

Banking Dispute Settlement Privacy under Law 22/13 and Associated Civil and Administrative Procedure Amendments

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Abstract:

To resolve disputes, a conventional judicial and administrative framework was initially established. However, as economic activities evolved, including related disputes, this framework became inadequate, especially for banking disputes, due to their unique nature stemming from the distinctiveness of banking operations and stakeholders involved. This deficiency prompted the Algerian legislature to institute specialized judicial mechanisms under Law 22/13. This legislation established specialized commercial courts dedicated to handling intricate economic disputes, notably banking disputes, alongside commercial divisions. It also outlined specific procedures before these entities, emphasizing the importance of alternative dispute resolution methods such as mediation and the safeguards they offer to dispute parties.

Keywords: Settlement banking disputes; Law 22/13; Reconciliation; Mediation; Specialized commercial court.

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1. INTRODUCTION

Banks play a crucial role as the primary engine of the economy, acting as essential intermediaries in trade and investment by providing security to those with financial surpluses and extending credit to those with deficits. However, with the rapid pace of economic advancement and the expansion of modern banking practices, disputes between banks and their customers have surged. Consequently, nations have sought legal remedies to address these issues within their legal frameworks.

Some countries have acknowledged the distinct nature of these disputes and established specialized judicial bodies to handle them, such as the Economic Court in Egypt and similar institutions elsewhere. Conversely, others have failed to recognize the unique characteristics of such disputes.

In Algeria, recognizing the inadequacy of both conventional and administrative judicial systems to effectively address these disputes due to their complexities within the commercial and banking sectors, Law 22/13 delineated the jurisdiction for resolving banking disputes to two distinct judicial entities: the commercial division of the court and the specialized commercial court. The legislator stipulated specific procedures to ensure the proper dispensation of justice within each of these bodies.

To what extent has the Algerian legislator, by amending the Code of Civil and Administrative Procedures according to Law 22/13, succeeded in establishing an effective system for resolving bank disputes?

To address this question, we adopted both the descriptive and analytical approaches, examining the legal provisions outlined in Law 22/13 and analyzing them to ascertain the stance taken by the Algerian legislature. Furthermore, we employed a comparative approach by juxtaposing the amended texts with their pre-amendment counterparts and referencing comparative legislation where applicable. To structure our discussion effectively, we opted to divide the topic into two distinct sections.

2. Bank dispute

To grasp the essence of a banking dispute, we endeavor to articulate its concept and subsequently emphasize the unique characteristics that set it apart from other types of disputes.

2.1 Definition of bank dispute

Before delving into the definition of a banking dispute, it is essential to clarify the terms "**conflict**" and "**dispute**." Conflict refers to a state of discord between conflicting parties arising from disparities and incompatibilities in interests or from a lack of clear understanding and resolution, impacting the actions and goals of the involved parties. On the other hand, a dispute signifies the progression of a conflict to a stage where it has been formally presented to competent bodies authorized to adjudicate upon it according to legal provisions². In broader terms, a dispute encompasses a range of conflicts that may be brought before the judiciary for resolution³.

Indeed, from the term "dispute," it is evident that it entails an adversarial process. It encompasses any endeavor involving the presentation of a real situation to an

² Salmi Warda, Lectures on the course of Economic Conflicts, University of the Fraternity Mentouri, Constantine 1, Faculty of Law, June 5, 2023, p. 05.

³ Beljoudi Ahlam, a presentation entitled The Privacy of Disputes of an Economic Nature, National Forum on Mechanisms for Settlement of Disputes of an Economic Nature in Algeria between Texts and Reality, Faculty of Law and Political Sciences, Mohamed Siddiq Bin Yahya Jijel University, November 8-9, 2016, p. 06.

impartial and morally upright individual who possesses the qualifications to apply legal principles on behalf of the judiciary. This activity necessitates the resolution of a specific conflict through legal means.⁴ Banking disputes generally refer to conflicts between banks and their customers stemming from various banking transactions. Typically commercial, these disputes arise due to the nature of banking activities and may pertain to issues such as interest rates, unpaid loans, or deposit-related matters.

Over time, banking disputes have seen significant growth, particularly with the economic expansion of countries like Algeria, which have embraced foreign and joint banks, thereby broadening the scope of banking investments. This has led to the active participation of numerous international banks alongside domestic ones in Algeria's banking landscape.⁵ Decision 24/01 determined the list of banks and the list of financial institutions accredited in Algeria until January 2, 2024.⁶

This category is commonly known as banking litigation, encompassing all conflicts arising between banks and their clients that are brought before various levels of legal proceedings. These disputes can range from matters concerning interest rates to other issues related to banking transactions. Banking disputes are notably complex due to the intricate nature of banking operations conducted by financial institutions.⁷ Finally, it can be said that there is no specific definition for a banking dispute, but it can be defined as “that dispute arising from the practice of banking business in which the bank is a party to the dispute, and this dispute is raised before persons or an institution seeking to resolve this existing dispute.”

The development of the economy has led to a huge amount of commercial, financial, and banking transactions, which have contributed to the emergence of disputes between the parties contracting with banking financial institutions, as these banking issues arising from the bank's practice of its business, such as opening accounts and issuing letters of guarantee, lead to the emergence of several disputes, whether Between the bank and the customer, or between banks among themselves, and these disputes may lead to a request to take temporary measures, for example, against the bank or the customer, in addition to a final decision on the subject of the dispute.⁸

2.2 Types of Banking Disputes

Disputes involving banks encompass all conflicts arising from the provision of banking services or operations conducted by banks with their clientele. As delineated by the legislator in Law 22/13, these disputes can be categorized into two distinct types: disputes between banks and financial institutions with merchants, and disputes between

⁴ Salmi Warda, Ben Mohamed Sarah, Conflict of an Economic Nature in the Algerian Legal System, Journal of Legal Studies, Yahya Fares Medea University, Algeria, Volume 09, Issue 02, June 2023, p. 355.

⁵ Benstoul Abderahmane, a presentation entitled Judicial Experience as a Means of Investigation for the Administrative Judge to Resolve Banking Disputes, presented as part of the activities of a study day entitled Judicial Experience in the Banking Field, Constantine Judicial Council in coordination with the Association of Judicial Experts - Constantine -, p. 09.

⁶ Bank of Algeria, Algeria, Decision No. 24/01 dated Jumada II 20, 1445 corresponding to January 2, 2024, including the publication of the list of banks and the list of accredited financial institutions in Algeria, Issue No. 12, year 61, dated Tuesday, Shaaban 10, 1445 corresponding to For February 20, 2024 AD, p. 30.

⁷ Fadhli Lazhar, the role of banks and financial institutions in coordinating with judicial experts in banking disputes, an intervention presented during a study day at the Setif Judicial Council entitled Judicial Experience in the Banking Field, on 09/26/2022, p. 05.

⁸ Hammam Muhammad Fahd Al-Araj, Arbitration in Banking Facilities Contracts - A Comparative Study -, Master's thesis, Al-Quds University, Palestine, 2017, p. 34.

banks and financial institutions with non-merchant customers⁹. Subsequently, we will elucidate the definitions of both merchant and non-merchant customers.

2.2.1. Distinguishing between the merchant and non-merchant bank customer

Commercial bank clients vary between merchants and non-merchants and also include natural and legal persons. The guarantees that banks provide to the customer vary according to his or her capacity. For example: The bank guarantee for a non-merchant customer is limited to a bank guarantee, in the form of installment sales, and it also takes the form of credit cards. However, if the client is a merchant, so here bank guarantees take another form, represented by documentary credits and letters of guarantee, as a distinct form of guarantee. But how can we distinguish between a merchant client and a non-merchant?

