>41</sup> Under the provisions of the 2010 Finance Law, sole proprietorship limited liability companies and companies whose turn-over 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.

<sup>42</sup> For more details about the list of documents required, see below the point 4.1, Chapter 4.

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 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.

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.

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.

A penalty of 100,000 AD to 1,000,000 will be inflicted to managers who haven't appointed the statutory auditors.

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)**

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.

The appointment of a statutory auditor is mandatory since 2006.

- **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 twenty. If the company reaches a point where there are more than twenty 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 twenty or less during the said period.

#### - **Share capital**

The share capital of the LLC may not be inferior to 100,000 DZD; it is divided in shares with an equal par value of at least 1,000 DZD. The share capital may be provided in the form of cash contributions or contributions in kind, but not by contribution of services. Shares must be fully paid in.

## - 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. 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 20 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<sup>43</sup>, 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 is required prior to any dividends transfer.

### **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.

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<sup>43</sup> Article 66 FL 2011

- After receiving the statutory auditors' report, he approves the accounting records<sup>44</sup> 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 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.

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<sup>44</sup> The 2010 Finance Law removes the requirement for certification by a statutory auditor of accounts for an SPLLC.

### 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 Inter-ministerial Directive of July 30, 1986 pertaining to the financial obligations of the liaison offices of foreign businesses or groups of businesses accredited by the Ministry of Commerce.

##### **3.3.1.1 The principle**

According to Article 1 of the Inter-ministerial Directive of July 30, 1986, a liaison office may not engage in profit-making activities nor have any local income. Its operating costs, including compensation and social security contributions paid for its personnel, 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 20,000 USD guarantee in favor of the Ministry of Commerce. As collateral for the guarantee, an amount of 20,000 USD must be deposited in a frozen account with an Algerian bank throughout the period of validity of the accreditation.
- Opening of a CEDAC account (convertible Algerian Dinars account) with the same bank.
- Payment to the same bank of an amount in a foreign currency that is at least equal to estimated operating costs for one quarter.

##### **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 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.

##### **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. 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 Ordinance relating to investment development as modified in 2009, 2010, 2011, 2012 and 2013, and the lack of separate legal personality does not allow the establishment of partnership, a foreign company may no longer open a branch since the enactment of these Finance Laws.

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<sup>45</sup> (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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<sup>45</sup> 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 Supplementary Finance Law for 2010, amending article 2 of the Law No.04-08 of August 14, 2004 concerning the conditions of exercise of trade activities, has limited the period of validity of the trade register for some activities.

This provision came into force following publication of the decree of 13 June 2011 (the Official Journal No. 36). The validity of the trade register for some activities is now limited to two (02) years renewable. The term is effective from the date of registration in the trade register. The activities covered are:

- the import business of raw materials, products and goods for resale in the state, with the exception of import operations carried out for own account by any trader in the course of business of production, processing and/or achievement in the limit of its own needs;
- of retail merchants exercised by foreign individuals or legal entities.

The merchant who wishes to renew its trade register for carrying out the activities concerned has, before the expiry of its validity, a period of fifteen (15) days to complete the formalities related to renewal. At the expiration of the period of validity, the trade register becomes ineffective. The trader concerned can then ask to be removed. Otherwise, the cancellation is requested by the inspection authorized. Traders already in the trade register for the exercise activities, as covered by the Order in question, must make the change from the trade register. (38 traders already in the trade register for the exercise of activities covered by the decree of June 13, 2011 have until June 30, 2012 to comply with these new provisions.)

The above activities, by the decree of June 13, 2011, must be homogeneous and belong to a single sector of the classification of economic activities subject to registration in the trade register. In all cases, the duration set by the text is placed on the extract from the trade register, in a dedicated area for this purpose.

Up to that date, operators could exercise any commercial activity, related or not to the corporate object, including foreign trade (import), with the same registration. The limitation imposed by the Supplementary Finance Law will, consequently, oblige operators to renew or reformulate their application for some of their activities. Let's remind here that the abolition or

the addition of a non-related activity may entail for the foreign companies a prior compliance to the new rules of ownership (51-49%).

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<sup>46</sup> 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.

Executive Decree No. 03-453 of December 1<sup>st</sup> 2003, amending and supplementing Decree no. 97-41 of 18 January 1997, brought about certain new elements that had not been included in previous texts regarding the requirements for registration with the Trade Registry such as the principal stated later in Law No. 04-08 of August 2004. The most noteworthy have been included in this guide.

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 (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.

The file required for registration with the Trade Registry of any legal entity contains among other the following documents:

- An application filled out on forms supplied by the CNRC.
- Two (2) copies of the Articles of Association pertaining to the establishment of the company.

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<sup>46</sup> See Ordinance No. 75-59 of September of 26, 1975 on Commercial Code and Law No. 04-08 relating exercising commercial activities.

- A copy of the Articles of Association published in the BOAL (official gazette) and in a national daily newspaper.
- A birth certificate and criminal records of the managers, directors, members of the managing board or members of the supervisory board.
- The ownership deed of the commercial premises or the lease concluded in the company's name.
- A copy of the receipt confirming payment of stamp duties.
- The receipt confirming payment of the registration fees to the Trade Registry.
- The accreditation or the authorization issued by the competent administrative authorities in the case of a regulated profession.

## 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.

Any person carrying out a regulated activity or profession for which registration with the Trade Registry is required must first seek accreditation or a temporary authorization issued by the competent administrative authorities.

The actual conduct of that activity only becomes possible however once the person in question has secured the definitive authorization or accreditation.

## 4.3 The status of foreign traders

Subject to detailed explanations regarding the organization and commercial activities of foreign individuals or legal entities in Algeria which appear in other parts of this guide, it is worth noting the obligations required of the foreign merchant by virtue of Executive Decree No. 03-453 of December 1<sup>st</sup> 2003.

Article 4 of the Decree stipulates that the following are required to register with the Trade Registry under the terms of the current legislation:

- All traders, whether individuals or legal entities,
- All commercial companies with head offices abroad opening an agency, a branch or other type of establishment in Algeria,
- All foreign commercial representatives carrying out commercial activities on the national territory,
- All self-employed entrepreneurs, service provider, whether individuals or legal entities,
- All tenant-managers of a business.

### 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.

This Decree has thus repealed the provisions of Decree No. 75-1111 of September 26, 1975 pertaining to commercial and industrial activities, crafts and liberal professions practiced by foreigners on the national territory, the provisions of Executive Decree No. 97-38 of January 18, 1997 governing the terms and conditions for granting trader cards to the foreign representatives of commercial companies, as well as the 8<sup>th</sup> indent of article 12 in Decree No. 97-41 of January 18, 1997, amended and supplemented, concerning the registration conditions with the Trade Register.

The foreign trader card is now being replaced by the professional card, which is granted under the conditions defined in the regulation mentioned above.

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**

This legal provision shall apply to any foreign national who carries on a commercial or industrial activity, exercises a craft or practices a liberal profession, including the members of the board of directors or supervisory boards of commercial companies and the managing directors under their statutory administration and management.

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.

The documents generally required in three copies for the establishment or of renewal of the resident foreign merchant card, are:

- Request manuscript;
- An application written on a form provided by the competent services of the wilaya;
- A criminal record of the person concerned;
- A certified copy of the original passport of the person concerned;
- A certified copy of the original resident card or the receipt in case of renewal;
- A certified copy of the original trade register or the receipt in case of renewal;

- A certified copy of the original articles of incorporation under Algerian law;
- A certified copy of the original of the deed or lease the headquarters of the Algerian company;
- A stamp duty of 10 000 AD;

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 stipulate that foreigners are required to apply for a foreign resident card within ninety (90) days after obtaining a professional card, except 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 professional 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 Freedom of Imports and Exports

Ordinance No. 03-04 of July 19, 2003 concerning the general rules applicable to importing and exporting merchandise sets the general principle in this sector. Article 2 of the Ordinance stipulates that: "Operations concerning the import and export of products are conducted freely." Only those products that threaten security, public order and morality are excluded.

Operations pertaining to the import and export of products are subject to foreign exchange controls<sup>47</sup> which do not necessarily imply restrictions. Currency regulations subject these operations to certain prerequisites, such as banking domiciliation<sup>48</sup>.

Product import and export licenses may be implemented. The measures would be in accordance with the provisions of Ordinance 03-04 or international agreements to which Algeria is a party.

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<sup>49</sup>, Executive Decree No. 90-366 of November 10, 1990 pertaining to the labeling and presentation of non-food domestic products, Act 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.

#### 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 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

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<sup>47</sup> Ordinance 03-11 of 26 August 2003, concerning currency and credit.

<sup>48</sup> See Currency Regulations, Chapter 6.

<sup>49</sup> 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.

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 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.

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

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.

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 Customs Procedures

### 5.3.1 Customs Regulations

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

Today, most products can be freely imported. Restrictive prohibitions provided for by Algerian regulations essentially relate to the maintenance of public order, public health and the protection of the environment.

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.

Since March 2010<sup>50</sup>, an application for customs duties exemptions has been established by decree under which every corporation engaged in production and/or commercial operations shall, before to the operation, make out an application for a customs duties exemption, and for all imports eligible for such exemption from customs duties, i.e. under a free trade agreement concluded by the Algeria<sup>51</sup>. The exemption application is prior to any transaction for imports free of duties and constitutes a statistical means for monitoring imports.

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

The 2001 Finance Law, which instituted the temporary additional duty (droit additionnel provisoire, DAP), is henceforth obsolete.

This provision was amended by the publication 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.

According to this text, the application of exempted customs duties has been expanded and concerns also the individuals.

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.

50 Executive Decree No. 10-89 of March 10, 2010 laying down the procedures for monitoring imports exempted from customs duties under free trade agreements.

51 Agreements concluded with the European Union and the Arab Free trade Zone. Concerning the Arab Free Trade Zone agreement, there are 4 lists of products excluded from the benefits granted under the Arab Free trade Zone. For detailed lists of products excluded see the Customs website: [www.douane.gov.dz](http://www.douane.gov.dz).



From January 1<sup>st</sup>, 2002, customs tariffs have changed radically. 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).

With regard to the customs system per se and final importation, the formalities are as follows:

- The customs declaration must be detailed and the supporting documents must be included,
- The detailed bill of entry is signed either by the notifier (owner of the merchandise), or by a customs broker commissioned by the notifier,
- The customs declaration serves as a basis for customs formalities and the control of foreign trade, and the regulation of foreign exchange; it also serves as the basis for the collection of payable duties and taxes and makes it possible to collect statistical data.

### **5.3.2 The customs agent**

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,
- 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.

### 5.3.3 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).
- 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.

### 5.3.4 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.

### 5.3.5 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<sup>52</sup>. 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.

### 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.

### 5.3.6 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.

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

### 5.3.7 Customs value

Determining the country of origin of goods is required to:

- Calculate the amount of applicable rights,
- Know the procedures pertaining to the control of foreign trade,
- Establish foreign trade statistics,
- Apply, if need be, special regulations.

A system of detailed bill of entry relating to customs value (DEV) has been established in Algeria. It is meant to provide the basis for a customs value database and all information relating to the customs values will be made available in the SIGAD (Integrated Information and Automated Management System).

In the interest of rationalizing the system and reducing the costs of reproduction of this statement, DEV declarations come solely in the form of computer data.

Indeed, the establishment of the DEV will be mandatory for all customs duty since 1 January 2009.

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<sup>52</sup> Refer to article 25 FL 2013

### 5.3.8 Measures to protect intellectual property rights

The main provision introduced by the Finance Act of 2008 pertains to 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.

### 5.3.9 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.

#### **Provisions of the agreement**<sup>53</sup>

##### *- 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.

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

<sup>53</sup> 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.

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).

**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. Controls thus take place after clearance.

Since the publication of Instruction No. 03-14 of 23 November 2014 and as of December 1, 2014, the level of external commitments signed by banks and financial institutions shall not at any time exceed two (2) 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<sup>54</sup> as follows:

- The means used to fraud are confiscated;
- The notion of infringement of the exchange regulations is formally extended to the purchase 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)<sup>55</sup> 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 delicti 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;

<sup>54</sup> 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.

<sup>55</sup> Formerly 50,000,000 AD.

- 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<sup>56</sup>.

#### **- 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;
- 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

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<sup>56</sup> See Chapter 9, point 9.7.2.



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.

The use of free transfer is provided for companies producing for the imported inputs and spare parts and new equipment to help increase the productivity of manufacturing companies. This payment is authorized on condition that "such imports meet only the requirements of production and the cumulative annual orders made in this context does not exceed the amount of four (04) million dinars for the same company". The amount was two (02) million in the supplementary finance law 2010.

It returns to the monetary authority to ensure strict compliance with that limitation. 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<sup>57</sup>.

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<sup>58</sup> 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 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.

<sup>57</sup> Further details in a second note dated 11 August 2009 issued by the Finance Ministry and the Bank of Algeria.

<sup>58</sup> Note issued by the Bank of Algeria, no. 180/DGC/2009 dated 13 October 2009.

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 Banque d'Algérie 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.

Exporters must repatriate the income from exports within a period not exceeding 180 days from the date of shipment for the goods or the date of completion for services.

Under Article 2 of Regulation No. 11-06 of 19 October 2011 amending and supplementing Regulation No. 07-01 of 3 February 2007 on common rules applicable to transactions with foreign currency accounts and the repatriation the non-oil export earnings must be done within a period not exceeding 180 days instead of 120 days from the date of shipment for the goods or the completion date for services.

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.

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 to 13 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 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 AD 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<sup>59</sup>, 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.

### 8.2 Pricing freedom

According to article 4 of the Ordinance, modified and completed, pertaining to competition, "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 stating that "the prices of goods and services are freely determined in accordance with free and loyal competition" 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.

Profit margins and services or of homogenous groups of goods and services may be fixed, confirmed, or limited through law. These dispositions were adopted after propositions of the sectors concerned and their aim at stabilising prices of staple goods and services, or largely consumed goods in case of disturbance of the market as well as fighting any form of speculation and preserving the consumers' power.

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, 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.

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<sup>59</sup> Amending and supplementing by law No. 08-12 of July 19, 2003 and by law No. 10-05 of August 15, 2010.

### 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.

Legislators acted in three stages: first they drew up a list of examples containing the essential components of contracts (8.2.1), then they defined unfair contract terms (8.2.2), before finally establishing an institution devoted in to tracing unfair contract terms and eradicating them from commercial relations (8.2.3).

#### 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 of September 10, 2006 aiming to set the essential elements of contracts and the contract terms deemed unfair).

