

Conditions and Procedures for Establishing a Banking Institution in Algerian Law

شروط وإجراءات تأسيس مؤسسة بنكية في القانون الجزائري

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Abstract:

The study investigates the legal frameworks that regulate the conditions and procedures for establishing a banking institution in Algeria, while also addressing certain issues arising from these regulations. This analysis is divided into two sections. The first section focuses on the objective and formal conditions required for establishment. The objective conditions encompass the satisfaction of minimum capital requirements, the assurance of the bank's economic project viability, and the integrity of shareholders. The formal conditions stipulate that the banking institution must be established as a joint-stock company. The second section elaborates on the establishment procedures, highlighting the necessity of securing a license from the Monetary and Banking Council and obtaining the accreditation of the Governor of the Bank of Algeria.

Keywords: Algerian Monetary and Banking Law, Bank of Algeria, Banks, Islamic banks, Investment Banks, Digital banks.

الملخص:

شملت الدراسة تحليلاً استقرائياً للنصوص التشريعية التي تنظم إنشاء المؤسسات البنكية في الجزائر، ووقوفاً على بعض الإشكاليات التي تثيرها تلك النصوص. وقد جاء البحث في مبحثين، تناول الأول الشروط الموضوعية والشكلية لتأسيس مؤسسة بنكية، فأما الشروط الموضوعية فتتمثل في تحقق الحد الأدنى لرأس المال، ووجود مشروع اقتصادي مجد وجدي للبنك، ونزاهة المساهمين فيه، والوجود المادي للبنك. وأما الشروط الشكلية فتتمثل في أن تؤسس المؤسسة البنكية في شكل شركة مساهمة، وأن تتقدم بطلب التأسيس مرفقاً بملف كامل أمام المجلس النقدي والمصرفي. أما إجراءات تأسيس مؤسسة بنكية فتطرق لها المبحث

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الثاني، وأولها الحصول على الترخيص من طرف المجلس النقدي والمصرفي، وثانيها الحصول على الاعتماد من طرف محافظ بنك الجزائر.

الكلمات المفتاحية: القانون النقدي والمصرفي الجزائري، بنك الجزائر، البنوك، البنوك الإسلامية، البنوك الاستثمارية، البنوك الرقمية.

Introduction:

Under the slogan, “Algeria 2025: the Year of Economic Success”, the Algerian President urged the “economic operators” to open private banks to absorb the dormant funds.⁽¹⁾

The banking industry contributes significantly to the country's economic development. It acts as the primary conduit between those seeking finance and depositors, while also participating in investment realization as a lender or financier. It also effectively contributes to the spread and development of payment systems other than cash payments, which have problems that affect both the national economy (inflation) and individuals (risks of loss, theft, and damage to money) on the third hand. It also offers banking advice and mediation to individuals seeking it on the fourth hand. All of this demonstrates the banking sector's tremendous importance.

The fulfillment of these vital responsibilities requires a robust and stable financial system. To accomplish this, Algerian legislators have implemented a dual-tier framework of financial institutions: the upper tier is represented by the Bank of Algeria, while the lower tier consists of credit institutions. These credit institutions compete to provide loans, financing, and various financial services. Conversely, the Bank of Algeria is responsible for regulating and overseeing the banking sector. Examples of "credit institutions" include traditional banks, investment banks, digital banks, Islamic banks, Islamic windows, and other financial entities and representative offices that focus on delivering bank loans to the general public.

From a legal standpoint, banks of all types are distinguished by their ability, unlike financial institutions, to carry out all banking operations, including collecting public deposits, granting bank loans, providing and managing payment methods, and conducting Islamic banking operations (According to Articles 68, 72, and 75 of Law 23-09, which encompasses the Monetary and

¹ The President's meeting with economic operators on Sunday, April 13th, 2025, at the International Conference Center, for more details: <https://2u.pw/xac8G>, visited on april15th, 2025 at 16:00 PM.

Banking Law)⁽¹⁾, banks are established as the most vital entities within the Algerian banking system. Given their significance ⁽²⁾, the legislator has imposed stringent conditions for their establishment. The legal criteria for launching a bank in Algeria are diverse, and an entity cannot attain the designation of a bank or commence banking activities until all these requirements are adequately met.

This study aims to analyze the legal texts pertaining to the requirements for establishing a bank in Algeria, underscoring certain issues identified within those texts. Accordingly, this study addresses the following problem: What are the procedures for establishing a bank in accordance with Algerian law, and how can the challenges posed by the relevant legal texts be addressed?

To address this issue, both descriptive and analytical methods will be utilised. The descriptive method will be used to outline the conditions for establishing a bank under Algerian law, whereas the analytical method will be used to explain and comment on the legal texts, as well as address the issues raised. A dual division will be followed, with two sections. The first section will discuss the objective and formal conditions for establishing a bank in Algerian law, while the second section will go over the procedures to be followed for establishing a bank in Algeria.