- Non-merchant banking customer: He is every natural or legal person who does not have the status of a merchant, whether he is a man or woman, a citizen or resident of the country. The non-merchant customer is not required to be of legal age, so it is permissible to create an account or conduct a banking transaction for a minor, a distinguished boy, or a person under interdiction. Through the guardian, custodian, or guardian. As for legal persons that do not have the status of a merchant; It organizes associations, institutions, endowments, and others that engage in activities that do not seek to achieve profit.
- The banking customer from the category of merchants: He is the natural or legal person who practices commercial business and seeks to make a profit. Registration in the commercial register is evidence of commercial status.¹⁰

2.2.2. The Algerian legislator's division of banking disputes:

- Disputes between banks and financial institutions with merchants:

These are those disputes that arise between financial and banking institutions and their customers who have merchant status only, as a direct result of banking operations regulated by laws, especially Law No. 09-23, dated June 12, 2023, which includes the Monetary and Banking Law, and Among the disputes with merchants we find disputes that are mainly related to deposits of funds, interest rates, unpaid loans and arbitrary clauses in contracts.¹¹

These disputes fall under the purview of the Specialized Commercial Court, given that the opposing party is a merchant, either by nature of their activities or by legal designation. In such instances, the dispute is deemed commercial due to the status of banks and financial institutions as commercial entities, mandated to operate in the form of joint-stock companies.¹²

⁹ Abdullah Linda, the extent to which disputes of an economic nature need a specialized judiciary, an intervention presented within the activities of the National Forum on mechanisms for settling disputes of an economic nature in Algeria between texts and reality, Faculty of Law and Political Science, Mohamed Siddiq Ben Yahya Jijel University, on 08-09 November 2016, p. 26.

¹⁰ Ibrahim bin Salem Al-Hubaishi Al-Juhani, Legal Regulation of Bank Customer Guarantees (An Applied Study in the Saudi System), Spirit of Laws Journal, Faculty of Law, Tanta University, Issue 81, January 2018, p. p. 11-10

¹¹ Shatatha Lina Ben Salem Ahmed Abdel Rahman, The Specialized Commercial Court in Algeria between consecration and manifestations of legal framing (a study in light of Law No. 13-22), Journal of Law and Environmental Sciences, Volume 02, Issue 03, 13-12-2023, p. 137.

¹² Hanan Mazza, Saeed Bouqrour, The Legal System of the Specialized Commercial Court, Journal of Comparative Legal Studies, Volume 09, Issue 01, 06-11-2023, p. 275.

- Disputes of banks and financial institutions with non-merchants:

In such disputes, the opposing party to the bank or financial institution is a civilian individual lacking merchant status. Hence, jurisdiction lies with the court, either before its civil or commercial division, based on the plaintiff's preference. This is because the relationship in question is of a mixed nature, given that the bank is invariably viewed as a commercial entity.¹³

To ascertain the appropriate judicial authority in this scenario, we consider the status of the defendant:

- ✓ If the bank or financial institution acts as the plaintiff and the defendant is a civilian individual (the consumer), jurisdiction to adjudicate the consumer dispute lies with the Civil Division, not the Commercial Division. This remains applicable even if the plaintiff (the bank or financial institution) initiates legal proceedings before the Commercial Division despite the inability to challenge the lack of specific jurisdiction.
- ✓ If the financial institution serves as the defendant and the civilian consumer acts as the plaintiff: Banks and financial institutions are deemed commercial entities based on their corporate structure (as joint-stock companies), and their operations are classified as commercial endeavors by nature.

From this perspective, the general principle dictates that jurisdiction lies within the Commercial Court. However, considerations arise regarding the potential burden imposed on the consumer plaintiff or customer, for whom the matter is deemed civil, by obliging them to seek redress from a commercial judiciary. In line with established legal precedent, the consumer plaintiff or civil party retains the right to opt between initiating their lawsuit before the civil court or the commercial court, consistent with the practices observed within the French judiciary.

In Algeria, the choice between the civil and commercial divisions is not permitted, as the Algerian legislature has expressly forbidden such an option within regional jurisdiction. Moreover, this prohibition extends to specific judicial jurisdictions, which are deemed integral to public order, as outlined in Article 45 BC, which deems any condition granting jurisdiction. Transferring jurisdiction territorially by a non-competent judicial authority is only permissible among merchants. Therefore, the civilian plaintiff (the consumer) submits their lawsuit to the Commercial Department under the provisions of Article 531 of the Civil and Administrative Procedures Law and its subsequent clauses, adhering to the overarching legal principles.¹⁴

3. The specificity of the banking dispute

Banking disputes exhibit a distinctiveness discernible across various dimensions, whether concerning their subject matter, involved parties, or inherent traits. Below, we outline the key facets that delineate the unique nature of privacy in banking disputes, prompting the call for specialized bodies and procedures to address them.

3.1 In terms of parties to the bank dispute

For a dispute to be categorized as a banking dispute within the judicial realm, it must exhibit certain defining characteristics. Foremost among these is its predominantly banking nature, entailing conflicts arising between either two banks or a bank and one

¹³ Ibid., p. 275.

¹⁴ Hajj bin Ali Muhammad, *The Importance of the Commercial Section for Considering Consumer Disputes in Light of the Civil and Administrative Procedures Law 08/09*, Academy for Social and Human Studies, Issue 09, 2013, p. 67.

of its clients, whether domestic or international. Such disputes often stem from commercial relationships that involve a foreign element, further underscoring their banking nature.¹⁵

3.1.1. Definition of banks and financial institutions

A- Banks: The Algerian legislator, in Ordinance 11/03, opted not to provide a specific definition for "**bank**," mirroring various Arab and Western legal frameworks, instead focusing solely on defining the Bank of Algeria. This decision reflects the inherent challenge in formulating a comprehensive definition for banks, given the diversity and ongoing evolution of their operations.¹⁶ According to Article 75 of Law 09/23, banks are considered legal persons whose function is to carry out the operations mentioned in Articles 68 to 70, 72, 76, and 77.

By referencing these articles, it becomes evident that banks engage in three primary activities as part of their regular operations: accepting deposits from the public, extending loans, and providing customers with various payment methods, along with their management.

Furthermore, banks are authorized to conduct all additional operations associated with their core banking or affiliated activities, as delineated in Article 79. These include currency exchange transactions, dealings involving gold, metals, and precious metals, as well as handling negotiable instruments and various financial products. Additionally, banks are empowered to purchase, subscribe to, manage, safeguard, and sell such instruments, alongside offering consultation and assistance in property management and financial advisory services. Moreover, they may provide services aimed at easing the establishment and growth of institutions and infrastructure, within the constraints specified by the Monetary and Loan Board.¹⁷

B - Financial institutions: Upon revisiting the Monetary and Loan Law, it becomes apparent that the Algerian legislature refrained from providing a specific definition of financial institutions. Instead, it characterized them based on their functions. According to Article 71 of the law, financial institutions are barred from receiving external funds and managing or providing means of payment to their clients. However, they are permitted to undertake all other operations.¹⁸ Hence, financial institutions are legal persons whose mission is to carry out banking business except receiving money from the public and managing means of payment or placing them at the disposal of customers, which means that these financial institutions lend but without using the funds of others, and therefore the primary source of financing for these institutions is limited to their capital. Contribution loans and long-term savings, and can also carry out various other operations mentioned in Article 79.

It is notable to mention that Article 93 of the Monetary and Loan Law mandates the Governor of the Bank of Algeria to maintain an up-to-date roster of banks and financial institutions. These lists are required to be published annually in the Official

¹⁵ Ahmed Mustafa Al-Dabousi Al-Sayyid, *Arbitration in Banking Transactions between Reality and Aspirations, A Comparative Analytical Study*, First Edition, Dar Al-Wafa Legal Library, 2015, p. 127.

¹⁶ Hawalif Abdel Samad, *Lessons in Algerian Banking Law*, Faculty of Law, Abu Bakr Belkaid University of Tlemcen, 2017/2018, p. 05.

¹⁷ Bakoush Lakhmisi, *Lectures on Banking Law for First-Year Master of Business Law Students*, Part One, Faculty of Law, University of M'sila, p. 18.

¹⁸ Qsantini Hadda Sabrina, Samar Nasr al-Din, *The regulatory framework for banks and financial institutions in Algeria*, Afaq Journal for Research and Studies, Volume 06, Issue 02, 07-31-2023, p. 304.

