

# The Legal Nature of the Industrial Subcontracting Agreement

## الطبيعة القانونية لعقد المناولة الصناعية

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*Received:* 20/07 /2025

*Accepted:* 16/10 /2025

*Published:* December /2025

### الملخص:

أدى التطور الصناعي والعولمة إلى تخصص الصناعات وانتشار أسلوب المناولة وسلاسل التوريد، حيث بات تصنيع المنتج كاملاً في جهة واحدة أمراً نادراً، وبذلك تنوعت علاقات وأشكال المناولة بين التخصيص، قدرة الإنتاج، والمناولة الوطنية والدولية، مما أثر على طبيعة العقود الصناعية والمركز القانوني الأطراف المتعاقدة. لذلك، سنحاول ضمن هذه الورقة البحثية معالجة التكييف القانوني لعقود المناولة الصناعية، في ظل تنوع أشكالها واختلاف مفهومها بين منظور قانوني ضيق يقتصر على التعاقد من الباطن، ومنظور اقتصادي شامل يقوم على علاقة تعاقدية خاصة بين عدة أطراف.

**الكلمات المفتاحية:** المناولة الصناعية، المقاول من الباطن، عقد المناولة الصناعية، المقاول الفرعي، أطراف العقد،

### Abstract:

Industrial development and globalization have led to the specialization of industries and the widespread adoption of subcontracting and supply chains. As a result, it has become rare for a product to be manufactured entirely in a single location. Consequently, subcontracting relationships and forms have diversified, involving factors such as specialization, production capacity, and both domestic and international subcontracting. This has significantly impacted the nature of industrial contracts and the legal standing of the contracting parties. Accordingly, this research paper seeks to examine the legal characterization of industrial subcontracting contracts, given their various forms and the differing interpretations of the concept—ranging from a narrow legal perspective limited to subcontracting, to a broader economic view based on a distinctive contractual relationship involving multiple parties.

**Keywords:** Industrial subcontracting, subcontracting, industrial subcontracting contract, subcontractor, contracting parties.

## **Introduction:**

Industrial enterprises have undergone profound structural transformations in terms of size and workforce, driven by changes in industrial production patterns resulting from industrial globalization and successive industrial revolutions—culminating in the Fourth Industrial Revolution, characterized by the use of advanced and innovative technologies and techniques<sup>1</sup>. These enterprises have shifted towards specialization and the adoption of more flexible and complex production systems, with the aim of reducing costs, maximizing the benefits of technological advancements, and improving efficiency and quality to enhance competitiveness and overall industrial performance.

This development has contributed to the emergence of small and medium-sized industries with integrative relationships with large enterprises, through the expansion of industrial subcontracting. Subcontracting has become a mechanism for utilizing the production capacities of factories that manufacture components, spare parts, and intermediate services. The forms of subcontracting have varied according to the policies of major industrial enterprises, ranging from supplier-based industrial contracting systems to the shift from integrating production stages toward specialization and focusing on core functions. This has resulted in the emergence of multiple forms of subcontracting, including specialization subcontracting, production capacity subcontracting, and both domestic and international subcontracting.

Accordingly, relationships among industrial enterprises have been strengthened within the framework of an industrial subcontracting strategy, which constitutes a binding commitment between two or more enterprises under a mutually agreed and enforceable contract. This ensures the continuity of their relationship and serves their shared interests in the fields of production and industrial services. Under this arrangement, one production unit (the principal enterprise) assigns another production unit (the subcontracting enterprise) to carry out a specific part of the production process, in accordance with the technical specifications, standards, timelines, and delivery conditions stipulated by the contracting parties.

On the other hand, the diversity of industrial subcontracting forms and the scope of contracts concluded to formalize cooperative relationships among industrial enterprises have given rise to various interpretations of these contracts, ranging between a broad economic perspective and a narrow legal view, as follows:

### **a. From the Comprehensive Economic Perspective:**

An industrial subcontracting process, in this sense, refers to any contractual relationship—whether for a fixed or indefinite period—concluded between two or more parties at different stages of production (such as design, research, manufacturing of intermediate or final products, etc.), marketing, or maintenance, under conditions that are binding on the contracting parties. This is the definition adopted by the **European Economic Community (EEC)** in a statement issued by the Economic Committee on December 18, 1978, regarding the legal characterization of subcontracting contracts, in line with the

approach reflected in Article 85, paragraph 1 of the Treaty establishing the European Economic Community. According to this definition, subcontracting is a process by which an enterprise, referred to as the principal enterprise, assigns—according to its directives—another enterprise, known as the subcontractor, to manufacture a product, provide a service, or carry out work on behalf of the principal enterprise.

This same definition has also been recognized by the **United Nations Industrial Development Organization (UNIDO) and the Arab Organization for Industrial Development and Trading** <sup>2</sup>. In this context, the contract is essentially based on the **delegation of tasks to a third party** within the framework of a direct relationship between **the main contractor and the subcontractor**. This relationship is typically formalized through a subcontract concluded between the **principal (or main) contractor and the subcontractor prior to the conclusion of the final contract** between the principal contractor and the end consumer. A clear example of this can be seen in the computer manufacturing industry, where a manufacturing company initially enters into contracts with several specialized companies for the production of computer chips, processors, network cards, flash memory, graphics cards, CPUs, and other components essential to computer production. The manufacturing company then assembles and integrates these components to produce a finished, ready-to-use computer for sale to the consumer. In some cases, however, the subcontract may be concluded after the main contract between the **principal contractor and the beneficiary of the work has already been signed**. For example, an individual may contract with a builder to construct a house, after which the builder may conclude contracts with one or more subcontractors to carry out specific tasks, such as electrical wiring, or the installation of doors and windows, etc. <sup>3</sup>

#### **b. From the Narrow Perspective or Legal Concept of “Subcontracting”:**

This refers to a subordinate contract (subcontract) under which a company, holding a principal contract concluded with a party known as the “client,” delegates all or part of the execution of the principal contract to another company, referred to as the “subcontractor.” This arrangement entails :

- The contractual framework involves three parties: (1) The project owner (the client), (2) The main contractor (the principal contractor), and (3) The subcontractor (the secondary contractor).
- This arrangement entails the conclusion of two distinct contracts: First, the primary contract, which establishes the legal relationship between the project owner and the main contractor; and second, the subcontract, which binds the main contractor to the subcontractor. Although the subcontract constitutes an independent agreement, it remains legally and functionally subordinate to the primary contract, as it pertains to the performance of a specific part of the main contractual obligations. Consequently, the subcontract is deemed ancillary and is subject to the prior approval of the main contractor. This contractual model is prevalent in sectors such as construction and public works, whereas its application in the industrial sector remains relatively limited, given the challenges in meeting its specific contractual requirements within industrial contracting contexts <sup>4</sup>.