1. The Objective and Formal Conditions

The bank's operations are commercial activities in both form and content⁽³⁾, as defined by specific legislative documents, and banking operations are founded on credit and trust. The bank trades with other people's money, and any inability to repay bank loans harms the banking industry as a whole. As a result, Algerian legislators are strict in determining the fundamental prerequisites for founding a commercial bank. These substantive criteria can be divided into two categories: those relating to the bank as a legal entity and those relating to the natural persons employed at the bank.

1.1-Conditions connected to the bank as a legal entity:

They are represented in the bank's legal structure, minimum amount of capital, and physical presence.

¹ Law N° 23-09 dated June 21st, 2023, including the Monetary and Banking Law, published in the Official Gazette, N°43, dated June 27th, 2023.

² Thierry Bonneau, Banking Law, Montchrestien, Paris, 2003, p 50.

³ Articles N° 02 and 03 of Order 75-59 containing the Commercial Code issued on September 26, 1975, amended and supplemented up to Law 22-09 dated May 5, 2022.

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1.1.1- The bank's legal structure:

Article N° 91 of Law N° 23-09, specifies that Banks and financial institutions that operate under Algerian law are required to be organized as joint-stock companies; consequently, they are bound by the regulations that govern this type of corporate structure, outlined in the Algerian Commercial Code⁽¹⁾. However, the legislator remained silent on the issue of licensing foreign joint-stock companies in banks governed by Algerian law. Therefore, he does not accept the licensing request for a banking institution that takes a form other than a joint-stock company, except for the licensing of opening foreign branches in Algeria, with due regard to the principle of reciprocity. A bank can also be organized as a cooperative, but this requires approval from the Monetary and Banking Council..⁽²⁾ It is noted that the Algerian legislator is strict about the form of the bank, which must be established exclusively as a joint-stock company. This is in contrast to the French Monetary and Financial Code, for example, which does not specify the form of company that a bank can take, as it can be established in the form of a solidarity company or a limited liability company, among others.⁽³⁾

1.1.1 - The minimum capital requirement for a banking institution:

The capital of a joint-stock company serves as the sole assurance for its creditors; consequently, the Algerian legislature has established legal rules for the formation of capital in this type of company. Nevertheless, guided by the principle that private property can impose limitations on public property, alongside the unique characteristics of the banking system and its potential risks to the national economy, the legislator has instituted specific regulations regarding the minimum capital requirements for banks and financial institutions operating in Algeria.⁽⁴⁾

It is significant to note that the determination of the minimum capital requirements for the establishment of banks and financial institutions, along with the subsequent tightening of these regulations by legislators, was largely a response to the crises faced by the banking sector, notably the crises involving the Commercial and Industrial Bank and Khalifa Bank. Additionally, this evolution in regulation was influenced by Algeria's efforts

¹ Articles N° 592 to 799 of the Commercial Code.

² Article N° 91 of Law N° 23-09, Op. Cit.

³ Teissier Anne, the professional secrecy of the banker, Aix-Marseille University Press, 2000, p 59.

⁴ Chenaa Amina, the legal system for the establishment of banking institutions in Algerian legislation, Journal of Rights and Freedoms, vol 09, issue 02, 2021, p 895.

to align with international banking standards, particularly as outlined in the Basel III agreement, in the wake of the global economic crisis of 2008.⁽¹⁾

Banks and financial institutions shall be fully paid-up and have cash capital equal to or more than the level set by a council ordinance enacted in accordance with Article N° 96 of Law N° 23-09, Banks and financial organisations with headquarters outside of Algeria must allocate at least the minimum capital needed by Algerian legislation to their Algerian affiliates. Article N° 02 of Regulation N° 24-02, issued in 2024, defined the minimum capital that banks must release upon establishment as follows -the same amount that foreign banks must allocate for their Algerian branches- :⁽²⁾

- Bank⁽³⁾: Twenty billion Algerian dinars (20,000,000,000 DZD);
- Investment Bank⁽⁴⁾: Twenty billion Algerian dinars (20,000,000,000 DZD);
- Digital Bank⁽⁵⁾: Ten billion Algerian dinars (10,000,000,000 DZD);

It is worth mentioning that there are legal organizations extremely similar to commercial banks under Algerian law known as "financial institutions", but this likeness does not reach the level of exactness, since there are significant legal distinctions between a bank and a financial institution, including:

❖ **Concerning banking operations:** The financial institution is authorized to engage in all banking activities outlined in the Monetary and Banking Law, including accepting public deposits, disbursing loans, and offering and overseeing payment instruments, in accordance with Article N° 75 of Law N° 23-09. As for the financial institution, it can only carry out the operations mentioned in Article N° 78 of Law N° 23-09.

¹ Oukacha Boukaïban, Algerian Banking Law in Light of the Judicial Precedents of the Supreme Court and the Council of State, Dar El-Khaldounia, Algeria, 2017, p. 55

² Article N° 02 of Regulation N° 24-02 dated April 6th, 2024, concerning the adequacy of the capital of banks and financial institutions operating in Algeria.

³ As definition of banks, a bank is characterized as an institution organized as a joint-stock company, with its primary purpose being to conduct banking activities, including accepting deposits, offering loans and financing, and managing payment methods. The nature of the bank-whether it is publicly or privately owned, or has shared capital-is not a determining factor. Look at: Bouzidi Ilyes, Algerian banking law, part one, Houma house, Algiers, 2020, p91.