#### 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;
- 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**

Eight types of restrictive practices have been observed. The common element of these detrimental practices is that they distort the competitive environment. They include:

- limiting market access,
- limiting or controlling production, as well as outlets and investments,
- dividing up markets or supply sources,
- Hindering the establishment of prices by market forces by artificially favoring price increases or reductions,
- Applying unequal conditions for equivalent services to commercial partners, thus putting them at a competitive disadvantage,
- Conditioning the conclusion of contracts on the acceptance, by the partners, of additional services that have nothing to do with the object of those contracts
- Allowing the award of a public procurement contract to perpetrators of these restrictive practices.
- Giving a company exclusivity in the exercise of an activity which falls within the scope of the Ordinance on competition.

By virtue of Article 7 of Ordinance No. 03-03, any abuse of a dominant or monopolistic position over a market or a market segment is prohibited.

The prohibitions introduced for practices that restrict competition are the same as those applied to penalize the abuse of a dominant position.

The only exceptions provided for by law are when, by resorting to restrictive practices, operators:

- Further economic or technical progress,
- Contribute to the improvement of overall employment,
- Strengthen their competitive position in the market.

### 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. 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.10-181 of July 13th, 2010<sup>60</sup>, arranges that "any payment which exceeds the five hundred thousand dinar sum (500,000 AD), must be made by the following means of payment: check, transfer, payment card, taking, bill of exchange, promissory note, any other scriptural means of payment".

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,

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<sup>60</sup> the Decree inter into force on March 31, 2011.

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 Competitive Council, under current legislation, is an administrative authority, autonomous, reporting to the Ministry of Commerce who enjoys legal personality and financial autonomy.

It is composed of 12 members appointed from among the experts and professionals. He is seized by any person or entity aggrieved by a restrictive practice.

The Competitive Council renders decisions, issues opinions and orders investigations with regard to any issue involving competitive Law.

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.

The Competitive Council issues opinions on any matter pertaining to competition submitted to it by the government. Local communities, financial and economic institutions, enterprises, professional corporations, labor unions, and consumer associations have the power to petition the council regarding the same issues.

Moreover, the Council voices its opinion on any proposed regulatory text pertaining to competition.

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.

# 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<sup>61</sup>. The 2003 Ordinance, follows the wake of the 1990 legislation (Law No. 90-10 of April 14, 1990 pertaining to money and credit)<sup>62</sup> 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<sup>63</sup>,
- - 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

61 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.

62 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.

63 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 new 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 new 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 new version of the Ordinance related to money and credit hasn't questioned the possibility to do such operations, however, they must be viewed according to the new regulations pertaining to foreign investors, particularly the regulation relating to the prohibition of any external debt for companies<sup>64</sup>.

### **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 exceptions, as far as permitting banks and financial institutions to extend credit to their

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<sup>64</sup> See the Chapter 2 of the present Guide.

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 its 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, BADRI), 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, 2014:

- 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;

- Arab Banking Corporation-Algeria;
- Natixis - d'Algérie;
- Société générale Algérie;
- Arab Bank PLC-Algeria ´ Succursale de banque;
- 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, 2014:

- Société de refinancement hypothécaire;
- Société financière d'investissement, de participation et de placement - SPA - ´ Sofinance - SPA;
- Arab Leasing Corporation;
- Maghreb Leasing Algérie;
- Cetelem Algérie;
- Caisse nationale de mutualité agricole ´ Etablissement financier;
- Société nationale de Leasing - SPA ;
- Ijar Leasing Algeria - SPA ;
- El Djazair IJAR - SPA.

### 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 (about 140 million USD, at the current exchange rate),
- 3.5 billion DZD for financial institutions (about 50 million USD, at the current exchange rate).

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 depository 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 depository, 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.

2. The market of debt securities consists of a:

Market of debt securities issued by corporations, government agencies and the State. one debt securities are listed on the market:

- DAHLI Group: maturity of security is scheduled for 2016

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 the 2010 Finance Act 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<sup>65</sup>, 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.

## 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.

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

<sup>65</sup> 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.

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:

**(1.)** The bank itself should receive a comprehensive authorization issued by the Bank of Algeria.

**(2.)** 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 change 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:

<b>The 5 components of the F/S of FAS</b>
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):

<b>ASSET</b>	<b>Y Gross</b>	<b>Y Deprec.-Prov.</b>	<b>Y Net</b>	<b>Y-1 Net</b>
<b>NON CURRENT ASSETS</b>				
<b>Consolidated goodwill – positive or negative goodwill</b>				
<b>Intangible assets</b>				
<b>Property, plant and equipment</b>				
Land				
Buildings				
Other tangible assets				
Fixed assets under concession				
<b>Assets under construction</b>				
<b>Construction work in progress</b>				
<b>Long-term investment</b>				
Equity method securities				
Other interests and related debts				
Other long-term investments				
Loans and other non-current financial assets				
Deferred tax assets				
<b>TOTAL NON-CURRENT</b>				
<b>CURRENT ASSETS</b>				
<b>Inventory and work in progress</b>				
<b>Receivables and related assets</b>				
Clients				
Other debtors				
Taxes and related items				
Other receivables and related assets				
<b>Cash and related assets</b>				
Investments and other current financial assets				
- Cash and cash equivalents				
<b>TOTAL CURRENT</b>				
<b>TOTAL GENERAL ASSETS</b>				

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):

<b>LIABILITIES</b>	<b>Y</b>	<b>Y-1</b>
<b>SHAREHOLDERS' EQUITY</b>		
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		
<b>Share of the acquirer (1)</b>		
<b>Minority interest (1)</b>		
TOTAL SHAREHOLDERS' EQUITY I		
<b>NON CURRENT LIABILITIES</b>		
Loans and financial debts		
Taxes (deferred and reserved)		
Other non-current debts		
Reserves and deferred revenues		
TOTAL NON CURRENT LIABILITIES II		
<b>CURRENT LIABILITIES</b>		
Suppliers and related accounts		
Taxes		
Other debts		
Cash liabilities		
TOTAL CURRENT LIABILITIES III		
<b>TOTAL GENERAL LIABILITIES</b>		
(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		
<b>GROSS MARGIN</b>		
Other operating income		
Commercial costs		
Administrative expense		
Other operating expense		
<b>OPERATING INCOME</b>		
Provide details of expenses by nature (Personnel costs, depreciation allowances)		
Financial income		
Financial expense		
<b>ORDINARY INCOME BEFORE TAX</b>		
Tax liability on ordinary income		
Deferred taxes on ordinary income (changes)		
<b>NET INCOME ON ORDINARY OPERATIONS</b>		
Extraordinary expense		
Extraordinary income		
<b>NET INCOME</b>		
<b>Share of the net income of the equity affiliates (1)</b>		
<b>NET INCOME OF THE CONSOLIDATED ENTITY (1)</b>		
<b>Including minority interest (1)</b>		
<b>Share of the group (1)</b>		
(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.”

### 10.2.75 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).

### 10.2.76 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.

### 10.2.77 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.

#### 10.2.78 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.

#### 10.2.79 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
<b>Old method</b>	6,0 mDZD	3,0 mDZD	9,0 mDZD
<b>New method</b>	4,3 mDZD	2,1 mDZD	6,4 mDZD

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 than 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<sup>66</sup>.

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 new 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 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

<sup>66</sup> For more developments on this issue see our different publications about the new financial accounting system on our website: [www.kpmg.dz](http://www.kpmg.dz).

explained in the text: appropriate management tools are required to monitor revenue, expense and income estimates.

#### **10.3.2.1.2 Provisions**

The new 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 new article no. 169-3 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 equipments awarded (.....) following exercises:

However, the subventions that are allocated for the acquisition of equipments 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 equipments 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 equipments 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 in Algeria,
- The person benefits from paid or unpaid employment in Algeria,
- The person has, in Algeria, the center of its main economic interests.

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. 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, are tax residents of Algeria.

##### 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 (see item 11.3).

### **11.1.3 Definition of Global income tax (Impôt sur le revenu global, IRG)**

With regard to the income of individuals, the law provides for an annual tax called “global income tax” calculated on the basis of all net income categories.

### **11.1.4 Tax regime**

The net income for each category is clearly determined according to specific rules for each, before being added to obtain global income. The latter is taxed according to a progressive scale.

In theory, these revenues are determined and taxed according to the same rules, whether they are revenues received by Algerian fiscal residents or by non-residents.

Non-residents and foreign persons engaged in paid employment or not or deriving income from Algerian sources and taxable in Algeria may be taxed twice on their Algerian income source if their country chooses to apply, under their internal legislation, the global income rule, or in the absence of an applicable tax treaty.

For people who realize a turnover not exceeding 30 million dinars, an assessment is made on the basis of their turnover under the single flat tax that we will develop further

#### **11.1.4.1 Taxation of salaries**

These include stipends, indemnities, emoluments, salaries, pensions and life annuities.

In addition, compensation allocated to partners of LLCs, 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 are considered salaries.

##### **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.).

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, territorial allowances, salaries and other remunerations paid as part of programs destined to promote youth employment, severance pay and unemployment allowances and benefits or allowances paid by virtue of laws and decrees pertaining to aid and insurance are excluded from taxable income.

##### **11.1.4.1.2 Tax system for salaried workers**

Apart from remunerations, benefits, non-monthly bonuses and gratuities covered by the 10%<sup>67</sup> withholding tax, earned income is taxable on the basis of a final withholding at source,

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<sup>67</sup> Rate adopted in the 2010 Finance Law.

withheld by the employer in accordance with the following monthly-adjusted progressive tax on global income rate schedule as per the terms of Article 104 on direct taxes:

<b>Fraction of monthly taxable income</b>	<b>Rate (%)</b>
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, regardless of the marital status of the taxpayer.

#### **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 (five) years issued in a period of five (5) years from 1 January 2008, are exempt from tax on total income (IRG) or the tax on corporate profits (IBS). This exemption covers the entire period of validity of shares issued during this period.

Regarding the article 66 of 2014 financial Law, 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.

The Finance Act 2015<sup>68</sup> amends the operational period of the exemption in respect of IRG and IBS which was scheduled for 1 January 2014 which becomes the 1 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 and undeclared partnerships subject to corporate tax (IBS).

Dividends, revenue from mutual funds, loans and advances to partners, compensations, undeclared advantages and distributions, directors' fees.

These revenues collected by a resident individual give rise to a withholding tax of 10% upon payment.

<sup>68</sup> Article 73 of 2015 finance law

Earnings distributed to non-resident physical persons are subject to a 15% withholding tax, unless an applicable tax treaty stipulates otherwise.

#### **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 physical 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 assets.

##### **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.

Under the provisions of Finance Act 2009, capital gains on transfer of property made during the course of a non-professional activity are not taxable. This measure would apply to capital gains made on or after 1 January 2009.

##### **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 whether they are short-term or long-term assets. They are considered long-term when they result from the transfer of property acquired more than three (03) years earlier. They are considered short-term when the sale took place less than three (03) years after the acquisition. 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.

With regard to leasing, it should be noted that 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 transfer of shares or actions carried out in Algeria, Finance Act 2009 provides for the taxation of non-residents who have made gains in Algeria, through a withholding tax of 20%, with effect from 1 January 2009.

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 made by residents, are tax exempt when the amount is reinvested. Reinvestment by 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.

However, the majority of tax treaties contain provisions stipulating that capital gains shall only be taxed in the country of residence of the transferor. When an applicable tax treaty exists, non-residents having realized taxable capital gains may, in principle, invoke the treaty.

#### **11.1.4.4 Other revenue categories**

##### **11.1.4.4.1 Professional<sup>69</sup> profits (ICP)**

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 and benefits of crafts.

When it comes to determining taxable income, the Law refers to the rules decreed with regard to taxes on corporate income.

The tax system varies according to sales figures.

The eligibility for submission to the IFU scheme for individuals or legal entities, corporations and cooperatives engaged in trade, business, craft or profession noncommercial whose annual turnover does not exceed thirty million dinars (30,000,000 DA).

As a reminder in the 2015 Finance law, the threshold was increased from ten million dinars (10,000,000 DA) to thirty million dinars (30,000,000 DA).

The main measures are 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."

The rate of IFU is fixed as follows:

- 5 %, for the activities of production and sale of goods ;
- 12 %, for other activities.

Indeed this measure introduces the possibility of payment of the total annual amount of IFU during the month of September without notice to the taxpayer. Reminder payment of IFU is quarterly.

The annual payment is made within the time is considered to maintain the quarterly payment plan, and immediately makes overdue payable shares increased regulatory penalties.

##### **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.

A final 7% tax is applied to revenues derived from the rental of non-commercial residential buildings. These revenues are tax-exempt when tenants are students or as rental collective housing whose area does not exceed 80 m<sup>2</sup>.

Revenues derived from the rental of space for commercial or professional use are subject to a 15% rate.

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<sup>69</sup> Article 2 of 2015 finance law

Persons earning property revenues are required to file a special return by 1 February of each year with the tax inspection authorities of the district where the building is located.

## **11.2 Main taxes paid by legal entities**

Legal entities present in Algeria may be taxed differently according to whether they are residents or non-residents. Algerian tax law contains some specific rules pertaining to non-resident corporations.

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 (see item 11.3).

### **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 (IBS).

Partnerships, undeclared partnerships, 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.

Conventional 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**

Capital gains from revaluations are taxable, except when a specific legislation providing for the exemption of these gains applies. This was a provision of the 2007 Finance Act, which was originally supposed to be applied until 31 December, 2007 but was recently extended to 31 March, 2008. The said exemption provided that the corporations that conducted a revaluation incorporate the capital gains derived from the revaluation to their capital by 31 March, 2008, thus increasing capital.

The revaluation was permitted only for capital on the balance sheet for FY 2006 (filed with tax authorities before 1 April 2007) and between the date of publication of Executive Order (i.e. July 4, 2007) and December 31, 2007.

The new provision of the Supplementary Finance Law for 2009 freezes in the capital of the company the amount of capital gains on revaluation, in excess of the statutory minimum, to avoid speculative measures which would reduce the capital amount of the capital gains and distributing it. If the company has benefited from the incentives of investment promotion, the legal minimum is considered initial capital of the company plus more integrated capital revaluation surplus. Under Article 28 of the Finance Law, disposals of stock or shares of companies that have received regulatory reassessments result in the payment of an additional registration fee; the rate is fixed at 50%.

The fee is based on the amount of the added value achieved. Also subject to this Law are disposals of revalued assets. This fee is based on the amount of the revaluation surplus value.

The capital gain resulting from the revaluation of property, to the entry of new financial accounting system (January 2010), will be reported to the tax result in a maximum of five (5) years. 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.

In order to encourage the development of leasing operations, the 2008 Finance Act has decreed that 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% is provided for (domestic law and treaty law,).
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, which are deductible up to 1% of earnings.
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.

For partially liable taxpayers, the portion of non-deductible (and non-refundable) VAT from the output VAT shall be considered a deductible expense from taxable corporate income.