In this context, it has become crucial to examine the legal status of the parties involved in subcontracting agreements, in their various forms, as well as the legal rules governing the relationships among them. This constitutes the primary objective of this research paper, through which we seek to analyze the legal foundation upon which such contracts are based, and to determine their legal characterization. This analysis is particularly significant given the legal implications arising from such characterization, whether in terms of dispute resolution mechanisms or the determination of the applicable law governing such disputes. A clear legal framework may mitigate the risks and challenges faced by the parties to industrial subcontracting agreements, particularly in the context of international investment contracts. This necessity has become even more pressing with the growing prevalence of international industrial subcontracting and the parallel rise of international arbitration stemming from such contracts. Therefore, the central question remains: ***What is the legal nature of the industrial subcontracting agreement?***

To answer this question, we have chosen to structure our study around two main axes, employing a descriptive and analytical methodology, which is well-suited to the nature of this subject. In the first axis, we will examine the industrial subcontracting agreement as a form of subcontract, wherein the subcontractor acts as a secondary party. This will involve an analysis of the conditions required for the formation of such contracts and an assessment of their legal consequences. In the second axis, we will explore the industrial subcontracting agreement as an independent and autonomous contract, in which the subcontractor assumes the role of a principal party within the contractual relationship. This section will analyze the legal implications that arise for the parties as a result of this characterization.

## **1- The Industrial Subcontracting Agreement as a Subcontract**

It is widely acknowledged in legal doctrine that a subcontract is an agreement by which the main contractor entrusts a subcontractor with the execution of part or all of the subject matter of the principal contract, provided that no legal prohibition exists. This contract is established within a contractual framework comprising two interrelated agreements: the first between the project owner and the main contractor, and the second between the main contractor and the subcontractor, through which the latter undertakes to perform part of the work stipulated in the primary contract. According to Dr. Mohamed Taha Ibrahim, subcontracting refers to ***"an agreement concluded between a contractor or a joint venture and another entity or an external party—referred to as the subcontractor—for the purpose of executing the original work or obtaining a benefit arising from the principal contract, with its existence, scope, and duration being dependent on the principal contract, as it constitutes its underlying cause."***<sup>5</sup>. Thus, the concept of subcontracting represents a form of horizontal relationship between enterprises, characterized by mutual dependency among production units. Under this arrangement, one unit undertakes the production of a component or part of the final product on behalf of another unit, in accordance with the technical specifications and the timeline determined by the beneficiary unit <sup>6</sup>.

This approach has been adopted in various legal systems, most notably in French legislation, which has devoted a specific law to subcontracting. Article 1 of Law **No. 75-1334 of December 31, 1975**, concerning subcontracting—amended several times, most recently by

Law No. 2001-1168 of December 12, 2001, and Ordinance No. 2010-1307 of October 28, 2010—which is the process by which a contractor (the principal undertaking), under its responsibility, entrusts another party, known as the subcontractor or subcontracting enterprise, with the execution of all or part of a contract for works or a public procurement contract concluded with the project owner<sup>7</sup>.

Similarly, Arab legal systems have largely adopted the same principle. For example, the Egyptian legislator defines subcontracting in Article 661 of the Egyptian Civil Code as follows: *“The contractor may entrust the execution of the entire work, or part thereof, to a subcontractor unless a contractual clause prohibits this or the nature of the work requires reliance on the contractor’s personal expertise. However, in such cases, the contractor remains liable towards the project owner for the subcontractor’s obligations.”*

The Algerian legislator has adopted the same approach, regulating the provisions related to subcontracting under the Algerian Civil Code and the Public Procurement Law, **without enacting a separate, specific piece of legislation** dedicated to this subject. Instead, the provisions governing subcontracting contracts are addressed within the section on contracts for works (contracts of enterprise) in the Civil Code with respect to private contracts, and within the legislation on public procurement and public service concessions concerning subcontracting in the execution of public projects, under the term *“subcontracting”*, as follows:

**a. Under the Civil Code:** The Algerian legislator has allocated only two articles within the amended and supplemented Civil Code to regulate subcontracting agreements, namely Articles 564 and 565 from the same law<sup>8</sup>. These provisions are included in Section Three, entitled *“Subcontracting,”* under Chapter One concerning contracts for works, within Title Nine relating to contracts of employment or work. The first article provides the legal basis for the permissibility of concluding subcontracting agreements, while simultaneously establishing the contractual liability of the main contractor for the acts of the subcontractor, as it stipulates that the main contractor remains liable towards the project owner for the obligations performed by the subcontractor.

**b. Under the Public Procurement Law:**

The Algerian legislator has classified **subcontracting as a form of subcontractual relationship** between the main contractor and the subcontractor, and as a mechanism for the execution of large-scale projects under successive legislations governing public procurement, beginning with the 1991 law. Initially, the term *“secondary contracting”* was used until 2015<sup>9</sup>, when the term *“subcontracting”* was explicitly introduced to denote subcontracting in the context of public procurement. The legislation has continued in this direction, allowing the contracting party in a public procurement contract to assign the execution of a portion of the contract to a subcontractor through a subcontracting agreement, under specific conditions and procedures, although no precise legal definition of subcontracting has been provided. This same approach was adopted in the most recent Public Procurement Law of 2023, which repealed the 2015 Public Procurement Law. The new legislation, enacted by Law No. 23-12 of August 5, 2023, which establishes the

general rules governing public procurement<sup>10</sup>, addresses subcontracting in Article **82**, specifying the conditions under which subcontracting may be utilized by both national and foreign contracting parties. The law sets out the fundamental principles for resorting to subcontracting, defines the conditions and procedures for concluding subcontracting agreements, and outlines the resulting legal effects.