⁴ An investment bank, also referred to as a business bank, is a financial institution focused on generating profits by funding entrepreneurs and commercial enterprises. Unlike traditional banks, it does not accept customer deposits; instead, it utilizes its own capital and earnings to pursue investment initiatives, extend interest-bearing loans, provide consulting services, and offer financial solutions to investors. The definition of an investment bank is outlined in Article 90 of Law 23-09. Look at: Houalef Abd samad, Algerian banking law, konoz edition, Tlemcen, 2022, p8.

⁵ A digital bank is a financial institution that provides its banking services solely via the internet and digital platforms, utilizing modern technology and eliminating the need for any physical presence to offer these services. Recently, the Algerian legislator recognized digital banks through Article 90 of Law 23-09. Look at: Houalef Abd samad, op.cit, p9.

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❖ **Regarding the minimum amount of capital required:** A bank's minimum capital is set at 20.000.000.000 DZD, while a financial institution's minimum amount of capital is set at 6.500.000.000 DZD, based on Article N° 02 from Regulation N° 24-02.

1.1.2- The issue of whether a bank's physical presence is required in Algerian law:

Algerian legislation, specifically Article 59 of Law 06-01, Article 90 of Law 23-09, Articles 05 and 06 of Regulation 24-04, and Instruction No 02-25, stipulates that the physical presence of a banking institution is a prerequisite for its establishment.

However, the Digital Bank – unlike other banking institutions– is exempted from the physical presence requirement, with alternative regulations ensuring mechanisms to prevent the use of digital banks in corrupt practices.

1.2- Conditions regarding natural persons for a bank:

The bank's natural persons are represented by its shareholders and managers.

1.2.1- Conditions for Shareholders:

The legislator has mandated that the bank's founders, when seeking for a licence, present descriptions of the persons who provide capital, i.e. the shareholders. Through Law N° 23-09 and Regulation N° 24-01, shareholders' characteristics have been given great importance related to integrity and the enjoyment of full civil rights without blemish.

Therefore, shareholders must have the authority to monitor and advise the banking institution's management, as well as the capacity to cover any possible shortfalls for the bank, such as a liquidity crisis or financial distress. Based on Regulation N° 24-01, the license application file must encompass various elements and information regarding each shareholder and their guarantors' financial capabilities. Furthermore, it should address the quality and integrity of these prospective shareholders, alongside the data related to the primary shareholders, which constitute the "core" within the shareholder group. This includes an assessment of their financial position, expertise, knowledge, and competence within the banking and financial sectors, as well as their commitment to providing support, which should be clearly articulated in the shareholders' agreement. ⁽¹⁾

¹ Article N° 04 from Regulation N° 24-01, dated February 6th, 2024, specifies the conditions for licensing the establishment of a bank and financial institution and their Accreditation.

Conditions for the Managers:

The Algerian legislator suggested that a bank have at least two managers. They must also be qualified to conduct their tasks in a way that protects bank clients, particularly depositors, from experiencing losses while also protecting their funds and interests.

As a result, these managers must have the needed professional and technical skills, as well as the capacity to manage. In this regard, the bank's founders must submit a file to the Bank of Algeria with information that allows the governor to assess the managers' professional backgrounds and determine if they have the appropriate knowledge and honesty. The application for the establishment of a bank or financial institution, along with the request for authorization to create a branch of a foreign bank or financial institution directed to the Chairman of the Monetary and Banking Council, must comprise a roster of the primary managers as delineated in Article 99 of Law No. 23-09, at least two of whom must be residents according to Article N° 98 of law N° 23-09.

In addition, in accordance with Article 87 of Law No. 23-09, individuals are prohibited from serving as founders of a bank or financial institution, or as members of its board of directors, or from managing a bank or financial institution, representing it in any capacity, or being authorized to sign on its behalf, if they have been convicted for the specified reasons:

- Convicted of a felony ;
- Convicted of embezzlement, betrayal, theft, fraud, issuing a check without sufficient funds, or breach of trust;
- Intentional wrongful detention committed by public trustees or extortion of money or valuables;
- Bankruptcy ;
- Violation of currency legislation and regulations;
- Banking or commercial Documents Forgery;
- Breach of corporate law;
- Concealing and hiding funds obtained as a result of these violations;
- Offenses related to drug trafficking, psychotropic substances, corruption, money laundering, financing of terrorism, and the funding of weapons of mass destruction;

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- Under Algerian law, individuals convicted by a foreign judicial authority with a final ruling are regarded as felons or guilty of misdemeanors;
- A person declared bankrupt or involved in bankruptcy or held civilly liable as a member of a bankrupt legal entity, whether in Algeria or abroad unless rehabilitated.

It is perhaps worth adding that both the shareholder and the manager in the commercial bank must have full legal ability under the general standards (as stated in Article 40 of the Algerian Civil Code) and that a natural person's legal capacity is achieved when they reach the age of 19 and are free of any mental disability.