Gazette of the People's Democratic Republic of Algeria. Additionally, any amendments to these lists must also be published following the same formalities, including the prescribed forms and procedures.¹⁹

3.1.2. Distinction between banks and financial institutions

Due to the cohesive legal framework regulating both banks and financial institutions, there frequently exists an overlap between them, making it challenging to discern their distinctions. Here, we endeavor to briefly elucidate the similarities and variances between them by examining the following elements:

Similarities:

- ✓ They both aim to achieve almost the same goals as seeking development and progress in the economic field.²⁰
- ✓ The legislator has provided both banks with identical procedures for establishment, as outlined in the text of Article 82 and subsequent provisions.

Banks and financial institutions bear the same obligations, which can be summarized as follows:

- ✓ Preventing the opening of any account or any financial transaction with false, incomplete, or ambiguous names
- ✓ Commitment to respect the confidentiality of information and non-disclosure²¹

Differences:

- ✓ The primary difference between banks and financial institutions lies in the operations they are authorized to undertake. Certain operations are exclusive to banks, while others are conducted by both banks and financial institutions alike.
 - *Operations authorized to banks:* The Monetary and Loan Law has authorized banks to carry out all the operations outlined in Articles 66 to 68, namely receiving funds from others, loan operations, placing means of payment at the disposal of their customers, and managing them.²²
 - *Operations authorized for financial institutions:* The Monetary and Loan Law explicitly prohibited financial institutions from receiving money from the public, managing means of payment, and placing them at the disposal of their customers, and permitted them to conduct other banking operations.²³
- ✓ Another difference between banks and financial institutions arises in terms of their funding sources.²⁴ While commercial banks rely on the funds of others to finance industrial projects, financial institutions rely on their resources to finance investment projects.
- ✓ Moreover, financial institutions are prohibited from opening bank accounts for

¹⁹ Order No. 03/11 dated 27 Jumada al-Thani 1424 corresponding to August 26, 2003, relating to cash and loans, Part No. 52, Year 40, dated 28 Jumada al-Thani 1424 corresponding to August 27, 2003, p. 03.

²⁰ Abdullah Al-Obaidi Raed Abdul Khaleq and Al-Mashhadani Khaled Ahmed Farhan, *Management of Financial and Banking Institutions*, Dar Al-Ayyam for Publishing and Distribution, Amman, Jordan, 2015, p. 27.

²¹ Qsantini Hadda Sabrina and Samar Nasr al-Din, previously mentioned reference, pp. 307-308.

²² See Articles 66 and 70 of Order No. 03/11 containing the amended and supplemented Monetary and Loan Law.

²³ See Article 71 of Order No. 03/11 containing the amended and supplemented Monetary and Loan Law.

²⁴ Zuleikha Himer, *The regulatory framework for the banking institution in Algerian legislation*, an intervention presented within the activities of the virtual international forum entitled "The Role of Banks in Protecting People and the National Economy from Banking Crimes," Faculty of Law, University of Algiers 1, on November 30 and December 1, 2022, p. 131.

- the benefit of their customers at the level of their windows under any form.
- ✓ In addition, commercial banks are subject to more stringent rules commensurate with the functions assigned to them, and this is evident through²⁵ the minimum capital required to establish a bank is set at **twenty billion Algerian dinars**,
 - ✓ whereas the minimum capital for establishing a financial institution is **six billion five hundred million Algerian dinars**. This variance in minimum capital is attributed to the higher risks typically encountered by commercial banks compared to financial institutions.
 - ✓ Additionally, the minimum capital requirement for banks serves as a safeguard for the interests of depositors, aiding in mitigating the risks inherent in the operations of a commercial bank.²⁶
 - ✓ Banks are also obligated to participate in the bank deposit guarantee system, which aims to provide compensation to depositors in the event of their loss.
 - ✓ Banks operating within Algeria are required to open a current and credit account with the Bank of Algeria to conduct clearing operations.

3.2. Conditions for establishing banks and financial institutions

Banking activity is distinctive when compared to other endeavors, be they civil or commercial. This uniqueness is evident in the conditions and obligations imposed on banking institutions, beginning from their establishment and extending throughout the process of acquiring the authorization to conduct their operations.²⁷

3.2.1. Objective conditions

Banking institutions must take a certain form, possess a minimum amount of capital, and stipulate conditions for their management.²⁸

The legal form of the banking institution: By the definition of a bank as a legal entity primarily engaged in banking activities, the legislator has entirely prohibited natural persons from conducting banking operations.

Referring to the provisions outlined in Article 83 of Order 03/11, it is evident that the legislator did not leave room for flexibility, mandating that banking institutions adopt the structure of a joint-stock company, considering the significant capital they can mobilize. However, an exception to this requirement is provided, allowing banking institutions to adopt the form of a mutual aid association, as exemplified by the Agricultural Cooperation Fund.²⁹

Capital: Due to the specificity of banks and financial institutions, the legislator excluded them from the application of the general provisions regarding founding capital,³⁰ as shareholders wishing to establish a bank or financial institution must possess a minimum capital as follows: **20 billion dinars for banks, 06 billion and 500 million dinars** for financial institutions, and **500 million dinars** for savings and loan cooperatives, and this amount must be completely released and in cash upon establishment.³¹

²⁵ Ali Gamal El-Din Awad, *Bank Operations from a Legal Perspective*, The Legal Library, Egypt, 1993, p. 27.

²⁶ Hawalif Abdel Samad, previously mentioned reference, p. 05

²⁷ Zuleikha Himar, previously mentioned reference, p. 131.

²⁸ Bakhoush Khamisi, previously mentioned reference, p. 13.

²⁹ Tabbaa Najat, *The specificity of the legal system for banking activity*, a memorandum for obtaining a master's degree in private law, specializing in economic reform law, University of Jijel, Faculty of Law, 11-02-2006, p. 08.

³⁰ Zuleikha Himer, *ibid.*, p. 132.

³¹ Qsantini Hadda Sabrina, Samar Nasr al-Din, previously mentioned reference, p. 312

Contributors and directors: Managers of banks and financial institutions shoulder significant responsibilities to ensure the success of banking activities. According to regulations, there must be a minimum of two individuals among the principal shareholders who guide the actual course of the bank or financial institution's operations. Additionally, a strong core team must be constituted of all principal shareholders, who are required to possess competence and experience in the banking and financial sectors. Moreover, the legislator mandates that managers possess the necessary qualifications to fulfill their duties effectively, thus safeguarding the interests of the bank's customers against potential losses.³²

3.2.2. Formal conditions

Merely fulfilling the aforementioned objective criteria is insufficient for a bank to attain the status of a merchant. It is also necessary to satisfy certain formal requirements, which include:

Licensing: To establish a bank, or financial institution, or to inaugurate a branch of a foreign bank or financial institution, Article 89 of Law 09/23 stipulates the necessity of obtaining a license from the Monetary and Banking Council. This is contingent upon the submission of a dossier containing the elements outlined in Article 03 of Regulation No. 02/06, which pertains to the prerequisites for establishing a bank or financial institution.³³

Licensing refers to “the preliminary authorization granted by the competent authority in response to the investor's application to establish their banking project. This approval permits the establishment of the project but prohibits the commencement of banking operations until all other requisite procedures outlined by the law are completed”. Licensing occurs either upon initial establishment or in the event of structural modifications to the bank or financial institution.³⁴

Registration in the commercial register: Since the legislator has mandated that banks and financial institutions must be established in the form of a joint-stock company and has not exempted them from registration procedures in the commercial registry like the Central Bank, they are bound by all the regulations applicable to legal entities governed by commercial law. Additionally, the legislator has outlined in the law concerning the conduct of commercial activities the provisions that apply to them. Every individual or entity intending to engage in commercial activities must be enrolled in the commercial registry. Upon registration, they are authorized to conduct commercial activities, except for regulated professions that necessitate obtaining a license or accreditation alongside registration in the commercial registry.

Therefore, banks and financial institutions are required to register in the commercial registry. However, their ability to operate freely and effectively is contingent upon fulfilling the necessary procedures to obtain a license and accreditation, as outlined in Article 4 of Law No. 04-08.³⁵

Accreditation: Article 92 of the Money and Loan Law specifies that following the acquisition of a license as per Article 91, “a company under Algerian law has the opportunity to establish itself and apply for accreditation as either a bank or a financial

³² Bakhoush Khamisi, previously mentioned reference, p. 14.