**c. Concerning Public Service Concessions:**

In parallel with the subjection of public service concession transactions to the same provisions governing public procurement contracts—pursuant to Article **209** of the **2015** Public Procurement and Public Service Concession Regulations—the Algerian legislator has provided a detailed definition of subcontracting in Article **60** of Executive Decree No. **18-199** of **August 2, 2018**, concerning public service concessions<sup>11</sup>.

The article states: *"For the purposes of this Decree, subcontracting refers to the procedure by which the concessionaire entrusts another natural or legal person, referred to as the 'subcontractor,' with the execution of part of the agreement concluded between the granting authority and the concessionaire, provided that this part of the agreement involves either the construction of infrastructure or the acquisition of property necessary for the establishment or operation of the public service facility, within the limit of 40% of the total value of the public service concession agreement."* This definition clearly falls within the broader legal concept of subcontracting, which is characterized as a form of subcontract agreement.

Based on the foregoing, it is evident that subcontracting agreements require specific conditions in addition to those stipulated under the general rules of contract formation. Moreover, such agreements entail significant legal effects, as they constitute a method for performing the obligations arising under the principal contract for works.

**1.1- Conditions for Concluding a Subcontracting Agreement**

One of the most distinctive features of the subcontracting agreement, according to both legal doctrine and statutory provisions, is the subordination of the subcontract to the principal contract. A subcontracting agreement is only considered as such if the following conditions are satisfied:

**1.1-01. The Existence of Two Successive Contracts:**

A subcontract cannot exist without the prior existence of an original contract for works concluded between the project owner (or the beneficiary of the final product or service) and the main contractor, who subsequently resorts to a third party—the subcontractor. This requirement is reflected as follows:

- a.** There must be a pre-existing contract concluded between the main contractor and the project owner. In the absence of such a contract, the new agreement is considered a principal contract, not a subcontract. This means that the subcontract remains dependent on the principal contract in terms of existence, scope, and legal nature, as both contracts relate to the same subject

matter and are categorized as contracts for works. This requirement is expressly stated in Article 564 of the Algerian Civil Code, which stipulates that the principal contract must be an existing contract for works concluded between the contractor and the project owner, whether it involves the manufacture, transformation, or maintenance of a tangible item—such as construction or equipment repair—or the provision of services or intellectual efforts, such as medical treatment, legal, financial, or accounting consultations.

**b. The subcontract gives rise to three legal relationships:**

- 1) A contractual relationship between the project owner (the client) and the main contractor (the holder of the principal contract), known as the original contract for works.
- 2) A second contractual relationship between the main contractor and the subcontractor, known as the subcontract or subcontracting agreement.
- 3) A third relationship between the project owner and the subcontractor, which is not contractual in nature but is instead governed by specific legal provisions.

**c. The subcontract must possess the same legal characteristics as the original contract**, as clarified in Articles 564 and 565 of the Algerian Civil Code, which explicitly state that the subcontract shares the same essential features of the principal contract for works, namely:

- ◆ It is a **consensual contract**, concluded by mere mutual consent between the main contractor and the subcontractor without requiring a specific formality, although it may be formalized in writing, particularly in large-scale works contracts or public procurement agreements, where the law requires that the agreement be documented in a written instrument signed by both parties (as stipulated in Article 2 of Public Procurement Law No. 23-12 mentioned earlier).
- ◆ It is a **bilateral contract**, imposing reciprocal obligations on both parties: the subcontractor is obliged to perform the required work, while the main contractor is bound to pay the agreed remuneration. This mutuality of obligations has significant legal implications, particularly with respect to contract termination, the defense of non-performance, and liability for loss or damage.
- ◆ The **independence of the subcontractor from the main contractor** is considered one of the most fundamental characteristics of a contract for works, whether it is a principal or subcontract. Some legal systems explicitly require this element when defining such contracts<sup>12</sup>.
- ◆ It is an **onerous contract** (contract for consideration), whereby each party receives compensation for its performance: the subcontractor performs the agreed work in exchange for payment, making the contractor's financial obligation a central component of the agreement.
- ◆ It is a **contract pertaining to work**, in which the subcontractor is bound to achieve a specific result. However, the obligation is tied not merely to the performance of the work itself, as in employment contracts, but to the achievement of a particular result. The subcontractor may either personally execute the work or subcontract it to others, provided that no legal prohibition exists.

Accordingly, this primary condition excludes from the scope of subcontracting agreements all transactions that fall under the economic concept of subcontracting but are not based on a pre-existing contract that can be classified as a contract for works. This notably applies to industrial subcontracting agreements concluded by large enterprises, particularly international corporations.

#### **1.1-02. Requirement of Subordination of the Subcontract to the Principal Contract:**

This subordination is realized through several factors and entails specific legal consequences, as follows:

- **Factors Establishing the Subordination of the Subcontract to the Principal Contract:**  
The legal subordination is primarily based on the unity of subject matter, as both contracts focus on the execution of the same work or part thereof, creating an objective connection between them. The main contractor remains the central party in both contracts, contracting with the project owner under the principal contract and with the subcontractor under the subcontract, without establishing a direct contractual relationship between the project owner and the subcontractor. If such a direct relationship exists between the project owner and the subcontractor, the legal characterization of the relationship falls outside the framework of subcontracting and is instead classified as a situation involving multiple principal contractors, even if there is coordination in the execution of the work.
- **Legal Consequences of the Subordination of the Subcontract to the Principal Contract:**
  - a. **Convergence of Legal Positions:** The relationship between the main contractor and the subcontractor resembles the traditional relationship between the project owner and the main contractor, resulting in similar rights and obligations. However, the subcontract remains independent to a certain extent, allowing the parties to negotiate specific contractual terms, provided such terms do not conflict with the subcontract's subordination to the principal contract, including limitations on contractual freedom.
  - b. **Limitation of the Subcontract's Scope to the Subject of the Principal Contract:**  
The subcontract cannot cover works exceeding those specified in the principal contract. However, the main contractor retains the right to delegate the entirety of the work stipulated in the principal contract to one or more subcontractors, while preserving the freedom to negotiate terms not directly related to the subject matter of the works, such as remuneration or the method of execution.
  - c. **Possibility of Further Subcontracting:** The subcontractor may, in turn, subcontract part of their obligations to another contractor unless explicitly prohibited by a specific clause in the subcontract or subject to certain conditions. If this right is exercised, the contract concluded with the subsequent subcontractor becomes a principal contract for that party and is subject to the same rules of subordination.
  - d. **Interdependence of the Legal Fate of Both Contracts:** The subcontract automatically terminates upon the termination of the principal contract—whether due to nullity, rescission, or impossibility of performance—given their shared subject matter. In cases