1.3- Technical Requirements:

The legislator empowered the Monetary and Banking Council, as a monetary authority, to establish technical requirements for practicing banking, consulting, and mediation in the banking and financial sectors.⁽¹⁾ Law N° 23-09 has stipulated the legal rules related to management, internal control, risk centralization, and depositor protection, which must be reflected in the license application file and demonstrate its compliance with it, and its commitment to the following points:⁽²⁾

- Respecting management standards aimed at ensuring liquidity and the ability to meet obligations towards depositors and others;
- A dedication to formulating internal governance regulations that clearly delineate the powers and responsibilities of both the deliberative body and the executive authority, accompanied by the implementation of a robust internal control system.
- The imperative to create guidelines and criteria for assessing and overseeing risks, with particular emphasis on loan-related risks.
- Committing to providing appropriate payment methods and tools at the customers' disposal within reasonable timeframes, dedicating Transparency in loan offers, and indicating all the related terms.

2. The Procedural Conditions

To be recognized as a trader, a bank must not only meet the aforementioned objective and Formal conditions but also fulfill certain procedural requirements. The most crucial of these is obtaining a license, closely followed by acquiring a certificate. It's worth noting that the

¹ Fadila Melhaq, Protecting the Algerian Banking System from Money Laundering, Dar Houma, Algeria, 2013, p 187.

² Articles N° 106,107,109, 136 of Law No 23-09, op. Cit.

legislator has established these two criteria to regulate banking institutions: Conditions for establishing or founding banks and Conditions for conducting banking activities.

2.1- The license

This method allows the administration or public authorities to maintain careful oversight of specific activities.⁽¹⁾ Each of these activities undergoes a thorough investigation on an individual basis. Once approved, they can proceed, but the administration may impose different conditions depending on the significance and risks associated with each activity. This approach is crucial for ensuring effective control and monitoring of these operations.⁽²⁾

As stated in Article N° 64 of Law N° 23-09, the council is assigned the responsibility of issuing individual authorizations for the establishment of banks and financial institutions, as well as granting permission for the opening of branches or representative offices for foreign banking or financial entities within Algeria.

2.1.1- How to get the license:

To obtain the license, a set of conditions specified in articles N° 96, 97,98,99 from Law N° 23-09 must be provided, in addition to the requirement of achieving the specified conditions in article N° 04 from Regulation N° 24-01. The license application file contains the following documents:

- ❖ Project description, including identification of the institutional type and the primary motivations behind the investment choice.
- ❖ Specifics regarding the founding investors, including the status of major shareholders in their respective home countries, their financial standing, as well as their relevant expertise and experience in the industry and finance when applicable, alongside their formal commitment to provide support.
- ❖ The foundational legal framework for the bank and financial institution, or the primary legislation governing the parent company concerning its branch, and the legal structure of the project as dictated by current laws and regulations.
- ❖ An economic and technical analysis, financial details, an integrated strategy, and a medium- to long-term plan, including an operational program for a duration of five (5) years.

¹ Rachid Zouaïmia, the independent regulatory authorities in the financial sector in Algeria, Houma edition, Algiers 2005, p 30.

² Kasdi Faiza and others, how to create banks and financial institutions under Algeria's new monetary and banking law No 23-09, Russian law journal, vol XII, issue 2, 2024, p 1495.

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❖ **Personality, Integrity, and Competence of Founders and Shareholders**, this encompasses the personal attributes, ethical standards, and skills of the founders and shareholders, as well as the nature and sufficiency of their contributions—both in terms of capital and in respect to their alignment with the selected operational model and the origin of the invested funds.

❖ **Document on Compliance Expectations**: prepare a comprehensive document delineating the expectations for adherence to the legislative and regulatory framework concerning the following components: the Information Disclosure System, the Internal Control and Risk Management System associated with operational activities, the Accounting and Auditing System, the Prudential System, the Anti-Money Laundering and Combating the Financing of Terrorism System, the List of Key Managers as delineated in Article 98, and the Confidentiality and Data, Assets, and Values Protection Policy. This document should draw on the specifications outlined in Article No. 03 of Instruction No. 01-25.⁽¹⁾

The Monetary and Banking Council serves as the authoritative body responsible for licensing decisions. This council evaluates applications and arrives at a decision, which may either approve or reject the request. The Secretary-General of the Monetary and Banking Council will inform the applicant of the outcome⁽²⁾, and no deadline for notification has been specified. The license becomes effective as soon as it is officially notified to the applicant.

2.1.2- Types of Licenses:

Licenses are divided into the following types:

2.1.2.1- Authorization for the establishment of Banks:

This is an essential procedure, to found banks and financial institutions, it is necessary to obtain authorization from the Money and Banking Council, which is issued by the Governor of the Bank of Algeria, as Chairman of the Council.⁽³⁾

2.1.2.2-Authorization for the Establishment of Branches:

According to Article N° 93 of Law N° 23-09, "the Council may grant permission for the establishment of branches of foreign banks and financial institutions in Algeria, contingent upon the adherence to the principle of reciprocity."

¹ Article N° 03 of instruction N°01 -25 Dated March 2nd, 2025 regarding the conditions for the establishment and licensing of a bank and financial institution.

² Article N° 05 of Regulation N° 24-01, op.cit.