### **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 can 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 30<sup>th</sup> April of each year, for entities registered at the level of the "DGE" (i.e article 21 of supplementary financial law 2010) and at the demand of the tax authority for others taxpayers.

For 2013, this documentation is supposed to cover financial years 2010, 2011 and 2012.

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 500 000 DA, and; Reintegration of the transferred benefits plus a fine of 25% of profits transferred under the provisions of Article 141 bis of direct taxes.

## **2) Calculation of the tax**

### **a) Applicable rates**

The IBS tax rate is fixed at 23 % for all activities<sup>70</sup>

### **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.
- 40% on income from anonymous or bearer securities. This tax is final.
- 20% on amounts collected by firms as part of management contracts for which taxation is done through withholding at source. This tax is final.

<sup>70</sup> Article 12, 2015 finance law.

- 24% on:
  - Amounts received by foreign companies in Algeria with no permanent professional installation as part of market services;
  - 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.

### 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 notably with regard to the new financial accounting system (CFS) since its entry into force, the 1st January 2010 (65 National Accounting Plan (NCP) before the implementation of the CFS and its entry into force) , submitting all accounting documents in response to any request by tax authorities and keeping the estimates, records, documents or data over which the right to discovery by tax authorities may apply for a period of at least ten (10) years.

Secondly, tax obligations are imposed on the firms. Thus, taxpayers 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. The freedom to offset losses against profits is given to firms during this four-year (04) period; 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 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. In the case of corporations liable for corporate income tax (IBS), TAP is calculated on the basis of sales in Algeria.

Operations between units of the same enterprise are excluded from the scope of application of the TAP.

#### 1) 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.

#### a) Reductions of 30%

They apply with regard to firms liable for corporate income tax (IBS), 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;
- Sales transactions made by producers and wholesalers for drugs manufactured locally.

#### b) Reductions of 50%

They apply with regard to firms liable for corporate income tax (IBS), 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 relating to locally manufactured drugs.

#### c) Reductions of 75%

It applies to retail sales of petrol, natural gas and oil.

#### d) Elements excluded from the taxable base

With regard to firms liable for the corporate income tax (IBS), the following are not included in the TAP taxable base:

- the amount of retail sales operations pertaining to strategic goods targeted by the aforementioned Executive Decree, 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.

### 2) Exigibility

The TAP is due on the basis of invoices issued by the corporation.

However, for public works and construction companies, turnover corresponds to total or partial receipts for the period. An adjustment of the fees owed on all works must be done at the latest upon provisional receipt of the works, except for receivables against public administrations.

Under the Finance Law for 2012 (Article 11) the tax on professional activities (TAP) is payable:

- for sales, by legal or physical delivery of the goods;
- for building works and services, for the total or partial receipt of price.

### 3) Calculation of the tax

The tax rate is set at 2%

However, this rate increases to 3% on turnover from the pipeline transportation activities.

### 4) 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 for taxpayers registered at the DGE level for which the payment is centralized there<sup>71</sup>.

Payment must be made by the 20<sup>th</sup> 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. Note that this statement is not mandatory; it only conditions the granting of the reduction.

#### 11.2.1.1.3 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

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<sup>71</sup> Article 19 FL 2013.

taxable base of corporate earnings from which the corporate shareholders receive the dividends, provided that those earnings stem from regularly declared earnings. Resident individuals are subject to a 10% withholding tax, dividends paid to shareholders or holders of shares of the companies under the single flat tax, are exempt from withholding<sup>72</sup>.

## **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.

### **11.2.1.2 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.

In addition to value-added tax, two other taxes to which the rules concerning the taxable base, liquidation, recovery and VAT disputes extend. These are the domestic consumption tax and the tax on oil products.

The first applies to various consumer products such as tobacco, coffee, certain fruit and certain alcoholic beverages. They are listed in the turnover tax code. The amount of tax varies according to the product. It gives rise to the obligation of submitting a monthly declaration within the same time period as with the VAT.

The second applies to oil products or equivalents, imported or produced in Algeria. The amount of tax differs according to the products listed in the turnover tax code. Exported oil products are exempted. It gives rise to the obligation of submitting a monthly declaration within the same time period as with the VAT.

#### **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**

They are namely: 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 studies and operations conducted within the context of a liberal profession and operations conducted by banks and insurance companies.

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<sup>72</sup> Article 10 FL 2015.

## 2) Operations subject to optional taxes

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 and earmarked for the acquisition or construction of individual housing units and access internet services.

Moreover, in order to develop leasing operations, the 2008 Finance Act 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 17% (normal rate), the other at 7% (reduced rate) and complete exemptions for certain products such as pharmaceuticals.

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.

Thus, for instance, VAT rates on equipment earmarked for LPG/fuel were reduced in the 2006 Finance Act, in a bid to steer consumption towards available and cleaner energy sources, namely natural and propane gas.

The State shall encourage domestic production by the exemption from customs duties and reduced VAT rate at 7% applicable to products intended for domestic production and falling under tariff headings hereinafter referred: 26-08, 72081000, 72082500, 72082600, 72082700, 72083600, 72083700, 72083800, 72083900.

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.

The Finance Act 2015<sup>73</sup> introduced the application of the reduced rate of 7% VAT on incoming raw materials and products in the manufacture of feed for livestock feed in the poultry sector and broilers and table eggs.

Please note that the above mentioned products were exempt from VAT.

The creation of a grain market regulatory authority, responsible for livestock feed will be introduced.

### **11.2.1.2.4 Assessment and payment of taxes**

#### **1) Obligations of persons subject to this tax**

VAT-taxable persons are required to fulfill various obligations.

They must, within 30 days after the start of operations, submit to the tax authorities with jurisdictional authority a declaration of existence supported by a copy of the articles of incorporation (for companies) and of the trade register. An identical declaration must be made for branches or agencies subsequently opened.

The VAT must appear clearly on their sales invoices. These documents must be prepared in accordance with the regulatory provisions established for this purpose.

Their accounting must respect the provisions of the Commercial Code and the National Accounting Chart (Plan comptable national, PCN).

In the case of a ceasing of activities, a declaration must be made to the tax authorities with jurisdictional authority within 10 days after the activities have ceased.

#### **2) 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 paid.

VAT deductions on cash operations can only be applied when the amount of VAT does not exceed 100,000 DA per taxable transaction<sup>74</sup>.

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, the deductible VAT is

<sup>73</sup> Articles 32 & 72 of 2015 FL.

<sup>74</sup> See Article 30 turnover tax Code amended by the Supplementary Finance Law for 2010.

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. The 2011 Finance Law specifies the method of calculation of pro-rata of VAT deduction for partially liable persons. 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.

Since the 2006 Finance Act, 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.

### 3) Payment

VAT-taxable persons are required to send, within the first 20 days of each month or quarterly following, a declaration of VAT due (or "précomptée") and pay, if any, the tax due. The form provided for this also serves as the declaration for other taxes.

#### 11.2.1.2.5 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.

Requests for reimbursement of VAT credits must be introduced within twelve (12) months from the last day of the quarter for which has been the VAT credit.

Now requests made after the deadline will be permanently inadmissible under the right to reimbursement, but the credit in question open right to carry forward for deduction in subsequent operations.

A measure of relief in cash for the company was introduced when the credit amount is equal to or greater than 5% of monthly turnover, the claims can be introduced into twenty (20) days of the month following that in which the credit was made.

Taxpayers which submitted requests for reimbursement of VAT can receive a cash advance from the filing of the application.

The advance payment is fixed at the rate of 50% calculated on the amount of formal confirmation by the in charge tax department<sup>75</sup>.

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<sup>75</sup> Refer to FL 2013

The amount of tax credit found at the end of the calendar quarter for which reimbursement is requested must be equal to or greater than 1,000,000 DA. Partially liable on whose claims are annual, no conditions on the amount are expected. In addition, the credit for which the amount is requested can no longer be charged to the G50 tax form.

When the amount is over 100,000 AD, the operations originating the tax credit have to be settled by a non-cash method of payment there to be reimbursement of the deductible VAT.

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.

## 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<sup>76</sup>;
- 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;
- capital goods, 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 benefiting from a VAT exemption and a foreign enterprise which does not have permanent professional installations in Algeria under the terms of the tax legislation in effect, regardless of the provisions of international tax treaties.

**Note:** The repeal of the 3rd paragraph of the article 42 replaces the purchase free regime for purchases of raw materials, components or specific packaging for a production, packaging or presentation of commercial products specifically exempted or intended a tax exempt sector through direct refund of the tax credits, undergone upstream.

The provisions cited above shall enter in force from 1 July 2014.

## 3) ANDI's VAT-exempt 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, provided that the investment is earmarked for operations subject to VAT.

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<sup>76</sup> Adopted by the 2011 Finance Law.

### **11.2.1.2.6 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 is set at 5%. 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 (Article 32 of the Supplementary Finance Law for 2009).

### **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.

The transfer of the revalued assets gives rise to payment of an additional registration fee whose rate is fixed at 50%. This right is based on the amount of the capital gains revaluation. No time limit is set for the application of the measure.

##### **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 by virtue of the 2008 Finance Act.

##### **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%.

**Note:** capital increases linked to the revaluation of assets of corporations provided for in the 2007 Finance Act are subject to a registration fee of 0.5% ranging between 10,000 AD and 300,000 AD.

### **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**

In addition to the taxation of potential capital gains, 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.

Transfers of stock or shares in companies that have received regulatory reassessments result in the payment of an additional registration fee whose rate is fixed at 50%. The rate is based on the amount of the achieved capital gains value. No time limit is set for the application of the measure.

##### **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 Ordinance No. 06-08 of July 15, 2006. These incentives<sup>77</sup> are provided by the National Agency for the Development of Investment (Agence nationale pour le développement de l'investissement, ANDI).

Other exemptions are lawfully provided. The Supplementary Finance Law for 2010 makes provision for 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. The

<sup>77</sup> For a detailed review of benefits, see section 2.3, "The institutions in charge of promoting investments."

opérations related to books, including printing and publishing, used to be submitted to a VAT of 7%.

- 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;
  - 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 same Finance Law, vehicles registered in the category of private cars (VP), of less than five years age, and mentioned in the corporate balance sheet or leased by the same firms for a cumulated period equal or superior to three months during a fiscal year, by firms located in Algeria, are submitted to an annual tax. This duty is not deductible for the calculation of tax and it is paid on the occasion of the payment of the due balance of liquidation of the corporate income tax.

The vast profits realized in special circumstances, outside the hydrocarbons sector, may be submitted to a single flat tax, calculated on the exceptional margins in application of a rate varying between 30% and 80%. The application method will be lawfully clarified.

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.

Finally, 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;
- Trailers;



- Vehicles carrying people;
- Motorcycles and mopeds subject to registration.

Regulatory text set a local integration threshold from which the exemption applies.

## **2. Fixation of the annual fee applicable to the land concessions.**

It is applied the minimum price the range of prices observed in the territory of each municipality to calculate the annual fee under the concession of land in the private domain of the State for the implementation of investment projects.

This decision also applies to previously granted concessions, by the decision of the Council of Ministers in favor of investment projects.

The 2015 finance act stipulated that the benefit of this expansion does not involve refund of the annual rental fees already collected by service areas

### **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 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 providers. 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.

The provision applies to contracts concluded after the date of enactment of the Supplementary Finance Law for 2009. The amendments to the original contracts are considered new contracts. Therefore, they will be subject to new provisions.

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.

Until 2006 corporations providing these services from abroad or through an intermediate on the Algerian territory for a period not exceeding 183 days were not subject to this type of tax declaration obligation. The Finance Act of 2007 has abolished this exception.

### **11.2.2.1.2 The real income regime option**

In principle 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 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.

Separate invoices must be issued from abroad for this equipment.

### **11.2.2.1.4 Delivery of services and tax treaties**

In principle, 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.

However, according to the current interpretation by the tax authorities, the delivery of services physically performed in Algeria is taxable in Algeria, whether these services represent a permanent establishment according to the tax treaty or not. Nevertheless the direction of tax legislation has confirmed the application of treaty provisions for certain companies

According to that same interpretation, 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.

## **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 and are taxed on their actual income.

In the absence of a tax treaty, the following Algerian taxes are due on the corporation's entire sales recorded as part of the contract:

- 2% of TAP on payments received from the client by virtue of the contract, except for reductions specifically provided for by the tax code,
- 23% (corporate tax rate) rate on earnings realized as part of the contract.

These taxes are paid in monthly installments of 0.5% of cashed sales during the month under consideration. The tax due balance is paid on the last day for filing the establishment's annual income tax return form at the latest.

**1)** 7 or 17% VAT on the purchase of goods and services necessary to perform the contract. This VAT may be deducted from the VAT billed to the client, and collected later on, except for projects exempted from VAT. The 2009 Finance Law (article 23) reintroduced this exception.

### **11.2.2.2 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.

### **11.2.2.3 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 six 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. However, in order not to be attributable to the establishment, those contract components must be billed separately from the other components by the corporation's headquarters abroad.

In those cases they are only taxable abroad and not in Algeria.

### **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.

With regard to supplies, they can be exported directly by the headquarters of the foreign firm for the client, who will act as the importer. This has several advantages, namely avoiding double payment of the VAT and of hiding a possible margin realized on the sale of equipment abroad.

### 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, one sees 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
Austria	06/17/2003	05/28/2005	No. 38-2005	In effect
Bahrain	06/11/2000	08/14/2003	No. 50-2003	In effect
Belgium	12/15/1991	12/09/2002	No. 82-2002	In effect
Bulgaria	10/25/1998	12/29/2004	No. 01-2005	In effect
Canada	02/22/1999	11/16/2000	No. 68-2000	In effect
China	11/06/2006	06/06/2007	No. 40-2007	In effect
South Korea	11/24/2001	06/24/2006	No. 44-2006	In effect
Egypt	02/17/2001	03/25/2003	No. 23-2003	In effect
United Arab Emirates	04/24/2001	04/07/2003	No. 26-2003	In effect. Applicable to UAE residents
Spain	10/07/2002	06/23/2005	No. 45-2005	In effect
Ethiopia	05/26/2002	Not ratified	—	Not in effect
France	10/17/1999	04/07/2002	No. 24-2002	In effect
Germany	12/11/2007	14/06/2008	No. 33-2008	In effect
India	01/25/2001	Not ratified	—	Not in effect
Indonesia	04/28/1995	09/13/1997	No. 61-1997	Not in effect
Iran	12/08/2008	12/05/2009	No. 32-2009	In effect
Italy	02/03/1991	07/20/1991	No. 35-1991	In effect
Jordan	09/16/1997	12/17/2000	No. 79-2000	Not in effect

Kuwait	05/31/2006	05/11/2008	No. 66-2008	Not in effect
Lebanon	03/26/2002	05/22/2006	NO. 35-2006	In effect
Morocco	01/25/1990	10/13/1990	No. 44-1990	In effect
Mali	01/31/1999	Not ratified	--	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	No. 24-2005	In effect
Oman (Sultanate)	04/09/2000	02/08/2003	No. 10-2003	Not in effect
Qatar	08/05/1998	Not ratified	--	Not in effect
Romania	08/28/1994	07/15/1995	No. 37-1995	In effect
Russia	03/10/2006	04/03/2006	No. 21-2006	Not in effect
Switzerland	03/06/2006	28/12/2008	No. 04-2008	In effect
Syria	09/14/1997	03/29/2001	No. 19-2001	Not in effect
Turkey	08/02/1994	02/10/1994	No. 65-1994	In effect
South Africa	04/28/1998	05/07/2000	N°26-2000	In effect
Tunisia	02/09/1985	11/06/1985	No. 25-1985	In effect
AMU	07/23/1990	last ratification on 07/14/1993		In effect, but not applied
Ukraine	14/12/2002	19/04/2004	No. 27-2004	Not in effect
Vietnam	12/06/1999	Not ratified		Not in effect
Yemen	01/29/2002	02/26/2005	No. 16-2005	In effect

Source: Revenue Services and Ministry of Foreign Affairs

**11.2.2.4.3 Presentation and analysis of the OECD model convention**

An OECD model tax convention<sup>78</sup> 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.