where termination is not automatic, one of the subcontracting parties must resort to judicial proceedings to request termination, with the right to claim damages in accordance with general legal principles. Furthermore, the subcontractor must vacate the worksite immediately upon termination of the principal contract, unless a new contract is concluded directly with the project owner<sup>13</sup>.

### **1.1-03. Requirement of the Project Owner's Approval for Subcontracting:**

For the validity of the subcontracting agreement, the project owner must be informed of, and consent to, the subcontract, even if the two prior conditions discussed above are satisfied. This requirement is expressly stipulated in Article 82 of the Public Procurement Law, which mandates the project owner's knowledge of the subcontract. Similarly, Article 564 of the Algerian Civil Code permits the main contractor to entrust the execution of the work to other contractors through subcontracting. Nevertheless, subcontracting is not permitted in the following two exceptional cases specified under Article 564:

- (1) When the execution of the contract is tied to the personal qualifications, expertise, or professional reputation of the contractor:** In such cases, the contract is deemed to be *intuitu personae* (personal in nature), thereby prohibiting the assignment of work to others, even in the absence of an explicit clause, since the contractor's personal qualities constitute an essential element of the contract.
- (2) Where a contractual clause prohibits or restricts subcontracting:** This may take the form of either an explicit prohibition (absolute ban), where the contractor commits to personally performing the work, or a conditional restriction, where subcontracting is subject to the project owner's prior approval or contingent upon the fulfillment of a specific condition. Such clauses may be explicitly stated or implied from the circumstances of the contract, provided there is clear evidence of the parties' intention to make the contract personal in nature. The legal consequences of violating this restriction are as follows:
  - ◆ **First: In relation to the subcontract itself,** the subcontract remains valid between its two parties. However, it has no effect on the project owner, who may refuse to recognize the subcontractor and prevent them from performing the works. In this case, the subcontractor retains the right to seek compensation from the main contractor.
  - ◆ **Second: In the relationship between the project owner and the main contractor,** the latter is deemed to have breached a contractual obligation. The project owner may demand the personal performance of the contract or seek its termination. However, the court is not obliged to grant termination and may instead order specific performance. In either scenario, the project owner retains the right to claim compensation for any resulting damages.

### **1.2- Legal Effects of Characterizing the Subcontracting Agreement as a Subcontract**

Characterizing the subcontracting agreement as a subcontract has direct legal implications arising from its subordination to the principal contract, particularly with respect to its executory

nature and its effects on the parties involved in the contractual relationship. These effects can be summarized as follows:

**1.2-01. The Subcontract as a Means of Executing the Principal Contract for Works:**

As previously noted, subcontracting arises when the main contractor delegates the execution of the agreed work, in whole or in part, to another party. Thus, the subcontract does not constitute an end in itself but serves as an instrument for fulfilling the obligations arising from the principal contract, without affecting the existence of the latter. Legal doctrine distinguishes between two scenarios:

- a. Subcontracting as a Normal Means of Execution:** This occurs in cases where personal execution of the work is not required, meaning the principal contract is not considered *intuitu personae* (personal in nature) and no agreement exists between the parties prohibiting subcontracting.
- b. Subcontracting as an Exceptional Means of Execution:** This situation applies to contracts that are generally considered personal in nature but where subcontracting has become customary, such as construction contracts. Due to their technical complexity, such contracts often require the involvement of specialized contractors to ensure the efficient and professional execution of the work. In these cases, subcontracting is regarded as a common means of execution, reflecting prevailing technical and economic practices.

Furthermore, in large-scale projects requiring the collaboration of various specialists to integrate different skills and ensure high-quality outcomes, the project owner typically faces two options: **(01)-** Concluding multiple separate contracts with specialized contractors, a course that is administratively burdensome and increases the project owner's responsibilities. **(02)-** Entering into a single contract with a main contractor who assumes full responsibility and is authorized to subcontract specialized tasks to qualified subcontractors in accordance with their respective areas of expertise.

In practice, the second option has proven to be more effective, as it ensures high-quality execution by assigning tasks to competent professionals. Consequently, subcontracting has emerged as the optimal mechanism for implementing such contracts, particularly in light of economic and technological developments.

As a result, when the subcontractor fulfills their contractual obligations in accordance with the delegated authority, the main contractor's obligations towards the project owner are considered extinguished—unless there has been a breach of contractual terms or damage suffered by the project owner. If the subcontractor fully performs the agreed obligations, the main contractor is deemed to have discharged their contractual duties, thereby terminating the mutual obligations among all parties involved <sup>14</sup>.

**1.2-02. The Existence of a Subcontract Does Not Alter the Obligations of the Project Owner Toward the Main Contractor:**

The main contractor remains the sole party bound by the principal contract and bears all the associated obligations, including enabling the contractor to execute the works, receiving

the completed work, and paying the agreed remuneration—except in cases where specific legal exceptions apply. One such exception is provided under Article 565 of the Algerian Civil Code, which allows the subcontractor to claim payment directly from the project owner within certain limits. As for the subcontract itself, it does not create any rights or obligations vis-à-vis the project owner, as the subcontractor is legally considered a third party with respect to the principal contract.