³ Article N° 89 of Law N° 23-09

Similarly, Article N°1 of Regulation 24-01 stipulates, "This Regulation delineates the criteria for the licensing of banking and financial institutions. Additionally, it provides directives for the establishment and subsequent authorization of branches of foreign banks and financial institutions."

2.1.2.3-Authorization for Amendments:

Any modifications that affect a bank or financial institution must receive approval from the council, with the exception of transactions conducted via the stock exchange and the transfer of shares designated as collateral for the managerial activities of the board of directors, as stipulated in commercial law.

Such amendment can impact the articles of association both prior to and following their approval. This encompasses alterations pertaining to the allocation of capital to a branch of a foreign bank or financial institution, which must submit any changes to the composition of the Board of Directors or the Supervisory Board, along with their biographies, to the Governor of the Bank of Algeria. This review process is instituted to verify compliance with the pertinent legal and regulatory requirements. The aforementioned protocol is equally applicable to general managers and assistant general managers who do not hold membership on the Board of Directors. Furthermore, in instances involving the transfer of shares in a bank or financial institution, such transfers may lead to a modification in the composition of the shareholder base.

2.1.2.4-License to Represent:

Article N° 92 of Law 23-09 stipulates that: "The representative offices of foreign banks in Algeria must be licensed by the council."

2.1.2.5-Licensing for banks and windows practicing Islamic banking:

An Islamic bank⁽¹⁾, as a financial entity, distinctly manifests its adherence to the principles of Islamic Sharia through its established systems, regulations, procedures, and prohibits interest in any of its operations.⁽²⁾

Islamic Banking products are subject to a prior licensing request with the Bank of Algeria (Article N° 13 of Regulation N° 20-02)⁽³⁾. It is important to note that the license for practicing Islamic banking is distinct from the

¹ An Islamic bank is a financial institution that performs banking operations in compliance with Islamic law. It offers various forms of financing, rather than traditional loans, including Murabahah, Musharaka, Istisna, Ijara, Salam, and Mudaraba, earning profits through these methods instead of charging interest. This framework was established in Algeria under Article 72 of Law 23-09.

² Bendjebes Yasmine. The Reality and Requirements of Developing the Islamic Banking Industry in Algeria. International Journal of Economic Performance, Vol 07, Issue 01, June 2024, p 75.

³ Article N° 13 of Regulation N°20-02, dated 20 Rajab 1441, corresponding to March 15, 2020, defines banking operations related to Islamic banking and the rules for its practice by banks and financial institutions.

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license required for the establishment of the bank or financial institution. A currently operating bank, which has obtained the necessary prior licenses and permits, must acquire a specific license to conduct Islamic banking operations. Prior to submitting a licensing application to the Bank of Algeria for the promotion of Islamic banking products, the bank or institution is required to secure a Sharia compliance certificate from the National Sharia Advisory Board for Financial Industry, a component of the Higher Islamic Council, in accordance with Article N° 14 of Regulation N° 20-02. It is worth noting that obtaining the compliance certificate is an additional procedure that the bank wishing to practice Islamic banking must fulfill, unlike banks that do not engage in Islamic banking transactions. The bank or financial institution must submit a file to the Bank of Algeria to request prior authorization to market Islamic banking products. This file consists, in particular, of the following documents:

- ❖ Certificate of compliance with Sharia law, as issued by the National Sharia Authority for the Islamic financial sector.
- ❖ Product description documentation.
- ❖ The perspective of the compliance officer of the banking or financial institution, in accordance with the stipulations outlined in Article N° 25 of Regulation N°11-08.dated 3 Muharram 1433, corresponding to November 28th, 2011 ; ⁽¹⁾
- ❖ In order to ensure administrative and financial independence within the context of an "Islamic banking window" and to ensure such independence from other activities associated with the banking sector or traditional financial institutions, it is imperative to implement a set of procedures (Article N° 16 of the aforementioned Regulation N° 20-02).

2.1.3- Refusal to grant a license:

The decision by the Monetary and Banking Council to deny a license is frequently attributable to inadequate documentation, the institution's failure to perform the operations proposed in the application, or the lack of appropriate facilities. Pursuant to Article N° 95 of law N° 23-09, an applicant whose license application has been rejected is permitted to appeal this decision to the administrative court in the city of Algiers. Nonetheless, the current discourse raises the issue of whether it is permissible to submit a second application for a license following a rejection, a matter seemingly overlooked by the legislator, especially when juxtaposed with Order N°11-03 concerning the repealed Monetary and Loan Law. This latter order

¹ Article N° 25 of Regulation N° 11-08 dated 3 Muharram 1433, corresponding to November 28, 2011, related to the internal control of banks and financial institutions.

established a timeframe of ten months from the notification of the rejection to limit the appeal process to the Administrative Court of Appeal in Algiers regarding the council's decisions.

2.2- Accreditation:

Once a license has been granted as a preliminary measure, applicants are invited to seek accreditation for engaging in various banking operations permitted by that license. It's important to understand that merely obtaining a license does not automatically grant banking status.