<sup>78</sup> Model Tax Convention on Income and Wealth.

### 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 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 6 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 include all operations aimed at verifying the authenticity of tax declarations, their reconciliation with accounting entries, 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 of the documentation 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).<sup>79</sup>

Spot audit of accounts 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.

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<sup>80</sup>**

The present article identifies the reasons for rejection of accounting, resulting from a tax audit as follows:

Rejection 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 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.

#### **1.1.1.2.2 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.

<sup>79</sup> Article 27 of 2014 Finance law.

<sup>80</sup> Article 28 & 29 of 2014 Finance law

### 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.

### 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 in the Tax Procedure Code. The Finance Law for 2012 (section 31) sets new deadlines. They are now 03 months, 06 months or 09 months instead of the deadlines that were previously provided four (04) months, six (06) months and one (01) years. 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 paragraphs 5 and 6 of Article 20 of the Tax Procedure Code are amended, supplemented and written as follows:

“Under penalty of nullity of the proceedings, on-site audit of accounting books and records can extend over a period exceeding three (3) months, regarding:

- Businesses service delivery, when their annual turnover does not exceed 1,000,000 AD for each fiscal year audited;
- All other businesses, where their annual turnover does not exceed 2,000,000 AD, for each fiscal year audited.

This period is extended to six (6) months for these same companies, when their annual turnover does not exceed respectively 5,000,000 AD and 10,000,000 AD for each fiscal year audited.

In all other cases, the duration of the on-site must not exceed nine (9) months. ”

These control periods are not applicable in cases of fraud or duly established when the taxpayer has provided incomplete or if no response within the deadline.

### 11.3.1.2.6 Provision prohibiting the renewal 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.

#### **11.3.1.2.10 The tax preliminary**

The finance law for 2012 introduced a new procedure under the heading of “tax preliminary.”

Under the terms of the explanatory memorandum of 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.

The modalities of implementation of this procedure are fixed by lawful way<sup>81</sup>

<sup>81</sup> Decree 12-334 dated September 8th 2012 related to tax preliminary

### 11.3.2 Litigation

There are two types of appeal.

**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 impossible 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.

##### 11.3.2.1.1 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 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.

##### 11.3.2.1.2 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.

### 11.3.2.1.3 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.

### 11.3.2.1.4 Statutory payment deferment

The taxpayer who disputes the merit or the amount of the taxes imposed on him may defer payment on 80% 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 20% 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 entirely 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.

### 11.3.2.1.5 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 Daira Commission, the Wilaya Commission or the Central Commission. The Daira commission has jurisdiction solely when the amount of the direct taxes and adjusted VAT is under 2,000,000 AD. The Wilaya commission has jurisdiction solely when the said amount is over 2,000,000 AD and under or equal to 70,000,000 AD for which administration has already rendered a decision or if a decision of the Daira commission is being appealed. The Central Commission has jurisdiction for all direct taxes and VAT adjustments in excess of 70,000,000 AD and, generally speaking, for all cases where the adjustment exceeds 70,000,000.

#### 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 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, Sonatrach, and 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.

Also, public holdings and state-owned economic enterprises whose capital is held by the said holding may not form corporate groups.

The 2008 Finance Act eliminated the requirement for corporations to prove that they had been profitable over the last two periods prior to the group's integration. Thus, newly established firms can integrate the group from a tax standpoint, provided that they meet the other requirements. The Finance Law for 2012 removed the obligation not to carry out two consecutive deficits by member companies after entering the group.

## 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 generalization of the IBS rate to 23% for all sectors, before 2015 and if the activities of the member companies of the group belong to different rates of IBS, earnings resulting from consolidation is subject to tax at the rate applicable to the member company whose sales is predominant.

**Note:** The 2007 Finance Law had introduced the exemption of VAT and TAP under transactions between member companies and what to avoid multiple taxation of transactions within the same group of companies.

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.

#### 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.

A company which has reached the authorized deduction limit may not benefit from the unused deductions of other corporations from the same group however. With regard to corporate groups established through the transformation of fiscally dependent entities into fiscally independent entities, deductions are only granted up to 50% of authorized limits.

#### **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).

##### **3) With regard to the VAT**

Intra-group transactions are exempted from the VAT. VAT also benefit of the consolidation regime.

##### **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.

## **2) Declaration of tax installments by corporate groups**

In the first fiscal year covered by this option (the fiscal year of establishment or that of the integration of new firms to the group), each firm, whether it is the parent company or a subsidiary, calculates and makes its own tax installment payments for a period of twelve (12) months, as if it were being taxed separately. These installments are credited against the corporate income tax (IBS) owed by the parent company, calculated on the group's overall performance (consolidated income).

In the following fiscal years, the parent company, which is solely subject to corporate income tax, will be required to calculate and make tax installment payments on the basis of the group's overall performance.

### **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 or 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.

## **11.5 Other financial provisions**

Under Article 10 of the 2009 Finance Law, "transfer payments, regardless of circumstances, of funds to non-resident individuals or legal entities must be declared beforehand to the regional tax collector" (Article 182b of the CID).

The implementing rules of this section, CID 182b have been determined by the order of October 1st, 2009 relating to the registration of the declaration and issuance of the certificate for transfer of funds abroad.

The transfer of funds is defined as:

- Payments and transfers of funds including the repatriation of investment income;
- Reimbursements, proceeds from sales, divestiture or liquidation;
- Royalties, interest and dividends.

As for the terms, remittances are subject to prior notification on a form provided by the tax administration (a model is attached to the order of October 1st, 2009 relating to the registration of the declaration and issuance of the certificate for transfer of funds abroad).

The above-mentioned form is sent to regional tax services for each transfer operation by:

- The contractor Algeria (authorizing entity), in the case of legal entities or individuals without permanent facilities in Algeria, and who undertakes, through an agreement, to provide services or construction work , with or without supplies or equipment;
- The person or entity who intends to repatriate investment income or transfer the proceeds from sales, divestiture or liquidation, as well as royalties, interest or dividends.

The declaration must be accompanied by documents specifically listed by the order:

- Copies of invoices domiciled with the bank or document in lieu thereof, to justify the purpose of transfer;
- A copy of the transfer order of the Algerian contractor;
- Copies of the minutes of the meeting, the articles of the trade register and the report of the statutory auditor, to justify the distribution of dividends.

A certificate of transfer is delivered to the tax filer by the regional tax authority within the statutory period of seven days from the filing date of the transfer declaration. A model certificate is attached to the Order. In cases of non-compliance with tax obligations, the said period is not respected and the certificate is issued if the tax situation of the transfer beneficiary is rectified.

Banking institutions are required to request, in support of the request for transfer of funds, the certificate of transfer of funds.

Import transactions of goods or merchandise purchased for resale are exempt from the subscription of the declaration of transfer of funds.

The operators involved in importation of goods or goods for the purpose of the exercise of their activity are not required to sign a remittance, if they agree not to resell the goods and property imported.

# 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° 09-94 of 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.

In theory, a certain number of positions are reserved for 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.

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.

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.

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.

Work that is dangerous, unsanitary and harmful to a person's health or moral values is prohibited to minors.

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 is confirmed in his job.

During the trial period, the contract may be terminated by either party, without prior notice or compensation.

### 12.1.8 Legal workweek

The legal workweek is set at forty (40) hours in normal working conditions. It is spread over 5 working days, from Saturday to Wednesday 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.

### **12.1.9 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.

The Finance Act 2015 repeals section 87 bis on the determination of the SNMG and introduces determining the applicable guaranteed minimum wage in industries which will be made after consultation with trade unions of workers and the most representative employers.

For the determination of SNMG, account is taken of evolution:

- The recorded national average productivity;
- Index of consumer prices;
- General economic conjunction.

The components of the SNMG and the amount will be fixed by decree.

### **12.1.10 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 1<sup>st</sup>), 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 1<sup>st</sup> 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 the country:

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 24 working days or 4 weeks of work is equivalent to one (01) month of work.

This period is equal to 180 working hours for seasonal workers.

- In the Southern regions of Algeria:

An additional leave, which cannot be less than 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.

### **12.1.11 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

### **12.1.12 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 that cannot be less than six (06) months of wages, without any effect on any damages and interest.

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.

The file must contain the following documents:

- an application for an affiliation declaration for the socially insured (printed),
- a birth certificate issued by the commune where the insured was born,
- a file of the family civil status, if the insured is married.

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 to affiliate may lead to the employer being condemned to pay a fine ranging between 10,000 to 20,000 AD per non-affiliated salaried worker and a prison sentence ranging between 2 to 6 months.

All persons of all nationalities exercising a salaried activity or a similar activity in Algeria must register with social security.

### **12.2.2 Retirement**

There is a single retirement system based on the standardization of rules relative to the appraisal of the rights, advantages and financing. The retirement pension constitutes a monetary right, personal and life-long. Retirement benefits include a direct pension awarded to the worker, a pension for the surviving spouse, the orphan or the parent or grandparent.

In order to benefit from a retirement pension, the worker must:

- be at least 60 years old for men, and 55 years old, for women,
- have worked for at least 15 years.

However, the worker may enjoy retirement benefits immediately before the age mentioned above, when:

- the worker has at least 32 years of actual work, without any age requirement (100%),

- the worker is at least 50 and has 20 years of actual work, at the worker's request (proportional).

There are exemptions to the age condition with regard to the harmfulness of the position occupied, total and permanent work disability, being a former *mujahid*, or the son or daughter of a *shaheed* (martyr of the national liberation war), etc.

When the worker reaches retirement age without having fulfilled the requirements with regard to work and contributions, he may benefit from a validation of up to 5 extra years of insurance, provided that his employer funds the repurchase with twelve monthly contributions for each year that was bought back and a lump sum contribution equal to 3 times the monthly salary subject to contribution for each repurchased year.

The amount of the pension annuity is set at 2.5% of the monthly salary of the last five years multiplied by the number of years of contribution. These pensions are paid monthly at the end of the prescribed period.

The basic salary used for calculating the pension is equal:

- either to the monthly salary during the five (05) years prior to retirement;
- or, if more favorable, to the average monthly wage determined on the basis of five (05) years which resulted in the highest remuneration during the professional career of the person concerned.

The annual amount cannot be less than 75% of the national guaranteed minimum wage (SNMG), or more than 80% of salary subject to contributions which were deducted from social security contributions and taxes. "*Mujahideen*" have a minimum rate provided by law, which is 100%, depending on the number of years of participation in the national liberation struggle validated, but the annual amount of pension they can be less than two and a half times (2.5) the amount of SNMG (i.e. in 32 years  $\times 2.5\% = 80\%$  of average pensionable earnings).

The effective date of entry of the retirement pension shall be the first day of the month when the person reaches retirement age and when the conditions of entitlement are met.

In any event the pension is paid from the actual cessation of work.

### **Retirement dossier**

Social security organizations manage retirement benefits. The documents required for the retirement dossier are:

- completed request form for retirement, signed and dated by the taxpayer;
- two recent photos;
- birth certificate issued by the town hall of the applicant's place of birth;
- certificate of family status and an individual certificate for the spouse;
- certificate of attesting to the cessation of salaried or commercial activity of the insured and the spouse;
- all proof of salaried activity (original certificates of employment, employment certificate, pay slip or insurance card, etc.).
- *Shaheed* registry records, duly authenticated; certificate of attestation for the sons of *Shaheed*, a certified copy of the original, for salaried workers still working;

- CCP (bank or postal) check (cancelled);
- photocopy of identity card;
- handwritten request for retirement under the employer legalized by the APC or district authorities;
- certificate of employment and of pay supplemented by the employer;
- certificate of pay established by the employer to certify pay subject to social security contribution, (during the 60 months preceding the filing of the board or if it is more favorable, the average monthly wage determined on the basis of five (05) years);
- certificate of contributor status (career record) on the self-employment;
- Certificate of daily allowances for the period of illness justified by the CNAS (with reference salary).

This dossier is sent to the CNR (State Insurance Fund) branch in the place of residence of the retired employee with a standard form issued by branch (certificate of wages).

### **Deadlines**

Applications for retirement are in a period of at least three months before the actual retirement date. The duration of the review of the dossier varies between 10 and 15 days from the date of submission.

### **Costs**

An allowance for retirement is often provided for by the collective agreements to which companies adhere, without being mandatory.

In this case, employees who worked for a certain period within the same company are given an allowance which in practice is often calculated on the basis of one month's salary per year.

### **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 became effective on January 1<sup>st</sup>, 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	Total
Social security	12.5%	1.5%	14%
Industrial accidents and illnesses	1.25%	-	1.25%
Retirement	10.5%	6.75%	17.25%
Unemployment insurance	1%	0.5%	1.5%
Early retirement	0.25%	0.25%	0.5%
Funding for social housing (FNPOS)	0.5%	-	0.5%
<b>Total</b>	<b>26%</b>	<b>9%</b>	<b>35%</b>

### 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 foreigner 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 *gendarmérie* 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 *gendarmérie* 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 *gendarmérie*, 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 principle, only foreign workers at the level of technician can be hired. However, workers from countries that have concluded treaties with Algeria and those enjoying the status of political refugee can work in Algeria. However, there are exceptions linked to the nature of the activities.

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 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.

#### **12.4.3 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<sup>82</sup>.
- 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 dossier containing the following (among other things):

- a transfer request compliant with the standard model provided by the bank by a foreign worker, duly endorsed by his employer;
- a copy of the employment contract compliant with the original;
- a copy of the original work permit or authorization for temporary employment issued by

<sup>82</sup> The 2010 Finance Law removes the specific rules previously applicable to income of expatriate employees. For more details see Chapter 11.

the competent authorities or the receipt of statement for foreign workers are not subject to requirements of work permit;

- a standard form detailing the transferable and non-transferable shares of wages.