**Based on the above points, the following conclusions can be drawn:**

- The subcontracting agreement is necessarily based on the existence of a prior principal contract, to which it is linked by both subject matter and legal nature. Nonetheless, it remains an independent contract in terms of its structure and legal effects. Although certain features of the subcontract may overlap with some types of industrial subcontracting—such as dedicated subcontracting, domestic subcontracting, or temporary subcontracting—these features do not apply to all forms of industrial subcontracting, thereby confirming the subcontract’s unique legal status.
- The application of subcontracting agreements is particularly evident in the field of public procurement contracts, especially in construction and public works projects—commonly referred to as **public procurement subcontracting**. In such cases, the subcontract is concluded during the execution of the principal contract, resulting in a *tripartite contractual relationship* involving the project owner, the main contractor, and the subcontractor. The main contractor may conclude multiple subcontracts, creating a hierarchical contractual chain involving various economic actors. Within this hierarchy, the subcontractor remains an indirect and subordinate party in the contractual relationship between the project owner and the main contractor and is not considered a principal party to the original contract.
- By contrast, industrial subcontracting in its economic sense—outside the context of the tripartite contractual framework—does not fall within the legal regime governing subcontracting agreements, where the project owner is predefined and an indirect legal relationship exists between the owner and the subcontractor. In many cases, the ultimate beneficiary of the subcontracted work remains unknown to the subcontractor. Moreover, certain modern forms of industrial subcontracting, particularly those involving industrial partnerships or technology and **know-how transfers**, require independent contractual frameworks that differ fundamentally from the narrow legal concept of subcontracting.

Accordingly, it can be argued that industrial subcontracting, in this context, has a distinct legal nature separate from subcontracting agreements. It may thus be classified as an autonomous contract, a proposition that will be addressed in detail in the second section of this study.

## **2- Industrial Subcontracting as an Independent Contract**

Industrial subcontracting represents one of the forms of economic cooperation based on the fragmentation of the production process and the delegation of the manufacture of parts, components, or assembly operations to independent subcontracting enterprises. These subcontractors operate according to the technical specifications defined by the ordering enterprise

(the principal contractor). This contractual model has emerged as a result of the globalization of industry and heightened competition, prompting major corporations to focus on their core activities while outsourcing secondary operations to subcontractors. This practice has become particularly prevalent in complex industries such as automotive manufacturing, electronics, and mechanical industries, which require high levels of technical flexibility and separate management of components. Consequently, subcontracting has evolved into a strategic option and a fundamental pillar within the industrial production cycle<sup>15</sup>.

This concept constitutes the general framework of subcontracting from an economic perspective and has been widely adopted at the international level. It has been recognized by the European Union, the United Nations Industrial Development Organization (UNIDO), and the Arab Organization for Industrial Development and Mining due to its broad applicability across various forms of industrial subcontracting. Furthermore, the Algerian legislator has also enshrined this approach under **Law No. 17-02** on the Development of Small and Medium Enterprises (SMEs)<sup>16</sup>, dedicating an entire chapter to the promotion of subcontracting activities, considering it a strategic tool to strengthen the national economic fabric.

Based on this framework, the contracts concluded between the principal enterprise and subcontracting entities often precede the conclusion of the final contract with the end consumer. . In the context of manufacturing final products, producers frequently engage specialized subcontractors to fabricate complex components that require advanced technical expertise (**know-how**). The end consumer—who ultimately acquires the product from the manufacturer-seller—is typically unaware of the production process or the various contributors involved in the manufacturing chain. This underscores the concealed nature of such contractual relationships within the final market.

Consequently, the legal relationship between the ordering enterprise and the subcontracting entity is structured as an independent bilateral arrangement, distinct from any foundational contract related to the final transaction. The subcontracting agreement is neither derived from nor contingent upon the consumer contract.

*“In this context, subcontracting takes the form of a bilateral or dual relationship between the manufacturer — or ordering party — and its industrial partner, the subcontractor.”*

Likewise, the subcontracting agreement concluded between the principal enterprise and the subcontractor constitutes a legally independent instrument, both anterior to and external from the final contract entered into with the consumer or ultimate beneficiary of the manufactured product. *It is both prior to and external to the final contract concluded with the consumer.*

## **2.1- The Contractual Relationship Between the Ordering Enterprise and the Subcontractor Is Bilateral and Direct**

Industrial subcontracting agreements, according to the economic perspective of the concept, are concluded directly between the ordering enterprise (the principal) and the subcontractor, without the need for a pre-existing contract—in contrast to traditional subcontracting agreements,

which necessarily presume the existence of a principal contract. No legal relationship arises between the subcontractor and the consumer, rendering these contracts independent in both origin and effect.

Accordingly, industrial subcontracting aligns with the provisions governing the standalone contract for work under Article 549 of the Algerian Civil Code, which defines such a contract as: “*A contract whereby one of the parties undertakes to manufacture an item or perform a task in exchange for remuneration promised by the other party.*” This leads to the following consequences:

## **2.1- 01. Regarding the Essential Elements of Industrial Subcontracting Contracts:**

Industrial subcontracting is governed by the provisions applicable to contracts for work, given that the contractor operates as an independent entity from the ordering party. The contract is formed through mutual consent, with a lawful object and cause, without requiring any specific formalities. Thus, it can be concluded either in writing or verbally.

However, for certain specialized types of subcontracting—such as those in the port, mechanical, electronic, and electrical industries—the Algerian legislator mandates written contracts due to their regulatory nature and technical complexity. Examples include, but are not limited to:

- **Port Handling Operations:** Under Article 913 of the Maritime Code No. 98-05 (dated June 25, 1998, as amended and supplemented), the Algerian legislator requires the conclusion of a formal contract and the payment of a fee for port handling operations defined under Article 912 of the same Code.

This requirement was reaffirmed in Article 4 of Executive Decree No. 19-157 (dated April 30, 2019), which sets forth the rules and conditions for the maritime transport, storage, and transit of hazardous goods via ports. (*Official Journal No. 32 dated May 15, 2019, page 18*), where port handling operations, in accordance with the provisions of the aforementioned Maritime Law, involve the loading of goods, their stowage, unloading, discharge, as well as placing them on storage yards or in warehouses and removing them therefrom.