³³ Zuleikha Himar, previously mentioned reference, p. 134.

³⁴ Bakoush Khamisi, *ibid.*, p. 15.

³⁵ Belazam Mabrouk, lectures on banking law, delivered to first-year students of the Master of Business Law, University of Mohamed Lamine Debaghine, Setif, 2016/2017, p. 09.

institution, depending on the circumstances.”³⁶

Accreditation is the formal process through which an institution is required to seek approval from the relevant authority to be recognized as a bank or financial institution, or as a branch of a foreign bank or financial institution, enabling it to conduct banking operations. This process follows the acquisition of a license from the Monetary and Banking Council and registration in the commercial registry.

Following the acquisition of the license, a dossier must be submitted to the Governor of the Bank of Algeria, as per Article 100 of Law 09/23, to obtain accreditation. The Governor of the Bank of Algeria grants this accreditation through a decision, which is subsequently published in the Official Gazette.

The file containing the application for obtaining accreditation must be submitted to the Governor of the Bank of Algeria, accompanied by documents proving the fulfillment of the conditions set by the license issued by the Monetary and Loan Board, within a maximum period of 12 months from the date of notification of the license.³⁷

Based on the above, accreditation is an exceptional procedure for carrying out a commercial transaction, and this highlights the specificity of banking activity.³⁸

3.3. Regarding the Subject Matter of Banking Disputes: Specifics of Banking Activity

Banks and financial institutions have emerged as the cornerstone of national economies, facilitating project financing and commercial transactions alike. This is achieved through a range of services collectively known as "banking operations," which form the essence of banking activity. It is the unique nature of this banking activity that imparts a distinct character to banking disputes.³⁹

3.3.1. Types of banking operations

The Algerian legislator, through Order No. 11/03, stipulated banking operations and divided them into two categories:

Basic banking operations:

✓ Receiving funds from the public:

The Monetary and Loan Law delineates funds received from the public as those obtained from external sources, particularly deposits, which can be utilized for the recipient's benefit. Nonetheless, the legislator has exempted certain types of funds obtained from external sources. These exemptions include funds held or remaining in accounts belonging to shareholders owning a minimum of five percent of the capital, as well as funds received by members of the Board of Directors and executives, along with shareholding loan funds (refer to Article 67 of Order 03/11, which contains amendments and supplements to the Monetary and Loan Law).

A money deposit can be defined as a contract that authorizes the bank to own the deposited money and dispose of it in a manner consistent with its activity and its obligation to return a similar amount to the depositor.⁴⁰

✓ Loan:

³⁶ Qsantini Hadda Sabrina, Samar Nasr al-Din, previously mentioned reference, p. 311.

³⁷ Belazam Mabrouk, previous reference, p. 36.

³⁸ Bakoush Khamisi, previously mentioned reference, p. 16.

³⁹ Arab Ahmed, Independent Administrative Authorities in the Banking Field, a dissertation for obtaining a master's degree in law, branch: Business Law, Faculty of Law, M'hamed Bougara University, Boumerdes, 2006-2007, p. 73.

⁴⁰ Tabaa Najat, previously mentioned reference, p. 02.

According to the Monetary and Loan Law, a financial transaction is defined as any action, conducted in exchange for compensation, whereby one individual pays or commits to paying money to another individual, or grants the other party an obligation to sign in their favor, such as a reserve guarantee (refer to Article 68 of Order 03/11), a loan, is an agreement between the bank and the customer that the bank pays a specific amount either to this customer or any person it appoints, with freedom to dispose of it if it is not agreed to specify a specific purpose for the loan.⁴¹

✓ **Payment methods:**

Payment methods are the tools that enable everyone to transfer money, regardless of the instrument or technical method used.⁴²

Subsidiary operations:

Apart from the fundamental operations conducted regularly by banks, the law permits them to engage in subsidiary operations. These operations, while not deemed unnecessary, stem from the core activities of banks and may be executed intermittently. Examples include currency exchange transactions and the utilization of transferred values.⁴³

3.3.2. Characteristics of banking operations

Speed: Speed is known as one of the pillars of commercial work in general and banking in particular. It is one of the main components, whether in terms of dealing or in terms of resolving disputes. Over time, economic variables change, and the purchasing power of money decreases, especially when it comes to currencies.⁴⁴

The commercial nature of banking operations: Article 2 of the Commercial Law stipulates: “Any banking, exchange, brokerage, or commission operation is considered a commercial operation according to its subject.” The matter relates either to commercial operations according to the subject matter for both parties, or to mixed operations, and in both cases these operations are commercial for the bank, as the Algerian legislator considered all banking operations to be commercial operations. However, if the bank’s client is a non-merchant, the work is considered civil for him and commercial for the bank⁴⁵, for example: depositing cash deposits in the bank by a non-merchant.⁴⁶

Banking operations are based on personal consideration: Banking activity hinges on the exchange of money, built upon trust, which underscores the importance of personal assessment in banking transactions. Consequently, banks reserve the right to select their customers to prevent unfavorable entries into the banking sector. However, owing to the influence of consumer protection laws on banking regulations, certain constraints are acknowledged, ensuring essential services, such as the right to access a bank account, are available to all individuals.

The monopoly of operations by banks and financial institutions: Banking operations are licensed to be carried out by specific parties as a monopoly, as Article 76 of Order

⁴¹ Hani Dowidar, Al-Wajeez in Commercial Contracts and Banking Operations, New University Publishing House, Alexandria, 2003, p. 205.

⁴² Qsantini Hadda Sabrina, Samar Nasr al-Din, previously mentioned reference, pp. 308-309.

⁴³ See Article 69 of Order 03/11 containing the amended and supplemented Monetary and Loan Law.

⁴⁴ Al-Taher Latrash, Banking Technologies, seventh edition, Office of University Press, 2010, p. 216.

⁴⁵ Ait Ouzou Zaina, Alternative means of resolving disputes in the banking and financial field, a presentation presented within the activities of the National Forum on Mechanisms for Resolving Disputes of an Economic Nature in Algeria between Texts and Reality, Faculty of Law and Political Sciences, University of Mohamed Siddiq Ben Yahya Jijel, on November 8-09. 2016, p. 82.

⁴⁶ Abdel Haq krims, Lessons in Banking Law, First Year of Master’s - Business Law, Faculty of Law and Political Science, Jijel, p. 01.

11/03 stipulates: “It is prohibited for every natural or legal person, other than banks or financial institutions, as the case may be, to carry out the operations that those banks and institutions routinely conduct per Articles 72 to 74 above, except for disbursement operations carried out following the Council’s system.”

The characteristic of compliance in banking contracts: Due to the unique nature of bank contracts, they are typically executed through a specialized method. Customers often provide their agreement by simply endorsing the form provided by the bank, which is typically included in pre-prepared documents. The customer typically lacks the opportunity to negotiate the terms; instead, they must either accept the contract in its entirety or decline it. Consequently, some legal experts consider bank contracts to be adhesion contracts.⁴⁷

Navigating the Complexity of Banking Operations and the Challenge of Substantiating Them: Demonstrating banking transactions used to be straightforward, but the advent of electronic banking introduced challenges in providing proof. This is because such operations are conducted by customers over the Internet, without physical presence, heightening the complexity of proving them. Moreover, banking transactions present a dilemma as they clash with the principle that prohibits individuals from fabricating evidence. An illustration of this is the difficulty in proving a withdrawal made with a credit card.⁴⁸

3.3. Characteristics of Banking Disputes:

Banking disputes possess traits that render them challenging to adjudicate through regular judicial channels.

3.3.1. The complex technical nature of the banking dispute:

The majority of banking disputes revolve around technical matters, often of such intricacy that the average judge may lack comprehension, necessitating reliance on technical expertise. Judicial familiarity with the banking domain plays a pivotal role in categorizing banking disputes and facilitating the judge's understanding thereof, given their complexity.