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.

### 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.

## 12.5 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 ALGERIAN JUSTICE SYSTEM

The Algerian justice system is a pyramidal system structured as follows: the Tribunal, the Court and the Supreme Court. Organic Law No. 98-01 of May 30, 1998 created a State Council destined to replace the courts and the Supreme Court with regard to jurisdiction over administrative matters. Furthermore, Organic Law No. 98-03 of June 3, 1998 created a Tribunal of Conflicts with the power to rule on jurisdictional conflicts between institutions of the judicial branch and institutions of the administrative branch.

### **13.1 The judicial organization**

#### **13.1.1 The tribunals**

There are 210 of them. They are the jurisdiction of first instance. They are made up of various sections: civil section, commercial section, social section, etc. .

They hear all the civil, commercial and social actions over which they have territorial jurisdiction. They issue rulings subject to appeal before the Court.

Tribunals sit in the chief place of the courts.

They have jurisdiction over the following:

- seizure of real property;
- order settlements and auction sales;
- seizure and judicial sale of boats and aircraft;
- enforcement orders;
- disputes pertaining to work-related injuries, bankruptcies, legal settlements, and petitions to sell businesses pledged as collateral.

The tribunal is an ordinary court. It is made up of various sections and the cases are enlisted according to the nature of dispute.

However, in the courts where some sections have not been established, disputes still fall under civil jurisdiction except those relating to labor disputes.

The specialized centers housed at some courts deal exclusively in disputes relating to international trade, bankruptcy and receivership, banks, intellectual property, litigation, maritime and air transport and insurance matters.

Algerian law grants Algerian nationals jurisdictional privileges in that all foreigners, even non-residents of Algeria, may be cited to appear before Algerian courts to execute the obligations contracted by them in Algeria with an Algerian. They may be prosecuted before Algerian courts for obligations they contracted abroad vis-à-vis Algerians. Conversely, an Algerian may be cited to appear before Algerian courts in connection with obligations contracted abroad with foreigners.

The orders, judgments and decisions of foreign courts may not be executed on Algerian territory unless they have been declared effective by the Algerian courts.

The request for enforcement of foreign orders, judgments, orders, acts and binding agreements is presented before the court situated at the headquarters of the court of the place of domiciliation or the place of execution, where those courts verify that it meets the following conditions:

- (1.) does not violate the rules of jurisdiction;
- (2.) have acquired the force of *res judicata* in accordance with the laws of the country where they have been rendered;
- (3.) is not contrary to orders, judgments or decisions already delivered by the Algerian courts and to which the defendant has pled;
- (4.) is not contrary to public order or morality in Algeria.

Similarly, laws and notarized acts established in foreign countries may be executed on Algerian territory unless they have been declared effective by the Algerian courts which verify they meet the following conditions:

- (1.) meet the requirements for the authenticity of the securities in accordance with the laws of the country where they were established;
- (2.) must resemble compulsory enforcement measures and be enforceable, in accordance with the laws of the country where they have been established and they are not contrary to public order or morality in Algeria.

These rules are without prejudice to those provided by international conventions and legal agreements concluded between Algeria and other countries.

### **13.1.1.1 Proceedings before the tribunals**

A case is brought before the tribunal by filing a subpoena bearing the date and signature of the plaintiff with the registry.

All subpoenas must include the name and address of the consignee, designation of the tribunal having jurisdiction, and a summary of the complaint and the arguments. When a corporation is involved, the subpoena must include the firm's name, its nature and the location of its headquarters.

The subpoena is delivered by the tribunal's clerk, sent by registered mail or through administrative channels. If the consignee has no known residence in Algeria, the subpoena is sent to his permanent address. If the consignee resides abroad, prosecutors must send a copy to the Ministry of Foreign Affairs, or any authority empowered to do so by diplomatic conventions.

With regard to tribunal hearings and judgments, the judges may sit every day, even on holidays. The hearings are open to the public.

The tribunal has the power to order inquiries and the presentation of expert evidence. The tribunal may also order a visit of the premises and investigation of facts requiring confirmation by witnesses when the verification of such facts appears admissible and useful in furthering the investigation into the case.

Judgments by default may be challenged within 10 days following notification. The notification must clearly specify that the right to challenge the judgment ends upon expiration of that deadline. When the subpoena has been delivered to the consignee in person, the judgment of the tribunal is deemed to have been heard. As such, it cannot be challenged.

### **13.1.1.2 Administrative tribunals**

They were created by Act No. 98-02 of May 30, 1998.

Their number and the scope of their jurisdiction have yet to be determined; however, the rules of procedure before administrative tribunals are set by the CPC. The rulings of the administrative tribunals may be appealed before the State Council, except when the law provides otherwise.

Administrative tribunals are organized into chambers, which are then subdivided into sections.

## **13.1.2 The courts**

There are 48 courts.

It is before these courts that the judgments of the tribunals are appealed. Appeals must be filed within one (01) month from the date of notification, either in person or at the place of residence (in cases where judgments are deemed to have been heard), of the tribunal's decision, or from the date of the deadline's expiration (in the case of judgments by default).

As a rule, the appeal is suspensive. The law may decide otherwise however. The appeal is formed by assignment motivated and signed by the party which lodges the appeal.

The time limit to appeal is increased by one (01) month for residents of Tunisia and Morocco and by two (02) months for those who reside in other countries.

The appeal is launched by a writ of appeal signed by the party lodging the appeal.

Investigation of the case under appeal is conducted according to the same procedures as before the tribunal. The parties either appear in person or are represented by their attorneys.

The court deliberates at the end of the hearings, announcing when the judgment will be rendered.

All judgments rendered on statements, pleadings or arguments are deemed to have been heard, even if the attorneys made no oral arguments during the hearings.

Judgments that reject exceptions or pleas of inadmissibility and rule on the substance of the case are also deemed to have been heard when the party who made the plea for exception or inadmissibility abstained from presenting a defense on the substance.

These judgments may be challenged within ten (10) days after notification. The notification must clearly specify that the right to challenge the judgment ends upon expiration of that deadline.

## **13.1.3 The Supreme Court**

The Supreme Court is the body regulating the activities of the tribunals and the courts.

The Supreme Court has the power to rule on appeals against the decisions without appeal pronounced by the courts and tribunals.

Petitions for cassation can only be based on one of the following:

- a) lack of jurisdiction or excess of power;
- b) violation or omission of procedural requirements;
- c) lack of legal grounds;
- d) non-existent, deficient or conflicting reasoning;
- e) violation or wrong application of domestic law or foreign law;
- f) conflicting decisions emanating from different tribunals and pronounced in last instance.

The time limit for filing petitions for cassation is two (02) months from the date of notification, either in person or at the place of residence, of the court's decision that is being challenged.

With regard to default decisions, the countdown to the deadline starts on the day when challenges are no longer admissible.

When one party resides abroad, the deadline for initiating proceedings is increased by one month, regardless of the nature of the case.

Supreme Court appeals do not suspend enforcement, except in cases pertaining to the status or legal capacity of persons and in cases of forgery.

The parties must be represented by attorneys authorized to plead before the Supreme Court.

Proceedings before the Supreme Court essentially include an application written by an accredited attorney. The following three elements must be included, as failure to do so will result in nullification:

- last name, first name, profession and address of the parties;
- a copy of the judgment being challenged;
- a summary of the facts and arguments making up the grounds for the appeal before the Supreme Court.

In the month following the filing of the petition, the plaintiff may present documents elaborating on his or her plea.

The decisions of the Supreme Court are duly justified. They contain references to the legislative texts applied in the judgment. When the Supreme Court rules in favor of the petitioner it cancels all or part of the decision under challenge and sends the case back to the same court, now made up of different judges, or to another court of the same order and rank as those whose decision is being reversed.

It is the responsibility of the court to which the case is being sent back following cassation to comply with the decision regarding the point of law ruled on by the Supreme Court.

Notification of Supreme Court's decisions is done by the court's clerk and is sent by registered mail, with acknowledgment of receipt, to the parties to the proceedings, as well as to the attorneys. Notification of the decisions is also sent to the courts whose judgments were challenged.

### 13.1.4 Overview of the system of legal remedies

	Introduction of legal action	Inquiry	End of hearings	Verdict
<b>Supreme court</b>	Petition for cassation by signed application of the attorney  (within a 2-month period following notification of the court's decision)	Responsible for ensuring the law is properly applied	Deliberations	Verdict reversing or upholding the court's decision
<b>Court</b>	Appeal by the unsuccessful party in first instance proceedings  (within a 1-month period following notification of the tribunal's decision)	Inquiry into the case	Deliberations	Verdict reversing or upholding the decision of the tribunal
<b>Ordinary tribunal</b>	Filing of complaint with the tribunal registry to initiate legal action	Inquiry into the case	Deliberations	Judgment and notification of the tribunal's decision

### 13.1.5 The State Council

By virtue of 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 State Council, "all filed and/or pending cases of the administrative chamber of the Supreme Court, except those cases ready to be decided," are transferred to the State Council. The aforementioned Organic Law 98- 01 makes the State Council the body regulating the activities of the administrative courts. The Council ensures the uniformity of administrative case-law throughout the country and upholds the law.

The State Council has the power to rule as the court of first and last instance with regard to:

- Actions for cancellation against regulatory or individual decisions emanating from central administrative authorities, national public institutions and national professional organizations. Example: actions for cancellations can be brought before the State Council against the decisions of ANDI, as well as against the decisions rendered by sectorial regulatory authorities. The decisions of the Competitive Council must be excluded however, as they can only be challenged before the Court of Algiers having jurisdiction over commercial matters.
- Proceedings pertaining to legal interpretation and to proceedings which aim to assess the legality of the acts at the root of the dispute, which fall under the jurisdiction of the State Council (the decisions of a minister, of a wali, or of an independent administrative authority for example).

During the appeal, the State Council hears about the decisions rendered by the lower courts (tribunals and courts).

The council is also the court of cassation with regard to the decisions rendered by administrative courts of last instance.

The proceedings before the State Council are conducted according to the provisions of the CPC applying to judicial rules of procedure.

Before the creation of the State Council, administrative litigation was vested with a possibility to appeal at the administrative chamber of the court and appeals were lodged with the administrative chamber of the Supreme Court.

### **13.1.6 The specifics of administrative procedures**

According to Law No.08-09 on the Code of Civil and Administrative Procedures, administrative tribunals are the courts of ordinary law in administrative litigation.

They hear, at first instance and to appeal to all cases in which the State, the wilaya, the municipality or a public administrative institution is a party.

Administrative courts are also competent to decide on:

(1) the application for annulment, interpretation and assessment of the legality of administrative acts taken by:

- the Wilaya and the services of the State in exercising it;
- the town and other municipal administrative services;
- Local public institutions of an administrative nature.

(2) substantive appeals;

(3) cases that are presented to them through specific texts.

The following actions listed as examples are mandatory before the administrative courts:

- in terms of taxes, in the place of taxation;
- on public works, in the place of execution;
- in terms of administrative contracts of any kind, in the place of award or execution;
- litigation involving officials, state officials or other persons of public administration, in the place of assignment;
- with regard to medical benefits, where they were provided;
- in terms of supplies, works, hire of work or industry, where the convention was passed or executed, when one party is domiciled in that place;
- in terms of difficulty of enforcing a decision of the administrative court at the place of the court that rendered the decision.

The administrative tribunal with jurisdiction to hear an application also has jurisdiction for any additional claim, counterclaim or incident within the competence of administrative tribunals.

It also has jurisdiction to hear any exception cases under the jurisdiction of an administrative court. Conflicts of jurisdiction between the Administrative Court and the State Council shall be settled by the latter, in united chambers.

The administrative tribunal (the administrative chamber of the court before the creation of all administrative tribunals) is petitioned by a written application signed by the plaintiff or an

attorney registered with the National Bar Association and filed with the court clerk according to the new Law No.08-09, at the Registry of the Administrative Court against the payment of court fee, except where otherwise provided by law. The application must be accompanied by the decision being challenged. Administrative tribunals can only be petitioned by individuals seeking legal remedy against administrative decisions.

The appeal must be lodged within four months (4) after the date on which the summons of a copy of the individual administrative decision or issuance of the collective administrative decision or regulation is personally served.

The courts' administrative chambers will disappear as soon as administrative tribunals are established. This means that the two court-level structure is maintained as far as administrative matters are concerned. The decisions rendered by the tribunals can only be appealed before the State Council. The appellant has four (4) months from the date of notification of the tribunal's decision to lodge an appeal before the State Council or petition for the cancellation of the tribunal's decision.

### 13.1.7 Overview of the system of legal remedies

	<b>Introduction of legal actions</b>	<b>Inquiry</b>	<b>Verdict</b>
<b>State council</b>	<ol style="list-style-type: none"> <li>1. Makes decisions subject to appeal against regulatory decisions of other central administrative authorities</li> <li>2. Hears interpretation appeals concerning the legality of administrative actions</li> <li>3. The time for appeal against decisions is 2 months (15 days in relation to orders for injunctions)</li> <li>4. The deadline to appeal in cassation is 2 months from notification of the decision</li> </ol>	Inquiry into the appeal	Reverses 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).
<b>Administrative tribunal</b>	Proceedings start with the filing of a complaint with the tribunal's registry	Inquiry into the case and deliberations.	Judgment and notification of the tribunal's decision

## **13.2 Jurisdiction of courts and tribunals with regard to emergency measures**

In the course of their execution, numerous contracts between Algerian and foreign corporations, namely equipment contracts and, more broadly speaking, ongoing execution contracts, create situations where Algerian courts are petitioned to consider emergency measures. Algerian law makes a distinction between emergency measures as such, and payment order procedures and proceedings for interim relief.

### **13.2.1 Emergency measures**

Algerian courts have the power to order emergency measures when a petition is brought before the court with substantive jurisdiction. The petitioned judge issues an order acknowledging the emergency situation claimed by the petitioner. If the petition is rejected, the decision may be appealed provided that it 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 debt is admissible whenever the legal action is initiated to obtain an order for payment. The plaintiff must attach all documents proving the amount and existence of the debt to his petition. In cases where the judge finds in the plaintiff's favor, he authorizes the issue of a notification ordering payment (which means that the debt is justified). In the opposite case, the judge will reject any legal remedy for the plaintiff, save for his or her right to resort to ordinary law actions.

When the decision is subject to appeal, the time limit (30 days) runs from the expiration of contradiction or from the pronouncement of the verdict which rejects the odds (the deadline is 30 days). After this time or if the order is not subject to appeal, it will be stamped by the Clerk of enforcement at the request of the creditor (by letter).