Accreditation is conferred via a determination rendered by the Governor of the Bank of Algeria, who also serves as the President of the Monetary and Banking Council. This determination verifies that the bank or financial institution being established satisfies all the criteria established by law and is subsequently published in the Official Gazette of the Republic of Algeria.

2.2.1- Accreditation Requirements:

After obtaining the incorporation license, a company is permitted to engage in banking activities only after it has acquired accreditation. This accreditation is bestowed upon the company provided that it meets all the legal requirements and complies with the regulations established by the Monetary and Banking Council. It is essential to recognize that branches of foreign banks and financial institutions are also required to secure accreditation if they are licensed in accordance with the law.

Additionally, the regulations from the Council outline other situations where accreditation is mandatory, which can be summarised as follows:

- ✓ Every managing member of the banking institution must receive accreditation from the Governor before commencing their duties.
- ✓ The Monetary and Banking Council provides opinions that allow wholesalers and concessionaires to reside in Algeria, enabling their registration in the commercial register.
- ✓ Establishing rental credit institutions requires obtaining both a license and subsequent accreditation from the Council.
- ✓ Lastly, the establishment of exchange offices is also permitted under these regulations.

2.2.2- Accreditation Procedures:

The Monetary and Banking Law does not outline the procedures for obtaining a license, making it necessary to define these through specific regulations, which can be summarised as follows:

The founders of the company must apply, along with two copies- one of them is digital- of a detailed file that includes an audited summary of how

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the project will be implemented and the resources required. This application must be submitted to the Governor within 12 months from the date the license is issued. Additionally, it must include all the documents and information required by current legislation and regulations.

According to instruction N° 01-25, as mentioned previously, each copy of the accreditation application file (two in total) includes the following elements:⁽¹⁾

- A certified letter of commitment from the General Assembly of Shareholders, signed by the chairman of the board.;
- A certified letter of commitment from the General Assembly of Shareholders, signed by the Chairman of the Board.
- A notarial deed containing the original articles of association and the shareholders' agreement, or certified true copies for branches of foreign banks.
- A certified authentic copy of the commercial registration.
- A certified authentic copy of the statement of tax presence, issued by the tax office in the location of the social headquarters.
- A certificate of complete release of the minimum capital or of that portion of social capital which exceeds the notary's allocation, along with a certified copy of the bank account deposit receipt.
- Authentic copies of the valuation assessment by the quota representative regarding the value of the in-kind quotas.
- Certificate for converting foreign currencies for non-resident stockholders;
- Reports from the regular general assembly that appointed board members.
- Reports from the parent institution's board of directors have designated two individuals to supervise the activity and branch.
- The members of the Board of Directors or those responsible for the management and administration of the branch must receive approval from the Governor of the Bank of Algeria.
- Records from the Board of Directors meeting, which include the election of the president and the appointments of the general manager.
- A certified copy of the title deed or lease agreement for the bank's main premises or its branch location, encompassing the entire location, telephone number, and facsimile number.
- A notarized financial disclosure statement for shareholders;

¹ Article N° 06 from instruction N° 01-25, op.cit.

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- Submit a full project study that includes the institution's organizational structure, managing directors' CVs, and development plans.

The Governor of the Bank of Algeria possesses the authority to approve the accreditation of a bank via a formal decision. This decision shall be communicated to the applicant by the Secretary General of the Monetary and Banking Council. Accreditation will be conferred if the company fulfills all the conditions outlined in this Law and the regulations established for its banking application, as well as any supplementary conditions that may be relevant to the license.

Accreditation is also granted to branches of foreign banks and financial institutions authorized under Article N° 93 of Law N° 23 - 09, This is contingent upon fulfilling the same conditions and taking into account the principle of reciprocity.

The application for accreditation is construed as a solicitation for the legalization of the banking and financial institution, which is mandated to adhere stringently to the obligations outlined in the framework of the license application or opening as specified in Article No 05 of Regulation No 24-01, in addition to any particular conditions that may be prescribed in the license. Based on the results of the field inspection carried out by the Bank of Algeria's mission and the existence of the requisite human and material resources for the company to perform its activities, together with fulfilling the criteria for registration in the commercial register to achieve legal personality, the foundational contracts must be presented to the National Centre for Commercial Registration and disseminated in accordance with Article N° 4 of Law N° 08-04, which relates to the conditions for engaging in commercial activities, as amended and supplemented.⁽¹⁾

In addition, according to Article N° 06 of Law 08-04, branches that carry out commercial activity in Algeria on behalf of a commercial company abroad are also obliged to register in the Commercial Registry. The determination to confer accreditation shall become effective from the date of its notification and will be disseminated in the Official Gazette. As a result, the bank will be authorized to conduct its operations.

- How can the accreditation of a banking institution be amended?

Among the new provisions in Law 23-09, as stipulated in Article 101, banks have the ability to request amendments to their accreditation. These amendments must first be approved by the Monetary and Banking Council,

¹ Article N° 4 of Law N° 08-04 dated on 14th August 2004 related to the conditions for the exercise of commercial activities, amended and supplemented, published in the Official Gazette of the Republic of Algeria, N° 52 dated on August 18th, 2004.