Banking is inherently intricate, often challenging for judges to comprehend due to its specialized nature lying beyond their expertise. Consequently, banking cases demand precision, clarity, and supplementation with expert input from individuals possessing comprehensive knowledge of the banking domain and its intricacies. This ensures the formulation of fair and equitable judgments. Judicial expertise in banking endeavors to elucidate material, technical, or scientific facts for judges, whether clarifying the sequence of events, attributing responsibilities, or delineating interrelations with other factual elements.⁴⁹

However, a prevailing challenge faced in practice by all judicial authorities when adjudicating banking disputes is the scarcity of specialized experts in banking and

⁴⁷ Belkacemi Sarah, *Mechanisms for Resolving Commercial Disputes in Algerian Legislation*, a thesis submitted to obtain a third-year doctorate in law, specializing in business law, Zian Ashour University of Djelfa, Faculty of Law and Political Science, 2022/2023, p. 63.

⁴⁸ Nasser Al-Din Ben Nasser, *Banking Disputes between the Civil Part, the Commercial Part, and the Criminal Part and the Role of Expertise in That*, an intervention delivered within the activities of the forum organized by the Setif Judicial Council within the framework of the local continuous training program for judges, on the subject of judicial experience, 2022, p. 03.

⁴⁹ Hammam Muhammad Fahd Al-Araj, previously mentioned reference, p. 38.

banking techniques. Instead, accounting experts are often called upon, despite their inadequate familiarity with banking techniques.⁵⁰

3.3.2. resolving banking disputes

Due to the unique nature of banking disputes, the legislator endeavored to designate specialized procedures and entities for their resolution, aiming to circumvent the drawbacks associated with conventional judiciary processes, such as procedural complexity, delays, and the lack of judicial specialization, which may impede the attainment of justice. Below, we delve into the entities entrusted with adjudicating banking disputes as per Law 22/13, followed by an exploration of the procedures devised to address these disputes.

The competent bodies to decide on the banking dispute: Following the recent amendment to the Law of Civil and Administrative Procedures, the Algerian legislator established the Specialized Commercial Court, endowing it with exclusive jurisdiction over certain disputes, including those involving banks and financial institutions with merchants. Meanwhile, disputes of a commercial nature, excluding those involving merchants, fall under the jurisdiction of the commercial division of the court. Consequently, the commercial division is responsible for adjudicating disputes involving banks and financial institutions with non-merchants.

3.2.2.1. Commercial Section

✓ Its formation:

Under Law No. 08-09, the composition of the commercial department was collective. However, recent amendments under Law No. 22-13 have led to changes in its structure. To examine this new development in the composition of the commercial department, we will divide this aspect into two parts:

1. Individual Judge in the Commercial Section: As stipulated in Article 533 of Law No. 08-09:⁵¹ “The Commercial Section shall consist of a chief judge and two assistants who are familiar with commercial matters, and who shall have an advisory opinion, who shall be chosen per the texts in effect.”

However, this article was amended by Law No. 22-13,⁵² to become as follows: “The Commercial Division shall be composed of a single judge.”

Indeed, the Algerian legislator has implemented a change in the composition of the Commercial Department. Previously collective, it has transitioned to an individual structure. This adjustment aligns with the department's new focus on handling straightforward commercial disputes.

2- Abolishing the assistants from the composition of the Commercial Department: According to the previous composition of the Commercial Department, the judge is assisted by two assistants who are appointed in accordance with Decree No. 72/60, as Article 2 of it stipulates that the assistants are appointed by the governor of the state in which the court's headquarters is located.⁵³ However, after Law No. 08-09 was amended by Law No. 22-13; We note that the Algerian legislator abandoned the

⁵⁰ Nasser al-Din bin Nasser, previously mentioned reference, p. 24.

⁵¹ Bouzbouja Hussein, Hussein Muhammad, Judicial Experience in the Banking Sector, Journal of International Law and Development, Volume 10, Issue 02, 04/27/2023, p. 463.

⁵² Nasser al-Din bin Nasser, *ibid.*, p. 19.

⁵³ Algeria, Law No. 08/09 dated 18 Safar 1429 corresponding to February 25 2008, including the Code of Civil and Administrative Procedures, No. 21, Year 45, dated 17 Rabi' al-Thani 1429 AH. Corresponding to April 23, 2008 AD, p. 03.

assistant before the commercial department, who had only an advisory voice, and replaced him with the mediator.

✓ **Its specializations:**

The Algerian legislator has curtailed the authority of the commercial section of the court. Presently, it adjudicates all commercial disputes except those delineated in Article 536 bis, which are under the jurisdiction of the specialized commercial courts⁵⁴, as Article 531 of Law No. 08/09 stipulates that the commercial section has jurisdiction over commercial disputes. And, when necessary, in maritime disputes, according to what is stipulated in the commercial law, the maritime law, as well as special texts. Respecting the provisions of Article 32 of the same law, after the issuance of Law No. 22/13, Article 531 stipulated the following: “The Commercial Department is competent to consider commercial disputes, except for those mentioned in Article 536 bis of this law.”

It is observed that the jurisdiction of the Commercial Department does not explicitly enumerate the specific disputes it encompasses. Rather, the reference is made solely to the article outlining the issues outside the purview of the Commercial Department.⁵⁵ In terms of the violation, since the disputes of banks and financial institutions with merchants⁵⁶ are within the jurisdiction of the Specialized Commercial Court, the Commercial Department has the jurisdiction to adjudicate disputes of banks and financial institutions with non-merchants.

3.2.2.2. The Specialized Commercial Court

Paragraphs 09, 08, 07, and 10 of Article 32 of the Civil and Administrative Procedures Law 08-09, pertaining to specialized judicial poles and their jurisdiction, were annulled according to Article 14 of Law 22-13 after the establishment of specialized commercial courts by the legislator, as outlined in Law 22-07 concerning judicial division. The jurisdiction, composition, and procedural guidelines for handling disputes before these courts are governed by Articles 536 bis to 536 bis 7.⁵⁷ The latter is distinguished from other judicial bodies in terms of its composition (first) as well as the type of disputes it is concerned with (second).

✓ **The formation of the specialized commercial court**

The formation of the Specialized Commercial Court involves several departments, each overseen by a judge who is supported by four assistants possessing expertise and familiarity with commercial affairs, whose opinions carry deliberative weight. In instances where one assistant is absent, the Commercial Court may convene effectively. However, if two or more assistants are absent, they are substituted by one or two judges,

⁵⁴ Algeria, Law No. 13-22 dated Dhu al-Hijjah 13, 1443 corresponding to July 12, 2022, amends and supplements Law No. 08/09, dated Safar 18, 1429, corresponding to February 25, 2008, which includes the Civil and Administrative Procedures Code, Issue No. 48, Year 59, dated On Sunday 18 Dhu al-Hijjah 1443, corresponding to July 17, 2022, p. 03.

⁵⁵ Algeria, Ministry of Justice, Decree No. 72/60 dated 06 Safar 1392 corresponding to March 21, 1972, relating to the conduct of courts in commercial matters, Part No. 25, ninth year, dated 13 Safar 1392 corresponding to March 28, 1972, p. 364.

⁵⁶ Fatima Al-Zahra Koudari, developments in the Algerian judicial organization - a study in light of the legislative and regulatory texts issued in 2022, Journal of the Department of Legal and Political Research and Studies, Volume 07, Issue 02, 2023, p. 06.