- **Industrial Subcontracting in the Mechanical, Electronic, and Electrical Sectors:** The Algerian legislator has explicitly defined both *subcontracting* and *subcontracting contracts* under Article 2 of the Joint Ministerial Order dated **March 8, 2018** concerning customs and VAT exemptions for components and raw materials imported or locally acquired by approved subcontractors engaged in the production of assemblies and subassemblies destined for the mechanical, electronic<sup>17</sup>, and electrical industries.

The definitions provided are as follows:

- ◆ **Subcontracting:** “*An operation whereby the ‘ordering enterprise’ delegates, under its responsibility, the performance of all or part of the subcontracting agreement—serving as a form of accreditation—to another enterprise known as the subcontractor or order recipient.*” This same definition is reiterated in Article 2 of Executive Decree No. 20-311 (dated November 15, 2020), which addresses customs and VAT exemptions for components and raw materials imported or acquired locally by subcontractors in the context

of their production activities<sup>18</sup>. This decree sets a two-year exemption period and defines subcontracting as: *“An operation whereby an enterprise, referred to as the ‘ordering party’, entrusts another enterprise, referred to as the ‘order recipient’, with the execution of part of its production process or the production of components necessary for its output and/or the provision of a service, in accordance with predetermined technical and technological specifications.”*

- ◆ **Subcontracting Contract:** *“A contractual document that acts as an accreditation and governs the relationship between the ordering enterprise and the subcontractor. It precisely defines the parties, the production tasks delegated by the ordering enterprise to the subcontractor, the implementation schedule, the terms of contract execution, renegotiation clauses, and the contract’s duration.”*

In the same context, the Algerian legislator has defined the **subcontractor** under Article 2 of Executive Decree No. 20-311 dated November 15, 2020 (as referenced above) as: *“The producer who, within the scope of its activities, manufactures assemblies and subassemblies destined for products and equipment in the mechanical, electronic, and electrical industries, as well as for the maintenance of production equipment across various activity sectors, and for the production of spare parts and components for all purposes.”*

This same approach is reflected in the definition of subcontractor provided in Article 2 of Executive Decree No. 20-313 dated November 15, 2020, which specifies the conditions and procedures for the acceptance of operators engaged in the production of electronic and household appliances to benefit from preferential tax treatment<sup>19</sup>. According to this decree, the subcontractor is defined as: *“Any natural or legal person subject to Algerian law who engages in industrial activities or services related to study or design that contribute to the production of components intended for integration in favor of the manufacturer.”*

## 2.1- 02. Regarding the Key Characteristics of the Industrial Subcontracting Contract:

The industrial subcontracting contract shares the same essential characteristics as those stipulated for contracts for work under the Algerian Civil Code, most notably the following:

- ◆ **A consensual contract:** It is formed through mutual consent between the industrial manufacturing enterprise and the industrial subcontractor. It may be documented in writing if required or by mutual agreement, particularly in large-scale contracts or contracts involving complex operations such as mechanical or electrical industries.
- ◆ **A bilateral contract:** The contract imposes reciprocal obligations on both parties, such as the execution of the agreed work and the payment of remuneration, along with associated legal consequences such as formal notice, termination, and liability for loss.
- ◆ **Independence of the subcontracting enterprise:** The subcontractor manufactures parts of the final product in its own name and under its own responsibility, without being subject to direct control by the ordering enterprise, though it remains bound by the technical specifications and design requirements pre-established in the contractual terms.

- ◆ **An onerous contract:** Each party receives compensation—while the subcontractor undertakes production or manufacturing, the ordering enterprise pays remuneration in return.
- ◆ **A contract pertaining to work:** The subcontractor commits to delivering a specific outcome, not merely performing the work itself. The subcontractor may fulfill its obligation either personally or through a secondary subcontractor, unless otherwise prohibited.

**Accordingly, whether the subcontracting contract is classified as a traditional subcontracting agreement or as an independent contract, it retains the same legal characteristics as the contract for work. It remains a prior, independent, and external contract relative to the contract that the manufacturing (ordering) enterprise may conclude with the final consumer.**

## **2.2- Reasons Driving Industrial Enterprises to Conclude Industrial Subcontracting Agreements**

The primary factors prompting an industrial enterprise (the ordering party) to enter into a prior, independent, and external subcontracting agreement—distinct from the contract it ultimately concludes with the end consumer—can be summarized as follows:

### **2.2-01. Engaging in Prior Subcontracting to Achieve Specialization in Cases of Technical Complexity :**

Major industries often resort to advance subcontracting agreements with specialized subcontractors to address the increasing technical complexity of product manufacturing before the product is placed on the market and before the final consumer contract is concluded.

This approach seeks to balance quality, cost, and production speed, particularly in modern and complex industries such as electronics, automotive manufacturing, and mechanical engineering. This strategy embodies what is known as specialized subcontracting (*sous-traitance de spécialité*), where highly qualified and technically specialized firms—with advanced technical equipment and skilled personnel—are entrusted with the execution of precise tasks relating to production components.

Such subcontracting arrangements foster stable and long-term relationships that are not significantly affected by fluctuations in demand and grant the ordering enterprise greater contractual flexibility compared to in-house production.

### **2.2-02. Engaging in Subsequent Subcontracting to Reduce Costs and Enhance Competitiveness :**

Industrial enterprises may also opt for subsequent subcontracting agreements to reduce production costs and boost competitiveness. This can involve leveraging lower labor or raw material costs abroad compared to domestic markets or entering into strategic partnerships with local subcontractors—particularly by foreign firms, including multinational corporations—to facilitate access to international markets.

This approach reflects what is known as **capacity subcontracting (sous-traitance de capacité)**, whereby the ordering enterprise delegates part of its production to subcontractors when its own production capacity is insufficient to fulfill certain orders, or when it prefers not to expand its production facilities. This type of subcontracting is especially prevalent in industries facing fluctuating demand for production volumes.