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following the same procedures for publication. Additionally, prior approval for the amendment is required in the following specific cases: ⁽¹⁾

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- The amendment pertaining to the essential regulations of banks concerning the institution's objectives, its capital, or its shareholders, and the same provisions apply to amendments to the fundamental laws of foreign bank branches in Algeria;
- In the event of transferring a share or a similar bond within the bank;
- Mergers and acquisitions of a bank shall be conducted under the same forms and conditions as stipulated in the provisions of the license and accreditation.

The following amendments are exempt from the prior mandatory approval of the council:

- Transfers of shares and bonds are executed through the stock exchange, and such transfers are designated as collateral for the governance of the board of directors as outlined in commercial law.

2.2.3- Revocation of Accreditation:

The Monetary and Banking Council may decide to withdraw accreditation Without prejudice to the penalties that the Banking Committee may impose within its authority in the following cases:

2.2.3.1- Upon the request of the bank or financial institution:

The request for withdrawal is submitted by the pertinent institution.

2.2.3.2-Automatically:

- If the conditions upon which the accreditation was granted are no longer met;
- The accreditation has remained unused for a period of 12 months;
- The activity that is subject to the accreditation has been suspended for six months.

The Banking Committee possesses the authority to revoke a license as a means of disciplinary action, which subsequently leads to the liquidation of the bank or financial institution, along with financial penalties that do not exceed the amount of the capital.⁽²⁾ In the event of a decision to revoke the accreditation, any bank or financial institution that is governed by Algerian law, as well as branches of foreign banks and financial institutions operating within Algeria, shall be subject to liquidation. During this interval, the bank or financial institution impacted must undertake only those operations that

¹ Article N° 103 of Law N° 23-09, op.cit.

² Article N° 103 of Law N° 23-09, op.cit.

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are essential to resolve the situation, declare itself in liquidation, and remain under the oversight of the Commission. The Commission is responsible for establishing the procedures regarding the interim management of the liquidation, and the head of the Commission is required to provide the President of the Republic with an annual report pertaining to the supervision of banks and financial institutions.

Conclusion:

The study found that the Algerian legislature enforces stringent requirements for the establishment of a bank to guarantee the security of the banking sector. This set of legal conditions serves as a primary preventive mechanism against the occurrence of gaps, imbalances, or acts of banking and financial corruption. Consequently, the rationale behind this stringent regulatory framework can be acknowledged as both rational and lawful.

Moreover, numerous conditions for the establishment of a bank are governed by a variety of regulations - and, to a lesser degree, instructions - issued by the Monetary and Banking Council, which represents one of the principal organizations of the Bank of Algeria; these regulations are evidently in competition with the legislative texts addressing the matter. It is important to highlight that the primary objective of regulations is to manage and execute the provisions specified in legislation. Nonetheless, this can be ascribed to the distinctive attributes of the subjects pertaining to banking law in general, and the requirements for founding a bank in particular, as these topics possess a technical and economic nature, making it more suitable to assign the governance of these issues to the Monetary and Banking Council. Consequently, the composition of this Council is ideally entrusted to specialists in economics, finance, money, and banking, who are members of the Monetary and Banking Council. These members are proficient experts in the fields of monetary, financial, economic, and banking matters, all appointed through presidential decrees in accordance with Article No 61 of Law 23-09.

Furthermore, banking institutions in Algeria, according to the latest amendments - particularly Law 23-09 and the regulations issued to implement it - are not a single type, these include: Banks (which may include Islamic windows), Islamic banks, digital banks, investment banks, and representative offices of foreign banks (foreign branches). It is noteworthy that financial institutions are not considered banking institutions. Although financial institutions are involved in the distribution of loans and financing, they are not allowed to collect deposits from the public and establish and manage payment methods (according to Article N°

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78 of Law 23-09 on the Monetary and Banking Code), financial institutions are also distinguished from banking institutions in terms of establishment conditions (according to Article N° 02/D of Regulation 24-02 on determining the minimum amount of capital required for banks and financial institutions operating in Algeria concerning banking institutions, the diversity of their relative influence has impacted the conditions for their establishment, as the conditions for establishing a digital bank differ from those of a conventional bank, an Islamic bank, an Islamic window, or an investment bank in several aspects. The establishment of a bank an investment bank or an Islamic bank is subject to certain objective conditions, namely a minimum capital requirement of 20 billion Algerian dinars (20,000,000,000 DZD) and a physical presence. By contrast, the objective conditions for establishing a digital bank are a minimum capital requirement of 10 billion Algerian dinars (10,000,000,000 DZD). The Algerian legislator has not stipulated a physical presence in the digital bank, with a set of controls that compensate for the omission of this condition (the digital bank must have a social headquarters in Algeria, one of the founders of the digital bank must be a bank operating in Algeria that owns 30 % of the digital bank's capital, and the digital bank must not be a branch of a foreign bank). Consequently, it can be argued that the Algerian legislator has maintained a balanced approach regarding the requirement for the physical presence of banking institutions. Under Article 59 of Law 06-01 on the Prevention and Fight against Corruption, the establishment of a bank without a physical presence is prohibited. However, Article N° 90 of Law 23-09, which includes the Banking and Monetary Code and its implementing regulations, permits the establishment of a digital bank, subject to the aforementioned controls. The fundamental reason for this legal stance is to preserve a competitive advantage by adopting innovations in the banking sector while ensuring the safety and stability of the financial system. This strategy entails the establishment of digital banks, without compromising the stringent security and safety requirements that are imposed on the banking sector, and in particular to avoid the creation of phantom banks that could be used to transfer the proceeds of corruption or to commit crimes that jeopardize the security of Algeria's banking and financial system.