⁵⁷ Sadiki Abdelkader, Means of Amicable Settlement of Commercial Disputes According to Law No. 22/13 Amending and Supplementing the Law of Civil and Administrative Procedures, Academic Journal of Legal and Political Research, Ammar Thilidji University, Laghouat, Volume 06, Issue 02, 2022, p. 68.

and a presiding officer is designated. The determination of the divisions' number within the Specialized Commercial Court is made by decree, following consultation with the Public Prosecutor, taking into consideration the nature and extent of judicial proceedings.⁵⁸

Organic Law No. 22-10, which established specialized commercial courts, was prompted by the evolving commercial and economic landscape, accompanied by the emergence of novel dispute types necessitating specialized resolution. This specialization is manifested in the composition of these courts. The legislator transitioned from a system comprising a single judge and assistants versed in commercial matters, whose input was merely advisory and appointed by prevailing laws, to a structure comprising a judge and four assistants possessing extensive expertise in commercial affairs. Their opinions carry deliberative weight, signifying that their viewpoints are integral to dispute resolution. The selection process for these individuals is subject to regulation, determined by executive decrees.⁵⁹

✓ **Its specializations:**

The Algerian legislator has opted for a degree of autonomy for the commercial judiciary in comparison to the civil judiciary. The specialized commercial court does not hold jurisdiction over all commercial matters; rather, its authority extends solely to specific matters delineated in Article 536 bis⁶⁰ to include complex disputes of a technical and international nature,⁶¹ and why these disputes among the specificities that require their assignment to specific legal frameworks and specialized judges, they are:⁶² intellectual property disputes, commercial company disputes, especially disputes between partners, as well as the dissolution and liquidation of companies, bank disputes and financial institutions with merchants, maritime disputes, air transport disputes, insurance disputes related to commercial activity, and related disputes.

In international trade, it becomes clear to us that the Commercial Court, with these jurisdictions, is an economic court because it specializes in economic disputes. Its people are economic agents.⁶³

In the context of banking disputes, which previously fell under the jurisdiction of specialized poles, Article 536 bis 03 of the BCCI expanded the scope to include financial institutions, a term of broader significance. Consequently, the Specialized Commercial Court presides over such disputes exclusively when they arise between a

⁵⁸ Salm Mebarakia Basma, Belasri Fatima, Commercial Judiciary in Algeria between Expectations and the Law, *Journal of Legal and Political Thought*, Volume 07, Issue 01, 05/15/2023, p. 1183.i Warda, Bin Muhammad Sarah, previously mentioned reference, p. 364.

⁵⁹ Mammar kouadri Muhammad, representing adversaries by a lawyer before specialized commercial courts between option and obligation, an intervention presented in the study day on the prospects and stakes in resolving commercial disputes in light of the development of specialized commercial courts, organized by the Ain Defla Judicial Council, 12/18/2022, p.02.

⁶⁰ Sardou Mahmoud, specialized commercial courts in confronting the development of commercial transactions, an intervention within the framework of a study day on: "Prospects and stakes in resolving commercial disputes", Ain Defla Judicial Council in partnership with the Faculty of Law, Djilali Bounaama University, Khamis Miliana, on December 18, 2020, p. 05 -06.

⁶¹ Ben Toumi Zahra, powers of the President of the Specialized Commercial Court and litigation procedures before it, an intervention presented during a study day on commercial courts specialized in civil and administrative law procedures, organized by the Setif Judicial Council in partnership with the Organization of Lawyers of the Setif District, p. 03.

⁶² Hajj bin Ali Muhammad and Maghribi Kouider, Towards a specialized Algerian commercial judiciary, *Journal of Law and Political Sciences*, Abbas Lagrou Khenchela University, Issue 09, January 2018, p. 67.

⁶³ Ben Azouz Fatiha, the repercussions of creating a commercial judiciary in Algeria, *Journal of Law and Political Science*, Volume 09, Issue 01, 03/08/2023., p. 238.

bank or financial institution and a merchant.⁶⁴ The French legislature set two standards that must be met for commercial courts to have jurisdiction, one of which is personal and the other is objective.

The personal criterion is manifested in the occupational status of the disputing parties, discerning whether they are merchants, manufacturers, or other professionals. Conversely, the objective criterion pertains to the nature of the dispute itself, determining whether it pertains to commercial matters or falls outside that scope.⁶⁵

The legislator has transferred numerous commercial disputes previously under the jurisdiction of the Commercial Department to the purview of the Specialized Commercial Court. This decision stems from the significance of these disputes and their requirement for adjudication by specialized judges and dedicated judicial bodies, given the intricate complexities associated with them.⁶⁶

It is noteworthy that legal representation by a lawyer before specialized commercial courts is not obligatory, as these courts function as courts of first instance. According to Article 14 of the ICC, the initiation of a lawsuit before the court may be undertaken by the plaintiff, their representative, or their legal counsel. Furthermore, there exists no contradictory provision in this regard.⁶⁷

About either Law 22-13 or the Judicial Organization Law, there is no provision mandating adversaries to be represented by a lawyer before the specialized commercial courts. Instead, the matter is left to the discretion of the parties involved, akin to courts of first instance. In contrast, the French legislator mandates legal representation in disputes before commercial courts if the dispute's value exceeds 10,000 euros. Regarding the appeal process for rulings issued by the Specialized Commercial Court, Article 536 bis 5 of Law No. 22-13 dictates that such rulings shall be appealed before the Judicial Council according to the rules outlined in this law.⁶⁸

This raises the question: ***Is it effective to appeal rulings issued by a commercial court specialized in commercial disputes before a non-specialized judicial body?*** The head of a department within the Specialized Commercial Court may, in instances of urgency, institute temporary or precautionary measures to safeguard the rights under contention in the dispute.⁶⁹ Among the urgent lawsuits brought before the Specialized Commercial Court, we encounter, for instance, cases about disputes between banks financial institutions, and merchants. These may include objection requests aimed at facilitating payment for lost checkbooks.⁷⁰

4. New procedures for resolving bank disputes

The uniqueness of banking disputes extends beyond their inherent characteristics and the establishment of specialized bodies with their respective compositions. It also

⁶⁴ Dr. Sardo Mahmoud, Ibid, p. 03.

⁶⁵ Masoudi Abdel Aziz, an intervention on the specific and regional jurisdiction of specialized commercial courts, Lawyer Magazine, No. 38, 2023, p. 54.

⁶⁶ Muammar kouadri Muhammad, Ibid, p. 08.

⁶⁷ Bentoumi Zahra, Ibid, p. 08.

⁶⁸ See the second paragraph of Article 536 bis 06.

⁶⁹ Saoudi Zohir, Ordinary Urgent Judiciary, Voice of Law Magazine, Khamis Miliana University, Volume 7, Issue 01, 2020, p. 705.

⁷⁰ Defria Lydia Fatima, Alternative Means of Resolving Disputes of an Economic Nature, Algerian Journal of Legal and Political Sciences, Mouloud Mammeri University of Tizi Ouzou, Faculty of Law and Political Sciences, p. 304.

encompasses the judicial procedures prescribed by the legislator for resolving such disputes. Specifically, the legislator has outlined procedures that must be adhered to to resolve. These procedures include reconciliation and mediation, which were originally optional methods. However, the legislator deviated from this norm in Law 22/13.

4.1. Mediation before the Commercial Department

Mediation stands as a pivotal alternative method employed in dispute resolution, particularly in civil and commercial contexts, of which banking disputes constitute a significant subset. It is commonly applied to disputes arising between banks and their clients during various banking transactions, to seek compromise solutions.⁷¹ The tasks of the banking mediator are limited to dealing with disputes presented to him by banks and their clients that are not permissible for arbitration or conciliation, and that are not related to public order, such as disputes of a penal nature.⁷²

4.1.1. Definition of mediation:

In Civil and Administrative Procedures Law No. 08/09, the Algerian legislator embraced mediation as one of the alternative methods for dispute resolution. Notably, it was deemed a compulsory procedure, not contingent upon the parties' consent, in disputes brought before the Commercial Department, as stipulated in Law 22/13, which amends and supplements the aforementioned legislation.⁷³ Mediation is defined as a legal system in which the parties to a dispute choose, by agreement, a third party before or after the conflict to help them reach an amicable settlement of their dispute with suggestions and recommendations that equally achieve their interests, in matters in which mediation is permissible.⁷⁴ It can also be defined as a mechanism involving the intervention of a neutral third party in negotiations between two opposing parties. Its objective is to facilitate the convergence of their perspectives and aid them in reaching a suitable consensual settlement for their dispute.⁷⁵

4.1.2. The privacy of bank brokerage before the commercial department

In contrast to comparative legislation that introduced a dedicated banking mediation system, the Algerian legislator did not enact specific laws about this aspect. The Bank of Algeria endorsed this approach, resulting in the absence of a system formally adopting this technique. Despite this, banks often resort to mediation in practice. As a result, the mediation provisions outlined in the Code of Civil and Administrative Procedure, alongside those detailed in Executive Decree No. 09/100 of March 10, 2009, which delineates the procedures for appointing a judicial mediator, serve as the legal framework for this form of mediation.