### **Key Findings on the Legal Nature of Industrial Subcontracting Agreements:**

- **Shared Objective with Traditional Subcontracting Agreements:** Despite their distinct legal frameworks, both industrial subcontracting agreements and traditional subcontracting contracts (in the legal sense) share a common goal: enabling the subcontractor to execute specific production or service tasks for the benefit of the ordering enterprise, according to clearly defined technical specifications, with the ultimate aim of completing the final product for which the ordering enterprise remains responsible vis-à-vis the end consumer or, in large-scale projects, the main contractor.
- **Divergence in Contractual Relationships:** The key distinction lies in the structure of the contractual relationship.

In traditional subcontracting (from a legal perspective), the parties benefiting from the contract are predefined and identifiable.

Conversely, in industrial subcontracting—as understood in economic terms—the ultimate beneficiary (i.e., the end consumer) remains unknown and undetermined at the time of contracting. This is due to the open nature of markets, the dynamics of product circulation at both local and international levels, and the practical impossibility of identifying or specifying the consumers beforehand.

### **Conclusion :**

In light of the analysis and findings presented in this research paper regarding the legal classification of industrial subcontracting agreements—which document and govern the various forms of integrative relationships among industrial enterprises—this study has highlighted the differing perspectives surrounding these agreements, ranging from a broad economic viewpoint to a narrower legal approach. The following key conclusions were reached:

- Industrial subcontracting agreements possess a dual legal nature, making it difficult to subject them to a unified legal framework. This complexity is primarily due to the evolving forms of subcontracting, which vary substantially in their structure, content, and contracting parties from the classical legal concept of subcontracting. While traditional subcontracting operates under a tripartite structure—where the end beneficiary (the principal) is known and specifically identified—industrial subcontracting tends toward greater autonomy.

It represents a broader model in both structure and purpose, particularly in the context of globalized production and international supply chains. Accordingly, classifying industrial subcontracting agreements as independent contracts rather than subordinate ones appears to be

the most appropriate and comprehensive legal approach, ensuring alignment with contemporary economic developments and the increasing complexity of industrial relations.

- Given the absence of a unified legal framework governing industrial subcontracting in Algeria, and with regulatory provisions limited to specific sectors, alongside the existing rules on subcontracting under public procurement regulations and the Civil Code, it appears most reasonable—at present—to rely on sector-specific regulatory and contractual frameworks. Thus, subcontracting agreements in the context of public procurement remain subject to their specific regulatory regime, while civil law provisions apply to private contracts. Additionally, principles related to industrial contracting (contracts for works and services) are considered in large-scale agreements, particularly those concluded by multinational corporations.

From this perspective, we propose the following recommendations:

- It is imperative to explore new legal frameworks capable of accommodating modern forms of industrial subcontracting, including partnership-based models. Such frameworks would be more suitable for Algeria than the current restrictive application of subcontracting solely as a form of traditional subcontracting agreement (contract under subcontracting).
- In line with Algeria’s policy objectives aimed at promoting domestic investment, attracting foreign capital, and advancing the knowledge-based economy driven by innovation and technology, there is a pressing need to establish a comprehensive legal framework that governs subcontracting activities in general, and industrial subcontracting in particular. This recommendation draws on Algeria’s experience in regulating entrepreneurial activities through specialized legal instruments, such as Law No. 22-23 of December 18, 2022, which introduced the legal status of the “self-employed entrepreneur” and organized unregulated activities while providing benefits associated with the entrepreneur card. Similarly, Executive Decree No. 20-254 of September 15, 2020 (as amended) established a National Committee responsible for granting labels such as “startup,” “innovative project,” and “business incubator,” and defined its composition and powers <sup>20</sup>.
- By analogy with these regulatory frameworks, establishing a specific legal system for subcontracting activities would constitute a pivotal step toward supporting small and medium-sized enterprises (SMEs) and innovative startups, enabling them to integrate into the modern economic dynamic, particularly those operating within industrial production chains.

## Citations :

**1** -It is worth noting that the emergence of the Fourth Industrial Revolution (Industry 4.0 or 4IR) is the result of the widespread availability of digital technologies introduced by the Third Industrial Revolution, which brought computers into all aspects of life, including communication and education, extending beyond mere production and manufacturing. The Fourth Industrial Revolution is generally characterized by the digitization of traditional manufacturing and industrial practices through the use of technologies such as artificial intelligence, big data, robotics, quantum computing, autonomous vehicles, cybersecurity, and other aspects of modern technology. The term "Fourth Industrial Revolution" was first used at the Hannover Industrial Fair in Germany in 2011, and it was later introduced by Klaus Schwab, the founder and Executive Chairman of the World Economic Forum, in 2015, alongside a team of scientists who developed a high-tech strategy for the German government at the time. Schwab described the Fourth Industrial Revolution as "a state in which the boundaries between developments in the physical, digital, and biological spheres are increasingly blurred. Unlike previous industrial revolutions, its impact goes beyond production and product quality, affecting all aspects of life." Prior to this, the world had witnessed two major industrial revolutions. The First Industrial Revolution emerged in the 1760's, benefiting the agricultural sector through the use of the steam engine, which led to increased production and, consequently, improved living standards. The Second Industrial Revolution followed towards the end of the nineteenth century as an extension of the first, marked by the advent of electricity and internal combustion engines, enabling the exploitation of natural and industrial resources as well as renewable energies, giving rise to what became known as the "automated factory."

**2**- It is worth noting that this definition was presented during the meeting of the Expert Group of the United Nations Industrial Development Organization (UNIDO) on policies and the Industrial Subcontracting Exchange, held in Vienna from May 22 to 24, 1991 (report issued on May 27, 1991, pp. 22-23). It stated that industrial subcontracting is an agreement through which an entity, referred to as the contracting company, assigns another independent entity, known as the subcontractor, to carry out, on its behalf and according to the technical specifications set by the former, the production of parts, components, sub-assemblies, or the provision of certain complementary industrial services that are necessary to complete the final product of the contracting company, which bears responsibility before the final customer.