In consideration of objective conditions, it is imperative that the bank, the investment bank, and the digital bank adhere to the standards of shareholder integrity, along with the feasibility and seriousness of the economic project.

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Furthermore, formal requirements must be satisfied for the bank, Islamic bank, investment bank, or digital bank, which encompass being constituted as a joint-stock company and providing a comprehensive application for endorsement by the Monetary and Banking Council.

Ultimately, the bank, investment bank, and digital bank are required to comply with the necessary legal procedures, the first of which involves obtaining a license from the Monetary and Banking Council. It is pertinent to note in this context that the establishment of an Islamic bank or an Islamic window within a bank necessitates a specific procedure, which includes obtaining a certificate of compliance with Islamic Sharia law issued by the National Sharia Authority for Fatwas in Islamic Financial Industry situated at the Supreme Islamic Council, followed by the acquisition of a special license to operate Islamic banking from the Monetary and Banking Council at the Bank of Algeria. The second legal step in the establishment of a banking institution is securing approval from the Governor of the Bank of Algeria. The third step is to initiate banking operations within 12 months of receiving accreditation, at the latest; failure to comply will result in the automatic withdrawal of accreditation by the Monetary and Banking Council, as specified in Article 104 of Law 23-09, which forms part of the Monetary and Banking Law.

In light of the aforementioned, the research indicates that:

- The Algerian legislature ought to synchronize terminology and refrain from dispersing legal provisions across various laws when governing the criteria for establishing a banking institution, as this could result in a deficiency of coherence within those provisions and potentially contradictions among them at times (for instance, the regulation of the physical presence condition of the bank in both Law 06-01 pertaining to the prevention and combat against corruption and Law 23-09 which encompasses the monetary and banking law, as elaborated in the main section of this study).
- Furthermore, the Algerian legislature is additionally urged to delineate the conditions for the establishment of a bank primarily through legislative texts, and it is permissible to assign the clarification and enforcement of those texts to the regulations of the Bank of Algeria, as the circumstances have recently started to transition in the contrary direction, since the regulations of the Bank of Algeria predominantly dictate the conditions for establishing a bank in Algeria.
- The research also suggested that the Algerian legislator replace the term "bank" with "banking institution" in the Monetary and Banking Law,

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because the latter now recognizes the existence of several types of banks and not just one image of the bank as was previously known. The revised legislation has thus organized conventional banks, Islamic banks, digital banks, and investment banks. Consequently, the monetary and banking law has established a multifaceted banking sector, which cannot be broadly categorized under the term "bank" alone, particularly in light of the divergent legal provisions that pertain to each banking institution type, as elucidated in this study.

- The Bank of Algeria ought to expedite the issuance of the regulations that will operationalize the Monetary and Banking Law No 23-09. It is deemed unwarranted that the recently promulgated monetary law, dated 21 June 2023, should persist in being applied and implemented under the provisions of Order 03-11 on money and credit, dated 26 August 2003, particularly given the numerous discrepancies between the two legislative texts. A salient difference is that the Monetary and Banking Law employs legislative texts to regulate Islamic banking, in contrast to the repealed Monetary and Credit Law. However, the regulation on Islamic banking in the application of the Monetary and Banking Law has not yet been issued, and therefore, Regulation N° 20-02 pertaining to Islamic banking, which was issued under the explicitly repealed Monetary and Credit Law, remains applicable under Article N° 166 of the Monetary and Banking Law. Despite the stipulation in the same article that the previous implementing texts will continue to be in force until the new texts are issued, this solution remains a patchwork. The issuance of new implementing texts is therefore required, especially since nearly two years have passed since the entry into force of Law N° 23-09 containing the Monetary and Banking Law. This is sufficient time to resolve the issue of delaying the issuance of new regulations. Consequently, there appears to be no rationale for additional delays.

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- Order 75-58 containing the Civil Code issued on September 26, 1975, amended and supplemented.
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- Law N°06-01, dated February 20th, 2006, concerning the prevention and fight against corruption, as amended and supplemented.
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- Regulation N° 24-02 dated April 6th, 2024, concerning the adequacy of the capital of banks and financial institutions operating in Algeria.
- Regulation N° 24-04, Dated October 13, 2024, pertains to the specific conditions for licensing, establishing, and operating digital banking activities.
- Regulation N° 24-01, dated February 6th, 2024, specifies the conditions for licensing the establishment of a bank and financial institution and their Accreditation.
- Regulation N°20-02, dated 20 Rajab 1441, corresponding to March 15, 2020, defines banking operations related to Islamic banking and the rules for its practice by banks and financial institutions.
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