While the intent of mediation is typically to alleviate the judiciary's caseload, the cited articles do not necessarily align with this objective. Instead, they render mediation a purely judicial process by empowering the judge to oversee it and precluding the parties' autonomy in selecting a mediator. Moreover, the requirement for initiating a lawsuit as a prerequisite for pursuing an amicable settlement contradicts the essence of

⁷¹ Bouqta Fatima Al-Zahraa, *Mediation in the Settlement of Bank Disputes*, a presentation presented within the activities of the National Forum on "Mechanisms for Settlement of Disputes of an Economic Nature in Algeria between Texts and Reality", Mohamed Seddik Ben Yahya University - Jijel -, Faculty of Law and Political Sciences, on 08-09 November 2016, p. 191.

⁷² Mebarakia Basma, Belasri Fatima, previously mentioned reference, p. 1185.

⁷³ Mebarakia Basma, Belasri Fatima, previously mentioned reference, p. 1185.

⁷⁴ Ahmed Abdel Karim Salama, *The General Theory of the Friendly Organizer for Settlement of Disputes*, first edition, Dar Al-Nahda Al-Arabi, 2013, p. 139.

⁷⁵ Kamal Fenish, *Mediation*, Supreme Court Journal, special two-day issue on alternative dispute resolution methods: conciliation, mediation and arbitration, Part Two, Lecture Hall, June 15 and 16, 2008, p. 569.

banking operations, which prioritize expediency. Even if the disputing parties desire mediation, the law restricts their ability to choose a mediator.⁷⁶

The Algerian legislator did not allow a bank dispute to be referred to mediation automatically as soon as it arose outside the judiciary, as is the case in comparative legislation. Rather,⁷⁷ it restricted the will of the two parties to a set of legal case formalities,⁷⁸ including the judge's acceptance of the case in form and before entering into the heart of its subject, presenting it.

The requirement for opponents to engage in mediation contrasts with the previous provision outlined in Article 994 of Law 08-09, which made the mediation process contingent upon the parties' consent. It would have been more prudent for the legislator to establish mediation as a voluntary agreement, akin to other comparative legislation. The intricate technical nature of banking operations is manifested in the disputes they generate, necessitating the selection of specialized individuals to conduct mediation.

The bank mediation charter in Morocco delineates mediation to a specific subset of disputes, notably excluding those arising from consumer loans, a provision mirrored in the Tunisian mediation system. Conversely, the French model adopts a more expansive approach, extending mediation to encompass savings contracts. This underscores that disputes suitable for mediation possess unique characteristics beyond conventional resolution mechanisms. Consequently, it is expected that the mediator possesses qualifications and experience, even though such requisites are not explicitly mandated by law.⁷⁹

4.2. settlement before the specialized commercial court

4.2.1. The concept of reconciliation

According to Article 459 of the Civil Code, reconciliation is characterized as a contractual agreement between two parties aimed at resolving an ongoing dispute or preventing a potential conflict by voluntarily relinquishing certain entitlements. This definition underscores three fundamental components inherent in the concept of reconciliation:

- ✓ The Existence of a Dispute: Reconciliation hinges upon the existence or potential occurrence of a significant dispute. It necessitates that a dispute, whether ongoing or impending, be present, and that no definitive judgment has been rendered on the matter. Reconciliation serves as a means to address and resolve such conflicts before a formal ruling is issued.
- ✓ The two parties must intend to resolve the dispute between them, either ending it if it exists or avoiding it if it is possible. If the two parties do not have the intention to end the dispute, the contract is not considered a settlement. Each of the reconciling parties reciprocally waived his right.⁸⁰

Considering the distinctive attributes of the reconciliation mechanism, particularly its role in alleviating the burden on litigants and fostering justice and societal harmony, the Algerian legislator, through the amendment to the Civil and Administrative Procedures Law 09/08 under Law 13/22, has mandated it as a compulsory procedure in all commercial disputes delineated in Article 536 bis. This encompasses disputes

⁷⁶ Bouqta Fatima Al-Zahra, previously mentioned reference, pp. 187-188.

⁷⁷ Bouqta Fatima Al-Zahra, previously mentioned reference, pp. 187-188.

⁷⁸ Defria Lydia Fatima, previously mentioned reference, p. 307.

⁷⁹ Mebarakia Basma, Belasri Fatima, previously mentioned reference, p. 1187.

⁸⁰ Ibid., p. 192.

involving banks and financial institutions with merchants that are adjudicated before specialized commercial courts.⁸¹

4.2.2. Conciliation Procedures of the Specialized Commercial Court

Analyzing Law 13/22 reveals that the Algerian legislator has mandated conciliation as a compulsory step in all disputes presented before the Specialized Commercial Court according to Article 536 bis 04⁸². The procedural requirements for conciliation can be outlined as follows:

- ✓ Before the opponents file their lawsuit to the Specialized Commercial Court, they must submit a request to the President of the Specialized Commercial Court requesting a settlement, either in person or through their representatives.
- ✓ The President of the Court shall act within five days from the date of submitting the request according to an order on a petition to appoint a judge to carry out the conciliation procedure.
- ✓ The person seeking reconciliation informs the opponents of the date of the reconciliation session specified by the judge appointed by the president of the court to conduct reconciliation.⁸³
- ✓ The judge appointed for reconciliation may seek the assistance of any person he deems appropriate, and the period of reconciliation may not exceed three months.
- ✓ The judge overseeing the conciliation process suggests potential solutions to the disputing parties. These proposals are not legally binding and necessitate the approval of all parties involved. Should any party reject the proposed solution, the judge is unable to enforce it. While resorting to conciliation is mandatory, accepting the judge's suggestions remains optional.

The reconciliation process may result in the issuance of either a reconciliation or non-reconciliation report. Subsequently, if reconciliation is not achieved, the lawsuit is filed before the specialized commercial court. This filing includes a petition to initiate the case, accompanied by the non-reconciliation report. Failure to adhere to this procedure may result in the dismissal of the lawsuit.⁸⁴

While we advocate for the mandatory conciliation process in disputes falling under the jurisdiction of specialized commercial courts due to its significance for involved parties and third parties, we express concern regarding its restriction to pre-filing and its classification as a formal prerequisite for case acceptance. It would have been more prudent for the legislator to emulate previous comparative systems, which permit conciliation even after case initiation, and allow for its implementation even if previously attempted and rejected before case progression.⁸⁵

It is proposed that the reconciliation process be overseen by a specialist rather than a judge who may lack competence in the specific nature of the dispute.⁸⁶

⁸¹ Sakis Muhammad Amin, *Procedures Followed in the Work of Specialized Commercial Courts*, a presentation presented in the study day on the prospects and stakes in resolving commercial disputes in light of the development of specialized commercial courts, organized by the Ain Defla Judicial Council, December 18, 2022, pp. 3-4.

⁸² Mebarakia Basma, Belasri Fatima, previously mentioned reference, p. 1190.

⁸³ *Ibid.*, p. 1191.

⁸⁴ Fatima Al-Zahra Kudari, previously mentioned reference, p. 07.

⁸⁵ Mohamed Saadeddine, *Commercial Courts Specialized in Algerian Law*, *Critical Journal of Law and Political Science*, University of Tizi Ouzou, Faculty of Law and Political Science, Volume 18, Issue 03, 12-30-2023, p. 136.

⁸⁶ Salmi Warda, previously mentioned reference, p. 45.

Conclusion:

Banks and financial institutions, engaging in a specialized form of commercial activity known as banking, are categorized as merchants. In the realm of bank disputes, previously under the jurisdiction of specialized courts, Article 536 bis QM now designates disputes involving banks and financial institutions with merchants as the purview of the specialized commercial court. The rationale behind this restriction could be attributed to the significance of merchants' interactions with banks and financial institutions, which often involve intricate disputes demanding expertise and expediency in resolution. Consequently, disputes involving banks and financial institutions with non-merchant customers were excluded, falling under the jurisdiction of the court's commercial department. Whereas specialized commercial courts previously employed a collective judicial formation equipped with specialized knowledge and professionalism, the commercial division now relies on an individual formation.