*« la sous traitance est accord par lequel une entreprise, donneur d'ordre, charge une autre entreprise, le sous traitant, d'assurer pour son compte, selon des spécifications déterminées, une partie du processus de production, pour laquelle il demeure responsable vis-à-vis du client final »*

**3** - Emmanuel Cordelier, The Scope of Subcontracting, Chapter 1 of the proceedings of the March 8, 2019 symposium of IFR 40, titled Securing Subcontracting: What New Challenges?, under the direction of Sandrine Tisseyre, published by Presses de l'Université Toulouse Capitole, Librairie générale de droit et de jurisprudence – Lextenso Editions, published on OpenEdition Books: December 19, 2019, pages 17–37.

**4** - Azziro Salima, The Subcontracting and Partnership Exchange and Its Relationship with Small and Medium Enterprises: The Case of the Algerian Subcontracting and Partnership Exchange – Central Region, Master's thesis in Management Sciences, Business Administration Department, Faculty of Economic Sciences and Management Sciences, University of Algiers, academic year 2008–2009, pp. 63–64.

**5** -Osama Mohamed Taha Ibrahim, The General Theory of Subcontracts, Dar Al-Nahda Al-Arabia, Egypt, 2008, p. 37.

**6** -Melyana El-Hadj, The Role of Subcontracting in the Creation of Small and Medium Enterprises :A Study of the Reality of Subcontracting in Algeria for the Period 2012–2014, Master's thesis (Second Cycle Academic Master's Degree) in Management Sciences, specializing in Small

and Medium Enterprise Management, Kasdi Merbah University of Ouargla, Algeria, Faculty of Economic, Commercial, and Management Sciences, academic year 2016–2017, pp. 3–4.

**7** - Article 1 of Law N o. 75-1334 of December 31, 1975, relating to subcontracting, as amended, defines it as follows: 'For the purposes of this law, subcontracting is the operation by which a contractor entrusts, by means of a subcontract and under their responsibility, to another person called the subcontractor, the performance of all or part of the contract or part of the public contract concluded with the project owner.' (This law was amended by Law No. 2001-1168 of December 11, 2001, on urgent economic and financial reform measures, published in the Official Journal of the French Republic [JORF] on December 12, 2001, p. 19703, and by Ordinance No. 2010-1307 of October 28, 2010, relating to the legislative part of the Transport Code, with the legislative part of the Transport Code published in a special annex to the Official Journal on November 3, 2010, p. 19645.)

**8** - Law No. 05-10 of June 20, 2005, amending and supplementing Ordinance No. 75-58 of Ramadan 20, 1395 AH, corresponding to September 26, 1975, concerning the Civil Code (Official Journal No. 44 dated June 26, 2005).

**9** - Presidential Decree No. 15-247 dated September 16, 2015, concerning the regulation of public procurement and public service delegations (Official Journal No. 50 dated September 20, 2015).

**10** - Law No. 23-12 of August 5, 2023, establishing the general rules relating to public procurement (Official Journal No. 51 dated August 6, 2023).

**11**- Executive Decree No. 18-199 of August 2, 2018, concerning public service delegation (Official Journal No. 48 dated August 5, 2018).

**12** - What is meant here is that the subcontractor carries out the work independently and in their own name, without being directly subject to the administrative or technical supervision of the main contractor or the project owner. However, this independence does not preclude the issuance of instructions related to the execution of the work in accordance with the specified design. Moreover, the main contractor has the right to monitor the progress of the work and to notify the subcontractor of any violations, as is the case with the execution of construction contracts.

**13** - Barjem Salhiha, "Subcontracting," Master's thesis in Law, specialization in "Contracts and Liability," University of Algiers – Ben Youcef Ben Khadda, Faculty of Law, Academic Year 2008–2009, p. 34.

**14** - Barjem Salhiha, "Subcontracting," op. cit., pp. 41–42.

**15** - Sébastien Ollivier, "Subcontracting: Legal Aspects," published on April 7, 2015, on the website <https://www.petite-entreprise.net/>, accessed on May 27, 2019.

« En somme, on peut définir la sous-traitance de la façon suivante : c'est une coopération économique consistant en une fragmentation puis une distribution de l'ouvrage à des entreprises indépendantes qui se chargent dans le cadre de ces rapports d'effectuer le travail demandé (généralement, production d'une composante, d'une partie, ou d'une sous partie du produit, assemblage...) selon les spécificités déterminées par le donneur d'ouvrage »

Sohayla Ahmed Moustafa Ahmed El Feky, The Law Applicable to International Subcontracting Contracts: A Comparative Study between France and Egypt, Doctoral dissertation in Private Law, University of Grenoble Alpes, France, defended on May 25, 2021, pp. 8–9.

**16** - Law No. 17-02 of January 10, 2017, containing the Guiding Law on the Development of Small and Medium Enterprises (Official Journal No. 02 of January 11, 2017).

**17** - The joint ministerial decree dated 25 Jumada al-Thani 1439 AH, corresponding to March 8, 2018, relates to the exemption from customs duties and value-added tax (VAT) for components and raw materials imported or purchased locally by approved subcontractors, within the framework of their activities for the production of kits and sub-kits intended for mechanical, electronic, and electrical industries' products and equipment. (Official Journal No. 25 dated May 2, 2018)

**18** - Executive Decree No. 20-311 dated November 15, 2020, relates to the exemption from customs duties and value-added tax (VAT) on components and raw materials imported or purchased locally by subcontractors within the framework of their activities. (Official Journal No. 67 dated November 15, 2020)

**19** - Executive Decree No. 20-313 dated November 15, 2020, sets the terms and conditions for the approval of operators engaged in the production of electronic and household appliances products and equipment to benefit from the preferential tax system. (Official Gazette No. 67 dated November 15, 2020)

**20** - Executive Decree No. 20-254 of September 15, 2020, establishing a National Committee for the awarding of the 'Startup' label, the 'Innovative Project' label, and the 'Business Incubator' label, and defining its missions, composition, and functioning (Official Gazette No. 55 of September 21, 2020, p. 10), as amended and supplemented by Executive Decree No. 21-422 of November 4, 2021 (Official Journal No. 84 of November 4, 2021, p. 06).