An order for payment is only possible when the debtor resides in Algeria. Notification of the payment order is sent to the debtor by registered mail with acknowledgment of receipt. The debtor must pay within 15 days, as failure to do so will expose him or her to all available legal means to force payment, in addition to being assessed late penalty interest charges and fees. The debtor may use the time before the deadline to prepare a response to the payment order, but will be required to deposit an amount equal to the costs, as the court clerk will not issue a receipt otherwise. If there is no response, the debtor is asked to appear before the judge. If the debtor fails to appear, the judge automatically rules and the decision is deemed to have been heard by the debtor. If the debtor's response is submitted after the allowed time limit, the creditor simply has to send a copy of the original of the judge's order to demand payment. The effects of the order of payment are those of a judgment after trial.

When the decision can be appealed, the countdown to the deadline starts when the time limit (maximum of 45 days) for presenting a response expires, or from the moment that the decision to reject the debtor's response (maximum of 30 days) is delivered. When this deadline passes or if the payment order is without appeal, the court clerk will execute the decision in accordance with the enforcement formula upon request by the creditor (by letter).

Any Ordinance containing an order of payment which has not been appealed or which is not certified for execution within (6) months from its date of issue is deemed to have lapsed and has no legal effect.



### 13.2.3 Proceedings for interim relief

Whenever measures pertaining to sequestration or any protective measures are about to be ruled on, the case may be referred to the president of the court of first instance with substantive jurisdiction.

The judge may rule at any time, including on holidays.

Interim relief orders do not address substantive legal issues. The president of the interim relief court has the power to order all investigative measures needed to resolve the dispute. Interim relief orders are provisionally enforceable, with or without bail.

They can neither be opposed nor their execution prohibited.

The decision can be appealed within 15 days after notification of the Ordinance. The appeal is also judged in accordance with emergency procedures.

## 13.3 Personnel categories in the judicial system

The judicial system comprises three personnel categories: judges, officers of the court and civil servants.

### 13.3.1 Judges

Contrary to the jurisdictional duality between the orders (judiciary and administrative), the magistracy is united under the authority of the Superior Council of the Magistracy. It is made up solely of professionals forming two groups: sitting judges and prosecutors of the department of public prosecutions.

The status of the magistracy was the target of restructuring efforts in 2004 within the framework of the reforms aiming to reinforce the independence of judges, reforms which translated into the rehabilitation of the role of the Superior Council of the Magistracy, which now enjoys financial autonomy and has seen the number of elected members increased.

### 13.3.2 Court officers

The activities of the court officers are exercised in the form of a liberal profession under the direct authority of a professional corporation for each branch and the guardianship of the Minister of Justice. The category of court officer includes: lawyers, notaries, bailiffs, auctioneers, court experts, trustee administrators and translators-interpreters.

The Ministry of Justice has initiated a restructuring program of all statuses, and mixed commissions have been established to ensure that the legal texts comply with changes in the market environment and its openness.

### 13.3.3 Civil servants

Considered as assistants to the judge, they fall into two categories:

1. **The registry**, which is made up of civil servants responsible for the management of the administrative services and the financial management of the jurisdictions.
2. **The judicial police**, a body mainly made up of civil servants of the national security, the police force and other appointed personnel, whose mission is to establish punishable violations, gather evidence, identify the culprits and bring them to the competent jurisdictions, in compliance with the law, and under the authority of the prosecutor of the Republic. Thanks

to the latest reform of the Code of criminal procedure, the judicial police have seen their powers considerably strengthened, all under the judicial control of the indicting chamber.

### **13.4 Customs Disputes**

Chapter 15 of the Customs Code deals with customs disputes. There are several peculiarities stemming from the special character of the Customs law which differs from ordinary law in certain provisions.

Customs violations, as defined by Article 240 of the Customs Code, are any violation of the laws and rules that the customs authorities are in charge of enforcing. Punishable under the Customs Code, these violations need only present two (02) aspects of a crime, instead of the three (03) usually required by ordinary law, to be considered as such:

- The material aspect,
- The legal aspect,
- The intentional aspect is not taken into consideration, and even judges may not invoke it in accordance with Article 281 of the Customs Code.

Customs fines and seizures, which sometimes exhibited a dual criminal and compensatory nature until 1979, sometimes a strictly compensatory nature after that, are showing that dual nature again with the modifications of Act 98-10 of July 21, 1998 which abolished Article 249 of the Customs Code giving supremacy to compensatory action. Fines owed to customs authorities are collected by the authorities themselves. The confiscated merchandise is not stored in the court registry, but in the customs office closest to where the seizure was conducted.

#### **13.4.1 Persons empowered to establish the occurrence of customs violations and their powers**

By virtue of the provisions of Article 241 of the Customs Code, the following are empowered to establish and record customs violations:

- Customs agents,
- The officers and agents of the judicial police,
- The tax agents,
- The agents of the national coast guard service, the agents in charge of economic investigations, competition, prices, quality and the prevention of fraud.

The establishment of a customs violation entitles these agents to seize merchandise liable to be confiscated as a guarantee against penalties legally incurred, as well as any document accompanying the merchandise. In cases where violators are caught in the act, the agents may arrest the suspects and bring them immediately before the prosecutor of the Republic after the procedures have been completed.

#### **13.4.2 Methods of establishing customs violations**

Customs violations, once established, are recorded in seizure or inquiry 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 inside the home of the offenders. According to Article 255 of the Customs Code, the customs reports must include the following formalities, as failure to do so will result in them being voided:

- the conduct of the seizure and the storage of the seized merchandise and documents in the customs office or station nearest to the location of the seizure and where the reports must be written immediately,
- the appointment of the customs collector in charge of prosecution as the custodian of the seized goods,
- the report lists the information which is likely to identify the offenders, the merchandise and to establish that an offense has been committed,
- the date, time and place of the seizure,
- the reason for the seizure,
- the declaration of seizure to the offender,
- the family names, given names, positions and residences of the persons conducting the seizures and the customs agents in charge of the prosecutions,
- the description of the seized merchandise and the nature of the seized documents,
- the summons made to the suspect to attend the writing of the report and the steps that followed that summons,
- the location where the report was written and the time when the session ended,
- the family names, given names and status of the custodian of the seized merchandise if possible. The forged or modified documents are seized, the report lists the type of falsification, describes the alterations and extra work. The documents are signed and initialed by the agents who attach them to the report.

Moreover, violation reports resulting from investigations or inspections must, according to the terms of Article 48 of the Code of Customs, mention:

- the family names and given names, status and residence of the enforcement officers, as well as the dates and locations of the investigations,
- the nature of the observations and information collected, either by inspecting the documents or questioning individuals,
- the seizure of documents with their descriptions,
- the legal and regulatory provisions violated as well as the appropriate regulations on penalties,
- the statement indicating that the persons in whose home the inspection and investigations were conducted were informed about the date and location where the report was written, that the report was read to them and that they were invited to sign it.

### **13.4.3 Scope of jurisdictions**

#### **13.4.3.1 Absolute jurisdiction**

The jurisdictions that rule in criminal matters hear cases pertaining to customs violations and all customs matters raised by way of exception, as well as related customs violations, accessory to or tied to ordinary law offenses. This jurisdiction is granted by Article 272 of the

Customs Code. Challenges pertaining to the payment of duties and taxes or their refund, and oppositions to seizures fall under the jurisdiction of the courts dealing with civil matters.

### **13.4.3.2 Territorial jurisdiction**

In the case of proceedings resulting from violations established by seizure or inquiry reports, the tribunal of competent jurisdiction is the tribunal with jurisdiction over the customs office closest to where the violations were established. Challenges to orders are brought before the jurisdictions dealing with civil matters in the district of the customs office where the order originated (Article 274 of the Customs Code).

### **13.4.4 Customs offenses**

There are five (05) categories of petty offenses and four (04) categories of misdemeanors. The classification of these violations was made by distinguishing between violations pertaining to merchandise that is prohibited or heavily taxed on one hand, and merchandise that is not, on the other. Secondly, a distinction was made between violations that compromise or evade duties and taxes and those that have no influence on the collection of duties and taxes for the treasury.

#### **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, uncovered in customs offices or stations during verification operations, represents a first-degree misdemeanor. This misdemeanor is punishable by the seizure of the fraudulent merchandises and the merchandise used to hide them, a fine equal to one (01) time the value of the confiscated merchandise and a prison sentence of 2 to 6 months (Article 325 of the Customs Code).

Acts of contraband pertaining to merchandise that is either prohibited or heavily taxed, represent a second-degree misdemeanor. This misdemeanor is punishable by the seizure of the fraudulent merchandise and the merchandise used to hide them, a fine equal to 2 times the value of the confiscated merchandise and 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, committed by a gathering of three (03) individuals or more, whether or not they are all in possession of fraudulent merchandise, represents a third-degree misdemeanor. This misdemeanor is punishable by the seizure of the fraudulent merchandise and the merchandise used to hide them, a fine equal to 3 times the value of the confiscated merchandise and a prison sentence of 12 to 14 months (Article 327 of the Customs Code).

Acts of contraband pertaining to merchandise that is either prohibited or heavily taxed committed with the use of firearms or animals, vehicles, aircrafts or boats of less than 100 net register tons or less than 500 gross register tons represent a fourth-degree misdemeanor. This misdemeanor is punishable by the seizure of the fraudulent merchandise and the means of transportation, a fine equal to 4 times the value of the confiscated merchandise and means of transportation and a prison sentence of 24 to 60 months (Article 328 of the Customs Code).

#### **13.4.4.2 Petty customs offenses**

Any violation of the laws and regulations that the tax authorities are in charge of enforcing, which has no influence on the prohibitive measures nor on the collection of duties and taxes represents a first-degree offense. This petty offense is punishable by a fine of 5,000 AD (Article 319 of the Customs Code).

Any violation of the laws and regulations that the tax authorities are in charge of enforcing, which influences the collection of the duties and taxes, represents a second-degree offense. This petty offense is punishable by a fine equal to double the amount of the duties and taxes that were compromised or avoided (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 through postal packages, as well as violations of Article 22 of the Customs Code, represent a third-degree offense. This petty offense 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, committed with the use of false documents, represents a fourth-degree offense. This petty offense is punishable by the seizure of the fraudulent merchandise and a fine of 5,000 AD, without prejudice to the application of criminal penalties for forgery and the use of forged documents.

An act of contraband with regard to merchandise that is neither prohibited nor heavily taxed is considered a fifth-degree offense punishable by the seizure of the fraudulent merchandise and a fine of 10,000 AD.

#### **13.4.5 Main violations likely to be uncovered by the verification of merchandise**

The fundamental principle in customs is the inspection of declarations detailing the merchandise, the documents supporting the declarations, and the physical verifications of declared merchandise by the agent to verify the truth of the information provided on the declaration form.

The inspection essentially pertains to the customs value, the nature and origin of the merchandise. In addition to making it possible to calculate the payable taxes and duties, the verification of these three (03) elements, called the tax factors, enables the application of prohibitive measures that could impact the merchandise. The inspection may lead to the discovery and recording of violations.

With regard to customs value, it must be declared in conformity with the provisions of Article 16 et seq. of the Customs Code. The price paid or to be paid to the supplier corresponds to the calculated invoice price. This value is sometimes challenged by the inspecting officer, who has the duty of trying to prove by any reasonable means the falsehood of the declared value in the most objective manner. Should the inspecting officer fail to do this, the deponent is entitled to maintain his position with regard to the declared value and to ask, if need be, for the arbitration of the hierarchical superiors of the control officer as part of an application for reconsideration. The deponent may also, just like the customs authorities by the way, petition the appellate commission, which is presided over by a judge and who will hand down a decision binding on both parties.

As for tariffs, when the product is not classified by name in a group or sub-group, the classification rules of the harmonized system make it much easier to have a justifiable classification. In extreme cases, the deponent also has the option of going before the aforementioned appellate commission for an appeal.

#### **13.4.6 Prosecutions and punishment of customs violations**

Under the terms of Article 265 of the Customs Code, “persons prosecuted for customs violations are referred to the tribunal of competent jurisdiction to be punished in accordance with the provisions of the current code.”

Nonetheless, the same Article allows offenders who wish to do so, to seek a compromise which would end the prosecution in the event of an agreement with the customs authorities.

During the court proceedings, the customs authorities and the offender have the same rights. The trial is adversarial. Judgments can be appealed. Nevertheless the authorities enjoy certain privileges specifically stipulated in the Customs Code.

##### **The judges are prohibited from:**

- excusing the offender with regard to intention,
- granting the release of merchandise seized as a result of a customs violation without collateral for their value and merchandise prohibited from clearing customs without prior authorization issued by the relevant authorities,
- seizing any duties and tax proceeds 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 challenged by an appeal (Article 294 of the Customs Code) and the administrative measures issued by virtue of Article 262 of the Customs Code are enforceable by any means, except by imprisonment. Their execution is not suspended by the exercise of the taxpayer’s right to 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 they apply for it. It is obvious that in order to ask for a settlement the defendants must first acknowledge the service and admit that a violation has been committed.

The request for negotiation is presented on printed customs forms, as in the case of contentious proceedings, in which the offender acknowledges the violation. He deposits a certain amount set by the customs collector. The offender fills out a specially printed paper taken from a portable notebook for travelers accepting to abide by the final decision of the competent authorities. In the other cases, the offender formulates a request on a blank piece of paper on which he acknowledges the violation for which he is being prosecuted and makes a monetary offer to settle the dispute. This request must be addressed to the authorities with jurisdiction depending on the amount of duties and taxes that were not paid or that the offender attempted to avoid paying, which are called insufficient or evaded duties.

Settlements are not legally possible in the case of violations pertaining to merchandise that is absolutely prohibited however.

Settlements occur depending on the insufficient or evaded duties, by notification or without notification. Settlements may occur before a ruling or after a ruling having acquired the authority of *res judicata*, the former terminates the fiscal and civil action, while the latter allows prison sentences to remain in effect.

Other violations reported and recorded by the customs administration and unchecked by the Customs Code:

It refers mainly to the violation of foreign exchange regulations. At the time of operations audit or control, the control officer may have to establish custom violation relating to a breach of foreign exchange regulation, particularly in cases of misrepresentation of value and illegal transfer of capital or at the occasion of an inapplicability of the banking domiciliation's certificate. These offenses are prosecuted in accordance with the provision of Ordinance No. 96-22 of 9 July 1996 concerning the suppression of foreign exchange regulations offenses, amended and supplemented by Ordinance No. 03-01 of 19 February 2003.

### **13.4.7 Organization of the directorate general of customs**

An Executive Decree No. 08-63 was issued on 24 February 2008 in order to determine the organization of the Directorate General of Customs. Under the authority of the Finance Minister, the Directorate General of Customs participates in the study and drafts international conventions and agreements relevant to customs, participates in the elaboration of legislation or regulations related to customs law and customs administration and implementation, applies laws and regulations on customs taxation, goods and services and other related taxes applicable to international trade, foreign exchange and oil, ensures the customs supervision of the territory, ensures the development and analysis of external trade statistics.