Furthermore, it is noteworthy to highlight the distinctive nature of banking disputes by mandating the activation of alternative dispute resolution methods. This entails requiring parties to resort to mediation if the dispute is under the jurisdiction of the commercial department, and to conciliation if it falls within the purview of the specialized commercial courts. The Algerian legislator has recognized the uniqueness of banking disputes stemming from the involved parties and subject matter, along with their distinguishing characteristics. This is evident in the approach taken to settle these disputes, characterized by several peculiarities, including the responsible adjudicating bodies and the procedures adopted therein. Such measures aim to safeguard the rights of the parties involved and ultimately achieve justice and social harmony.

The legislator's decision to allow rulings issued in disputes between banks and financial institutions with merchants to be appealed before the Chamber of Commerce, rather than a specialized body with expertise in commercial matters, has drawn criticism. This choice potentially compromises the quality of decisions made by the Chamber of Commerce, given its lack of specialization in such intricate matters. Nevertheless, the Algerian legislator deserves recognition for adopting a unique approach to resolving banking disputes as a distinct category of economic disputes, acknowledging their specialized nature compared to other types of disputes.

Recommendations:

- Acknowledging the unique nature of banking disputes, specialized commercial courts must be staffed with judges possessing a deep understanding of this distinct category of disputes.
- Moreover, specific procedures tailored to settling banking disputes should be established, prioritizing efficiency and confidentiality over conventional provisions outlined in the Civil Code.
- Reevaluation of the timeframes associated with both mediation and conciliation processes is warranted to ensure timely resolution.
- Establishing criteria for the selection of assistants and implementing ongoing training programs are essential measures, particularly considering their deliberative role in banking disputes.
- Additionally, there is a pressing need to establish specialized appellate commercial courts that specifically cater to the unique characteristics of banking disputes. This initiative would uphold the principle of two-level litigation and ensure the proper adjudication of these complex cases.

- Requiring representation by a lawyer for both parties in banking disputes is warranted given the intricate nature of such cases and the challenges inherent in comprehending banking techniques.
- Furthermore, regarding mediation and conciliation as prerequisites for initiating a lawsuit in banking disputes serves to promote the utilization of alternative dispute resolution methods, thereby enhancing the protection and benefits afforded to all parties involved.

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Abdullah Linda, *The extent to which disputes of an economic nature need a specialized judiciary*, a presentation in the National conference on mechanisms for settling disputes of an economic nature in Algeria between texts and reality, Faculty of Law and Political Science, Mohamed Siddiq Bin Yahya Jijel University, on 08-09 November 2016.

Ait Ouzou Zaina, *Alternative means of resolving disputes in the banking and financial field*, a presentation in the National Conference on Mechanisms for Resolving Disputes of an Economic Nature in Algeria between Texts and Reality, Faculty of Law and Political Sciences, University of Mohamed Siddiq Ben Yahya Jijel, on November 8-09. 2016.

Beljoudi Ahlam, a presentation entitled *The Privacy of Disputes of an Economic Nature, the National Conference on Mechanisms for Settlement of Disputes of an Economic Nature in Algeria between Texts and Reality*, Faculty of Law and Political Sciences, Mohamed Siddiq Ben Yahya Jijel University, November 8-9, 2016.

Ben Stoul Abdel Rahman, *a presentation entitled Judicial Experience as a Means of Investigation for the Administrative Judge to Decide on Banking Disputes*, presented within the activities of a study day entitled Judicial Experience in the Banking field, Constantine Judicial Council in coordination with the Association of Judicial Experts - Constantine -.

Ben Toumi Zahra, *powers of the President of the Specialized Commercial Court and litigation procedures*, presentation in a study day on commercial courts specialized in civil and administrative law procedures, organized by the Setif Judicial Council in partnership with the Organization of Lawyers of the Setif District.

Bouqta Fatima Al-Zahraa, *Mediation in the Settlement of Bank Disputes*, a presentation within the activities of the National Conference on "Mechanisms for Settlement of Disputes of an Economic Nature in Algeria between Texts and Reality", Mohamed Seddik Ben Yahya University - Jijel -, Faculty of Law and Political Sciences, on 08-09 November 2016.

Fadli Lazhar, *The role of banks and financial institutions in coordinating with judicial experts in banking disputes*, a presentation during a study day at the Setif Judicial Council entitled Judicial Experience in the Banking Field, on 09/26/2022.

Mammar Kouadri Muhammad, *representing adversaries by a lawyer before specialized commercial courts between option and obligation*, a presentation in the study day on the prospects and stakes in resolving commercial disputes in light of the development of specialized commercial courts, organized by the Ain Defla Judicial Council, 12/18/2022.

Masoudi Abdel Aziz, *a presentation on: the specific and regional jurisdiction of specialized commercial courts*, Lawyer Magazine, No. 38, 2023.

Nasser Al-Din Ben Nasser, *Banking Disputes between the Civil Part, the Commercial Part, and the Criminal Part and the Role of Expertise in That*, an intervention delivered within the activities of the conference organized by the Setif

Judicial Council within the framework of the local continuous training program for judges, on the subject of judicial experience, 2022.

Sakis Muhammad Amin, *Procedures followed in the work of specialized commercial courts*, a presentation in the study day on the prospects and stakes in resolving commercial disputes in light of the development of specialized commercial courts, organized by the Ain Defla Judicial Council, December 18, 2022.

Sardou Mahmoud, *specialized commercial courts in confronting the development of commercial transactions*, a presentation within the study day on: "Prospects and stakes in resolving commercial disputes", Ain Defla Judicial Council in partnership with the Faculty of Law, Djilali Bounaama University, Khamis Miliana, on December 18, 2020.

Zouleikha Himer, *The regulatory framework for the banking institution in Algerian legislation*, a presentation presented in the international conference entitled "The Role of Banks in Protecting People and the National Economy from Banking Crimes," Faculty of Law, University of Algiers 1, on November 30 and December 1, 2022.

Legal Texts:

Algeria, Law No. 08/09 dated Safar 18, 1429 corresponding to February 25, 2008, including the Code of Civil and Administrative Procedures, Part No. 21, Year 45, dated Rabi' al-Thani 17, 1429 AH corresponding to April 23, 2008 AD, p. 03.

Algeria, Law No. 13-22 dated Dhu al-Hijjah 13, 1443 corresponding to July 12, 2022, amends and supplements Law No. 08/09, dated Safar 18, 1429, corresponding to February 25, 2008, which includes the Civil and Administrative Procedures Code, Issue No. 48, Year 59, dated On Sunday 18 Dhu al-Hijjah 1443, corresponding to July 17, 2022, p. 03.

Algeria, Ministry of Justice, Decree No. 72/60 dated Safar 6, 1392 corresponding to March 21, 1972, relating to the conduct of courts in commercial matters, Issue No. 25, ninth year, dated Safar 13, 1392 corresponding to March 28, 1972, p. 364.

Bank of Algeria, Algeria, Decision No. 24/01 dated Jumada II 20, 1445 corresponding to January 2, 2024, including the publication of the list of banks and the list of financial institutions approved in Algeria, Issue 12, year 61, dated Tuesday, Shaaban 10, 1445 corresponding to For February 20, 2024 AD, p. 30.

Bank of Algeria, Algeria, Regulation No. 18/03 dated 26 Safar 1440 corresponding to 04 November 2018, relating to the minimum capital of banks and financial institutions operating in Algeria, Issue 73, Year 55, dated Sunday 01 Rabi' al-Thani 1440 corresponding to 09 December 2018, p. 22.

Order No. 03/11 dated 27 Jumada al-Thani 1424 corresponding to August 26, 2003, relating to cash and loans, Part No. 52, Year 40, dated 28 Jumada al-Thani 1424 corresponding to August 27, 2003, p. 03.