The organization is composed of five (5) directors or principal analysts, seven (7) analyst heads, a general inspection governed by a particular text and several administrative branches, which include:

- Legislation, regulation and trade.
- Taxation and tax collection.
- The Directorate of Customs.
- Follow-up customs checks.
- Management of customs information.
- Litigation.
- Public relations and information.
- The Directorate of General Administration.
- Training.
- Financial resources.
- Infrastructure and equipment.

## **13.5 Alternative dispute resolution**

### **13.5.1 Arbitration**

The administrative courts may have recourse to arbitration for certain legal proceedings (*recours de plein contentieux* – specific to French administrative law in which the administrative

judge has extensive powers and can annul the administrative act the subject of the proceedings) and cases falling within its jurisdiction.

Arbitration can occur at any stage of the proceedings initiated by the parties or the judge after the agreement of the parties.

In the case of arbitration, the judge provides a record which describes the terms of the agreement and ordered the settlement and closing of the file. This order is not subject to any appeal.

### **13.5.2 Mediation**

With the exception of cases of family and industrial businesses that may affect public order, the judge must offer mediation to the parties. If the parties accept this proposal, the judge shall appoint an ombudsman to hear their views and try to bring in order to enable them to find a solution. Mediation can cover all or part of the dispute.

In no case does it defer to the judge who may at any time take other measures as deemed necessary.

The duration of the mediation may 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 an individual or association. If an individual is responsible for the mediation, they shall be designated from among the people known for their probity and righteousness and must meet the requirements of Law No. 08-09 on the code of civil procedure and administrative.

The Ombudsman may be dismissed by the judge when mediation becomes impossible because of the mediator or the parties.

At the termination of their duties, the Ombudsman shall inform the judge that the parties are or are not able to find a solution.

If agreed by the parties, the mediator prepares a record which is recorded in the contents of this agreement. The minutes are signed by the parties and the mediator. The case comes before the court prior to the day fixed. The judge confirms the minutes of the agreement by order which shall not be subject to an appeal. This order is enforceable.



# 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.

# CHAPTER 15

## THE LEGAL REGIMES FOR HYDROCARBONS AND MINING

### 15.1 Hydrocarbons<sup>83</sup>

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 is 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 20<sup>th</sup> 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 the attractiveness of the national mining sector, in order to increase the exploitation effort and

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<sup>83</sup> This issue is explored in greater detail in the KPMG Algeria’s Hydrocarbon Guide, 2007.

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 follows:

- 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) which 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 (li) 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..

### 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.
  - In this regard, it is worth recalling that:
  - 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.

## **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<sup>2</sup> 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:

$(TCH_{m\text{vn}}-1) (M / 80)$

- $TCH_{m\text{vn}}-1$  = 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		
<b>ZONE A</b>	4.000,00	6.000,00	8.000,00	400.000,00	16.000,00
<b>ZONE B</b>	4.800,00	8.000,00	12.000,00	560.000,00	24.000,00
<b>ZONE C</b>	6.000,00	10.000,00	14.000,00	720.000,00	28.000,00
<b>ZONE D</b>	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 TOR rate depends on the value of the cumulative production of each perimeter going back to when exploitation of the deposits of the said perimeter began.

The rates are summarized in the table below.

PV (10°DA)	FIRST THRESHOLD (T1)	70
	SECOND THRESHOLD (T2)	385
	INTERMEDIATE THRESHOLD	$70 < PV < 385$
TOR RATE	FIRST LEVEL	30%
	SECOND LEVEL	70%
	INTERMEDIATE LEVEL	$(40/S2-S1) (PV-S1) + 30$

TOR is considered a deductible charge and consequently, it is deductible from the ICR taxable base.

The TOR is paid in twelve (12) monthly installments. It is liquidated and the balance is paid, without warning, before the annual return is filed.

In case of late payment, late payment penalties of 1 ‰ per day are added to the sums due.

Under the terms of the law 13-01, mentioned above, a new methodology for determination of the tax on oil incomes which is based on the profitability of the project.

For the needs of calculation of the TRP relative to the perimeter of exploitation linked to research and exploitation of hydrocarbons contract, the coefficients R1 and R2.

Operating costs allowed the deduction for determining the rate of the TRP are listed by the Executive Decree No. 14-138 of 20 April 2014.

### 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.

### 15.1.2.1.5 Tax on flaring

The gas flaring is prohibited.

ALNAFT may grant exceptional authorizations for periods which cannot exceed ninety (90) days however.

Under those conditions, the operator, benefiting from the authorization, must pay a tax of eight thousand (8,000,00 DA) per thousand normal cubic meter (nm<sup>3</sup>).

The payment of this tax does not free the operator from the obligations imposed by Article 109 of the law concerning the compliance of facilities and operations with the legislation setting the technical standards in terms of industrial safety, prevention and management of major risks and environmental protection. 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<sup>3</sup>.

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 substances except 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.

At the end of 2006, two important milestones were reached with the promulgation of the law: the separation of the activities of the incumbent operator (Sonelgaz) and the establishment of CREG, an independent regulatory authority.

In January 2004, three subsidiaries were created for core activities: Sonelgaz electricity production (Sonelgaz production d'électricité, SPE), Sonelgaz electricity transportation (Sonelgaz, transport de l'électricité, GRTE) and Sonelgaz gas transportation (Sonelgaz, transport du gaz, GRTG).

It is within the GRTE that the System operator project and the Market operator project were implemented. In 2006, the system operator was created as a subsidiary and its capital is slated to be opened to third parties.

CREG, as an independent regulatory authority, was endowed with an executive committee in January 2005. Finally in 2006, the restructuring of the electricity and gas distribution organization, which began in 2004 with the creation of four general directorates in charge of distribution (Algiers, Centre, East and West) followed by their subsidiarization, was completed.

The organizational restructuring was conducted in accordance with the planned schedule. A range of legislative texts has been published during the period 2005-2008 as follows:

**During 2005**, a publication of the Decree on the regulation of fares and the remuneration of transport, distribution and marketing of electricity and gas. The Decree stipulates that the activities are remunerated on the basis of provisions that are objective, transparent and non-discriminatory, in the interests of consumers and operators.

**During 2006**, six decrees dealing with the production and transport of electricity, gas transportation, construction and operation of new facilities to produce free electricity were added to the regulatory framework. Production is subject to the granting of a license to operate issued by the CREG.

The procedure for requesting authorization to operate is governed by Executive Decree No. 06-428 of 26 November 2006. The applicant must provide a file in 6 copies and send it to the commission (CREG). It has 4 months to rule on the request. Executive Decree No. 06-428 provides for specifications containing the rights and obligations of the producer of electricity.

Executive Decree No. 06-432 establishes the rights and obligations of the system of gas on the basis of specifications.

**During 2007**, publication of two executive decrees and three ministerial orders, on the conditions for supplying power, third party access to transmission and distribution of electricity and gas, setting the annual consumption level of electricity and gas for eligible clients in accordance with conditions linked to their return to the rates system, operating permits for the transmission of electricity, the authorization to operate the transportation of gas and determining the procedure for notification of the production of electricity.

**During 2008**, a new executive decree consolidates the opening of the private sector. Decree No. 08-114 sets the rules for granting and withdrawing concessions for the distribution of electricity and gas and includes the specifications concerning the rights and obligations of the licensee. It specifies in detail the conditions for granting or withdrawing concessions under the direction of the CREG.

Since the CREG must intervene to regulate the electricity and gas market and since, in order to do so, it must act in the interest of both consumers and operators, it should be noted that six cases call for its intervention:

first, With regard to authorizations and concessions, it provides information in connection with applications and delivers authorizations for the construction and exploitation of new electricity production facilities.

second, With regard to forecasts concerning demand and the investment scheduling, it drafts the programs indicating needs and approves electricity and gas transportation network development plans.

third, With regard to the compensation of operators and to the rates, it determines the compensation of operators and the rates applying to captive customers and manages the electricity and gas fund.

4th, With regard to the access of third parties to the network and to the markets, the CREG guarantees the rules of procedure and functioning of the system operator, while supervising and organizing the markets.

5th, With regard to technical and environmental control, the CREG controls the application of the regulation in the area of hygiene, safety and the environment (HSE) and proposes rules of conduct with regard to the quality of performance and customer service.

6th, With regard to the consumer protection, the CREG evaluates how operators fulfill their public service obligations, gathers the information pertaining to complaints from operators, stops administrative sanctions and publishes information in the interest of consumers.

**During 2009**, Executive Order establishing the tools and methodology for developing the indicative program needs power generation means; Decree of 3 March 2009 determining the gaseous hydrocarbon pipelines under the oil and gas installations as part of the transport network sector for supplying the domestic market.

**During 2010**, Executive Decree No. 10-95 of 17 March 2010 laying down the rules for Economic Rights connection to networks and other actions necessary to meet the power demands of customers for electricity and gas, Executive Decree No. 12-150 of 28 March 2012 amending Executive Decree No. 10-138 of 13 May 2010 fixing the technical rules for design, operation and maintenance of distribution networks for electricity and gas.

**During 2013**, Executive Decree No. 13-218 of 18 June 2013 laying down the conditions for the granting of premiums for diversification costs of electricity generation.

**During 2014**, Order of February 2, 2014 in fixing the guaranteed purchase prices and terms of their application for electricity produced from wind power facilities using the chain. Decree of 2 February 2014 fixing the guaranteed purchase prices and terms of their application for electricity produced from plants using solar photovoltaic

To date, the Law No. 02-01 has initiated several projects to independent power producers (PPIs), often in cooperation with several companies (private & public).

The production of electricity by independent power producers is expected to increase and provide a significant portion of domestic production in the coming years.



# 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.

In terms of market share, the operator OTA, with 47.9%, remains the leader in the GSM segment, followed ATM respectively 29% and WTA with 23.1%.

In the 3G segment, and taking into account the figures provided by the three operators is the ATM operator who leads with 44.2%, followed closely by WTA 43.8%.

The latest entrant in the 3G market, namely OTA, to reiterate, began marketing its services July 5, 2014, holds 12% market share.<sup>84</sup>

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 entreprises, DGE)<sup>85</sup>.

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<sup>86</sup> 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."

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

85 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.

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

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.
- 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 Djazzy used up all available numbers, the ARPT granted the carrier a new prefix (09), which Djazzy 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.

An association of New Information and Communication Technology (NICT) users named TOUIZA was created by the end of 2007. This association essentially works to defend the interests of mobile telephone, web and VoIP telephone users. The association is independent.

The ARPT has resumed the review of applications for permission to provide VoIP services. The organization had temporarily withdrawn the specifications for the award of authorizations to operate in the field of VoIP services in June 2006 after granting such authorizations to eleven different companies specializing in Internet and multimedia content. The suspension was lifted following the review of results of a study regarding the evolution of this sector of activities and its impact on the telecommunications market.

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.

According to the latest statistics from the regulatory authority, the turnover in the telecommunications sector is estimated at 495 billion dinars, an increase of over 8% compared to that recorded for the year 2012.

It should be noted that the revenues generated by the operators of fixed and mobile telephony for the same period in the amount of 300 billion dinars, representing approximately 61% of consolidated revenue sector turnover.

Regarding the contribution of the telecommunications sector to gross domestic product (GDP) for 2013, it is estimated at 2.8%.

# CHAPTER 18

## INSURANCE

The insurance sector<sup>87</sup> 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 16 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 16 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.

Insurance companies are represented in a professional organization called "UAR" (Union des assureurs et réassureurs / Union of Insurers and Reinsurers).

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<sup>87</sup> For a detailed study of the sector, see KPMG Algeria's "Insurance Guide".

Insurance products are distributed through a network made up of 457 insurance intermediaries, including 433 general agents and 24 brokers with 20 whose activity is spread throughout the country.

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 <sup>(83)</sup>  
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 to 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.

### **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;
- the 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.

In 2009, an Executive Decree No. 09-307 of 22 September 2009 amended and supplemented Executive Decree No. 91-176 of 28 May 1991 laying down detailed rules for the investigation and issuance of planning permits, subdivision permits, parceling certificate, building permits, certificate of compliance and demolition permits.

Decree No. 09-307 essentially focuses on the subdivision 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.

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, a requirement added by the new decree.

Regarding the building permit if the permit "is issued for the achievement of one or several buildings in one or more tranches, it is considered withdrawn if the tranche is not completed within the time prescribed by law on building permits."

### **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 Non-compliance with building permit requirements**

The courts are automatically notified within 72 hours of the failure of a structure to comply with building permit stipulations when the violation has been recorded by a duly mandated agent. A copy is also addressed to the president of the APC and to the Wali.

The competent court rules on public actions. It orders that the structure be made to comply or to be partially or totally demolished and also sets the deadline for when this must be done.

If the offender does not comply with the legal decision (in other words if he does not take the necessary steps to ensure that the demolition work is conducted), the president of the APC or the Wali automatically executes the work at the expense of the offender.

A law on the compliance of buildings and their completion was adopted July 20, 2008. Application texts were added to the instrument during the year 2009.

Thus, on 2 May 2009 three executive decrees were adopted.

One relates to the conditions and terms of appointment and functioning of the monitoring and investigating committees on the creation of subdivisions, housing clusters and construction sites.

The second sets the procedures for implementation of the declaration of compliance of buildings. Under the provisions of this Decree, the obligations relating to the declaration of compliance referred to in the text are assigned to landlords, building or contract owners or the accredited stand-ins. The Law applies to buildings still under construction with a building permit, constructions with a building permit and which do not comply with the requirements of the permit, completed buildings whose owners have not obtained a building license and unfinished constructions whose owners have not obtained a building permit.

Finally, a third decree determines the composition and working procedures of the *daïra* and appeals commissions (provided by the Law) which are responsible for deciding on matters of building compliance.

### **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 from one year to three years;
- 50% during the operating period from one year to three years;

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 1<sup>st</sup> 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

## PUBLIC PROCUREMENT CONTRACTS REGULATION

### 20.1 Scope of the public procurement contracts regulation

The public procurement contracts regulation in force is governed by Presidential Decree No.10-236 of October 07, 2010, amended and completed<sup>88</sup> pertaining to the public procurement contracts regulation. The new regulation which repeals, in all its provisions, presidential Decree No.02-250 of July 24, 2002 largely resumes several of its dispositions. It will, therefore be examined in its specific dispositions and with more precision, in the last part of this chapter.

Several Orders laying down the implementation of the public procurement contracts regulation were been published relating to (i) the preference margin rule, (ii) investment model of commitment, (iii) arrangements for direct payment of subcontractors the content and conditions of update files of economic operators, (iv) the letter of submission model, the declaration of probity, (v) how to be registered and removed from the list of prohibited operators to bid for public contracts (vi) procedures for exclusion from participation in public procurement<sup>89</sup>.

Therefore, in this context, the main objective of tendering and performance procedures for public procurement contracts is to ensure that the works are performed, supplies acquired, services delivered and feasibility studies conducted under the best terms with regard to price, quality and times for completion. These factors contribute to the best possible interaction of market forces.

As for the terms and conditions for granting the contract, the announcement is provisional and is published under the same terms as the call for tenders. Rejected bidders may thus dispute the selection with the contract committee of the contracting department.

The requirement that a bid bank bond of at least 1% of the contract amount be provided by the tenderer should help discourage spurious bids<sup>90</sup>.

The precise definition in the specifications of the required selection criteria must be included for the call for tenders to be valid.

To ensure that partners are selected on a competitive basis, negotiations with bidders are prohibited once the tender offer has opened and during the evaluation of the offers to select the co-contracting partner.

The contracting department is obligated to make progress payments and pay the balance within a period not exceeding thirty (30) days from the moment of acknowledgment of the situation or upon receipt of the invoice and automatically faces late payment penalties when the progress payments and balance payments are not made on time.

Late payment penalties are made to the Public Procurement Contract Guarantee Fund (Caisse de garantie des marchés publics, CGMP), which is the State financial institution in charge of

88 Amended by (i) Decree 11-98 dated March, 1st 2011, (ii) Decree 11-222 dated June 16th 2011, (iii) Decree 12-23 dated January 2012 and (iv) Decree 13-03 dated January 13th 2013.

89 JO n°18 dated April, 20th 2011.

90 Article 51 of the amended Presidential Decree 10-236

facilitating the performance of public procurement contracts. The CGMP ensures that all required guarantees are delivered to the co-contracting partners.

Performance bonds are transformed into guarantee bonds when a warranty period is stipulated in the contract and performance deductions are substituted for performance bonds for certain types of feasibility studies and services. In that case, the reserve created from all deductions is transformed, upon practical completion, into a guarantee bond.

Direct payment of the subcontractor by the contracting department would, if well managed, be likely to make subcontracting firms true partners of the contracting department, just like the main contractor.

The establishment of terms and conditions for collateralizing public procurement contracts and the participation of the CGMP in the financing of public procurement contracts are two rules which will facilitate the funding of contracts.

The Bid Opening Committee meets in public in the presence of the bidders who have been notified beforehand according to the specifications of the call for tenders, with the last day representing the deadline for submitting bids.

Overall approval issued by the public procurement contracts committees is needed by the contracting department, the financial control and the accounting officer.

This regulation was designed to achieve three complementary objectives:

- Facilitate, in transparency, new procedures for the adoption of public procurement contract through the creation of a third national commission of public procurement (work, studies, services); to streamline their internal rules which will be, henceforth, adopted by an Executive Decree, limiting the commissions role to a procedure regularity control;
- Increase transparency in the management of public funds and fight corruption by the addition in the technical tenders, of update of tax and social obligations (Such as the certificate of deposit of the corporate accounts). submit companies and public institutions to the public procurement contract regulation whenever the contract is financed by government , on a definite or temporary basis (extended under some conditions to public economic enterprise), to demand the declaration of honesty and the addition of an anticorruption clause in contracts, to frame the appeals regarding orders without call of tenders to face emergency situations (limitation of amount of money), to frame the selection procedure (Jury's anonymity), to force every contracting department, at the beginning of the fiscal year, to make a list of the contracts concluded during the previous fiscal year and the beneficiaries as well as a provisional program of projects to launch, an observatory of the public orders.
- promote the firms participation and the national production by encouraging the use of divide into plots the projects, to rise the preference margin of 15% to 25% attributable to domestic companies whose the share capital is detained by a majority of national residents, as well as to national goods and services, to use of national call of tenders exclusively if the domestic market can satisfy the needs. Furthermore, foreign companies must undertaking to conclude a partnership.

The legislation is applicable to contracts implying public expenses.

Considered as a relaxation for their proper functioning since 2013, Economic Enterprises are no longer subject to bide purview under the Decree 10-236. In consideration, they are required to develop and to adapt throw their management bodies, procedures for procurement,

according to their characteristics, based on the principles of freedom of access to the command, equal treatment of applicants and transparency.

Nevertheless, they remain subject to external audits required by law under the powers devolved to the auditors, the Audit Office and the General Inspectorate of Finance.

The main measures provided by procurement regulation concerns mainly the following questions:

- The definition of needs, public procurement contract, and co-contracting partners.
- The procedures of the selection of co-contracting partners, more particularly rules of the tendering of public procurement contracts, especially require from the bidder a certificate of probity or submitting the selection of the co-contracting partner, for foreign companies, to the financing conditions and to the reduction of the transferable part proposed by these companies.
- The contractual provisions by requiring that new mentions must be provided in the contract. It must be especially dispositions on environmental protection, use of local labor. The new regulation requires from the contractor to impose new guarantees which will be held on foreign bidders as the use of locally produced goods and services, contracting services have the obligation to ensure the effective implementation by the foreign bidder of their obligations or commitments.
- The control of public procurement contract, as well as the obligation to inform about the concluded contracts for and by the contracting department, or then the institution of control a priori of contracts by organs of controls.

### **20.2 Tendering process for public procurement contracts**

Current regulations regarding public procurement contracts call for a series of new rules that clearly favor improvements in the way that market forces are allowed to interact with regard to the selection of the co-contracting partner.

These rules are organized around three basic principles:

- The type of rules governing the selection of the co-contracting partner.
- Rules governing the selection of the co-contracting partner.
- The selection of the partner being temporary at first, it opens the way for an appeal before the National Public Procurement Contracts Committee from bidders who believe that their bid has been unfairly rejected.

The objectivity of this selection becomes all the more evident in view of the obligation imposed on the contracting department to conduct the selection in two stages:

- The pre-selection pertains to all the bidders whose bids meet the technical requirements with regard to the work, supply, performance of services and studies related to the contract about to be concluded,
- The final selection, which becomes definite when all the means of appeal have been exhausted, pertains to the bidder whose financial offer is the most favorable; save for exceptions, this selection is automatic. At this stage, the "25% Rule" comes into play. Under Article 19 of the Procurement Code, a preference margin to a maximum rate of 25% (85 Previously to presidential decree No. 10-236, the rate was 15%.) is given to the product of Algerian origin

for all types of markets as determined by the Public Procurement Code. Preference is given to domestic production and therefore to the bidder who proposes, with this margin of 25%, the lowest bid or the most advantageous circumstances.

This goal is supported by the terms and conditions of payment and financing provided for in the law. The bid bond greater than one percent (1%) of the amount bid is required for works and supplies in an amount within the jurisdiction of national commissions and committees of sectoral markets, expected in the specifications for bidding. The bid bond of the foreign company must be issued by a bank under Algerian law, covered by a guarantee issued against a foreign bank by the first order.

The amount of the performance bond is set 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 meet the jurisdictional thresholds of national commissions and committees sectoral markets, the amount of the performance bond is set at between one percent (1%) and five percent (5%) of the amount market.

In the case of works contracts that do not meet the jurisdictional thresholds of the national commission of works of sectoral committees and markets, withholding performance bond of five percent (5%) of the amount of the state of work may be substituted for the performance bond. The provision made by all withholding of performance is converted to provisional acceptance of the market, holdback.

### **20.3 Improvements on the terms and conditions of payment of the co-contracting partner and financing of public procurement contracts**

According to the regulations, the payment of the contract takes place by payment of advances and/or deposits and by regulations for pay.

The time limit for making progress payments and paying the balance cannot exceed thirty (30) days from the time that the statement of work is accepted or the invoice received.

Moreover, to counterbalance the liquidated damages imposed on the co-contracting partner, he is entitled to interests on late payment by the contracting department, which is calculated ipso jure and without any other formality as soon as a delay in payment is recorded.

The notion of co-contracting partner could even be extended to the sub-contracting firm who could negotiate direct payment by the contracting department with regard to the services it performs.

It must be pointed out however that the CGMP, as a State financial institution, can participate in the financing of public procurement contracts in order to facilitate their execution.

### **20.4 Dispute resolution**

The law favors the amicable settlement of disputes which may arise from the tendering and performance of public procurement contracts.

Should this procedure fail, the parties may submit their dispute to Algerian courts with territorial jurisdiction or to international commercial arbitration. It is also possible for the partners to resort to the National Public Procurement Contracts Committee (Commission

nationale des marchés,) established as a true “tribunal,” whose distinctive feature is that it renders immediately effective decisions within thirty (30) days.

## **20.5 New obligations**

### **Promoting national production and/or skills**

To achieve its objectives, the contracting department may use, for the execution of its services to the tendering of contracts with companies incorporated under Algerian law and foreign companies but a preference margin of 25% is given to products of Algerian origin and/or to companies incorporated under Algerian law, whose capital is majority owned by national residents, for all types of contracts.

In case the bidder is a group made up of companies incorporated under Algerian law (whose capital is majority owned by national residents) and foreign companies, the profit preference margin is subject to the justification of shares held by the company incorporated under Algerian law and the foreign company.

The tender documents must clearly indicate the preference granted and the method of valuation and the comparison of tenders adopted to apply the preference mentioned.

### **Commitment to invest for foreign bidders**

According to article 24 of Presidential Decree No.10-236, the specifications of the international calls for tender may provide the commitment to invest for the foreign tenders to set up an Algerian law company with Algerian partners.

When it is required, the commitment to invest must be carried out in the same scope of activity as the object of the contract.

The tender documents must include a non-limitative list of enterprises likely to realise a partnership operation with foreign tendering party.

Failure, for the foreign tendering party, to respect the commitment, entails:

- formal notice,
- the application of financial penalties,
- Termination of the public procurement contract
- Listing the company, who failed to fulfil its commitment, on a list of enterprises prohibited from tendering for a public contract.

A joint order of the Minister of Finance and Minister responsible for the investment will be issued to clarify the conditions of application of this commitment

### **A strict framework for the elaboration and tendering of public procurement procedures**

The legislator wanted to establish procedures clearly determined in all the phases, from the elaboration of the tender to the signing, in particular the phase of choice. This led to a new introductory section: “settling public procurement needs.” The needs expressed in unique plot or in separate plots, must be fixed prior to any launching of any procedure of signing of public procurement. They must be established with precision (nature and quantity).

The legislator defines with precision, thus circumscribes contract types. For example “The



objective of the contract is the construction, maintenance, rehabilitation, restoration or demolition, by the contractor of one or part of a work, including equipment necessary for their use, exploitation, with regard to provisions fixed by the contracting institution, master of the work (ie persons submitted to Public procurement contracts regulation).

The public procurement tendering is still the procedure of the tender (general rule) and the mutual agreement procedure (attribution of a contract without resorting to competition). The procedure can from simple mutual agreement to mutual agreement after deliberation.

Concerning the choice of the candidates, it is stipulated that "any bidder, alone or in group, can refer only to his professional qualifications and references".

The possibility to use to mutual agreement was supplemented with two cases:

- When a legislative text or regulation attributes to a public institution an exclusive right to carry out a mission of public service. The list of institutions concerned will be fixed by a conjoined decree of the finance minister and the concerned minister.
- When the matter is promoting public national tool of production. In this case, the use to this contracting mode must be submitted to prior agreement of the Council of ministers.

**Note:** cases of resorting to simple mutual agreement, as the fact that the contractor is in a monopolistic situation or an exclusive procedure, cases of extreme emergency, cases of a priority project of national importance, were initially arranged by the previous public procurement regulation (2002).

The resort to mutual agreement after deliberation is permitted henceforth:

- for procurement of studies, specific supplies and services whose nature does not require the use of a tender;
- for works procurements under the direct national institutions of state sovereignty;
- for operations carried out under the cooperation strategy of the Government, or of bilateral concessional financing, debt conversion by development projects or grants, where such financing arrangements provide. In this case, the contracting department may limit the consultation to companies in the country only for the first case or the donor country to the other cases.

For these situations, the use of the mutual agreements after consultation must be based on specifications submitted prior to the launch of the consultation committee for endorsement by the procurement authority.

Regarding the obligations of the bidder, technical tenders must contain with respect for the news measures:

- the bid bond of the foreign company must be issued by a bank incorporated under Algerian law, covered by a counter-guarantee issued by a first order foreign bank;
- certification of the legal deposit of corporate accounts for the commercial legal entities incorporated under Algerian law;
- the declaration of probity;
- the tax identification number for domestic bidders and foreign bidders who have worked in Algeria.

Operators excluded from participation in public procurement are:

- operators registered in the national register of fraud, serious offenders to the tax and to the customs and trade legislations;
- foreigners awarded procurement that have not honoured the commitment to invest in partnership.

The choice of co-contracting partner will take place especially in terms of two additional criteria to the previous regulation:

- the Needs of the contracting department;
- the financing conditions and the reduction of the transferred part offered by the foreign companies and conditions of product support (after-sale services, maintenance and training).

Concerning corporate groups, the legislator provides that, when the interest of the operation justifies it (a contract of national importance at least as a first criterion), the opportunity to bid as a corporate groups, must be provided in the specification of the tender. In this case, the bidders must intervene in a joint and several form group or jointly partner. The co-contracting partners, acting in corporate groups form, commit themselves, jointly or severally, to the execution of project.

The group is several and joint when each member of the group is committed to the implementation of the entire procurement.

The group is said to be joint when each member of the group agrees to perform the service or services that may be assigned by the procurement.

Regarding the provisions on the fight against corruption, the legislator defines the criteria for corruption and reminds the obligations for the co-contracting to take the declaration of probity. In doing so, it raise the obligation as aggravating factor in cases of corruption or attempted corruption.

The constituent elements of corruption are all acts or maneuvers aimed at offering or giving to a public official directly or indirectly, either for himself or for another entity, remuneration or benefit of any kind or, on the occasion of the preparation, negotiation, conclusion or execution of a procurement, contract or codicil.

These acts constitute sufficient grounds to terminate the procurement, the contract or the codicil. Coercive measures can be taken further, up to the listing of traders allowed to bid on public procurement and the termination of the procurement.

At the end, all contracts of public procurement must contain certain mandatory elements. Three elements were added by the new regulation:

- labor provisions guaranteeing the respect of the labor regulations;
- provisions pertaining to the protection of the environment;
- provisions pertaining to the local labor employment.

# 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<sup>91</sup>, 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.

<sup>91</sup> 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<sup>92</sup> 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.

<sup>92</sup> 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<sup>93</sup>.

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

### **Sanctions**

The infringement of layout designs of integrated circuits is punishable by:

<sup>93</sup> 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.

- 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](http://www.onda.dz)**



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