



GENERAL REGULATORY COMPETENCE MONETARY AND BANKING COUNCIL ACCORDING TO LAW N°. 23-09

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Abstract:

The Monetary and Banking Council has important regulatory powers in monitoring banking activity in accordance with Law 23-09, which sets the conditions for establishing financial institutions in terms of legal form, capital, and eligibility. Founders.

where The Algerian legislator has expanded the legal framework to include Islamic banking, exchange offices, and financial intermediaries. In addition to that The Council Organizes Basic banking operations such as receiving funds, granting loans, and processing payment methods, with strict accounting compliance.

It also imposes prudent rules related to the liquidity ratio and the solvency ratio to ensure the stability of the financial system. and The Council also regulates the movement of capital between Algeria and abroad within a clear legal framework. These measures aim to build a flexible, regulated financial sector that is compatible with international standards.

key words: regulation, capital, Islamic banking, foreign exchange market.

Introduction:

Monetary and Banking Law No. 23-09 transfer Quality in the regulatory frame work of the Algerian financial sector, strengthening the role of the Monetary and Banking Council As an independent authority with expanded powers, The aim of the new legislation is to modernize the banking system and ensure its compliance with international practices and standards, by

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strengthening governance and supervision of banks and financial institutions..

Under previous laws such as 90- 10 and 03-11, the Board combined the functions of monetary authority and management. Bank of Algeria, resulting in duplication of tasks that Werther recovery Later Positive Order 01-01, And as a result Confirm order 03-11 Cancelled The Council has supervisory and regulatory functions, but it remained limited in its capabilities when facing modern transformations in the banking sector, which necessitated the issuance of the law 23-09 with broader comprehensiveness that includes support for digital banking and Islamic banking And the digital dinar.

One of the most important developments that came with the New law Expanding the Council's powers to include setting general and specific regulatory rules, granting licenses and operating approvals to all players in the financial sector, and strengthening oversight and good governance. The Council remains subject to executive oversight, but it enjoys independence in making regulatory and individual decisions related to regulating banking activity, financing the economy, and controlling the foreign exchange market.

The problem:

- **To what extent does the Monetary and Banking Council have independent and effective powers in setting monetary policies and regulating banking operations ?**

Accordingly, this research paper decided to divide the study into two axes : The first treats General regulatory jurisdiction of the Monetary and Banking Council, while the second focuses on The Monetary and Banking Council has the authority to issue individual decisions.

SECTION I General regulatory competence Monetary and Banking Council

The Algerian legislator granted to Monetary Board and banker Prior supervisory powers to practice banking activity, which enables it to frame the banking system In its capacity as a monetary authority, the Council issues general regulatory powers to control and monitor the extent to which banks and financial institutions comply with the regulations and laws it enacts, with the aim of ensuring the smooth running of banking activity and the banking profession as a whole. To Accordingly, we will discuss in the Axis one to Conditions for establishing financial institutions, mechanisms for regulating banking activity, and regulating the movement of capital and the foreign exchange market.

First Requirement: Conditions for establishing financial institutions

To the Council The Monetary and Banking Authority has the authority to issue regulatory systems aimed at framing the work of banks and financial institutions during their banking activity, given the role played by these bodies in dealing with the funds of others, These regulations define the conditions for establishing financial institutions, minimum capital standards, and the eligibility of founders and managers.

Paragraph1: Legal entity and corporate structure

The legal form of the banking institution is one of the fundamental issues to which the Algerian legislator has given special importance, as it stipulated: the Monetary Law Banker on Mandatory adoption by banks and financial institutions in Evil form Cat with shares This is what the article confirmed.⁹¹ of Law 23/09, There fore Branches of foreign banks operating with in Algeria are exempt from the requirement to establish them selves as companies. Shares This implicitly means that these branches are not obligated to follow the legal form required



locally, which provides them with a degree of A Comparative organizational flexibility And In local Algerian banks (Zakaria, 2022, p. 405).

Regulation No. 00-02 was issued by the Monetary and Banking Council to determine the conditions for establishing and establishing a foreign bank or financial institution in Algeria (02, 2000, p. 21). And This system has been cancelled. For Regulation No. 06-02, which replaced it and introduced more advanced controls to regulate the establishment and operation of branches of foreign banks and financial institutions with in Algerian territory. (Regulation No 0.-0. 2006, p. 12)

It is worth noting that the Monetary and Banking Council has a new system to regulate exchange offices (Regulation 2.-0. , 2023, p. 13) In addition to Accreditation Organizational structure for a new financial intermediary that includes independent brokers (Article 11, 2007, p. 15) and payment service providers In a new qualitative step with in the frame work of Monetary and Banking Law No. 23-09, So that they are established in the form of a joint stock company, a simple joint stock company, or a limited liability company. In order to keep pace with developments in the financial sector and expand the scope of its supervision.

Paragraph 2: Minimum capital criteria

It is considered Capital is an essential factor in maintaining the stability of financial institutions and protecting the interests of their creditors. (Abdelkader, 2018, p. 347) Which prompted the legislator to regulate the limit. Minimum capital for banks with in the frame work of the law 23-09 with in Article 96 of this law stipulates that a fully paid-up cash capital must be available upon establishment. (Mahmoud, 2009, p. 99) In compliance with the provisions of Articles 64 and 97, in order to activate these controls, the Monetary and Banking Council issued Regulation No. 24-02. (Regulation No 2.-0. 2024, p. 25), which abolished the previous system No. 08-04 (Regulation 0.-0. , 2008, p. 05), to be clear The following values: Bank capital of no less than 20 billion Algerian dinars, and 6.5 billion dinars for financial

institutions, to be paid in cash and in one installment, This is due to the legislator's desire to ensure the strong solvency of these institutions, and to support financial transparency and public confidence in the sector, in order to achieve the integrity of the banking system and protect the rights of those dealing with it.

And According to In accordance with the provisions of Regulation No. 24- 02, branches of foreign financial institutions with in Algeria are exempt from the minimum capital requirement approved for local banks, Instead There fore, these branches are granted their licenses in accordance with the general conditions stipulated in the Banking Law. (Baghu & Qali, 2023-2024, p. 51), In view of the legislative transition to Law 23-09, the Algerian legislator has given banks and financial institutions existing before the law came into force a period of twelve (12) months to settle their situation and adjust their capital to the required level, other wise they are exposed toto with draw Licensed and accredited by the Council. (Zakaria, 2022, p. 408)

Paragraph 3 : Eligibility of founders and managers

According to Article87from law cash And the banker number 23- 09 (Regulation 2.-0. , 2023, p. 20) It is prohibited for any person to participate in the establishment of a bank or financial institution, or to be a member of its board of directors, or to manage or represent it in any capacity - directly or through others - A debt for criminal or misdemeanor crimes specified in this legal text, with the aim of ensuring the integrity and reputation of the sector's leaders The banker. (Order, 1992, p. 12)

And Required order number 92- 05 (Order, 1992, p. 13), not to The number of managers in banking institutions is less than two, so that they bear the responsibility for actual management and determining work directions, whe ther in local banks or branches of foreign banks. (Baghu & Qali, 2023- 2024, p. 49) The system also requires them to ad here to strict professional and ethical standards that include good reputation, integrity, competence, and banking experience. (Daoud, 2013, p. 84) The material supports98from law 23- 09 These controls



emphasize the importance of discipline and integrity in selecting and assuming these positions, to ensure the proper management of financial institutions and protect the stability of the banking system. (Regulation 2.-0. , 2023, p. 14).

Second Requirement: Mechanisms for regulating banking activity

The banking profession is of paramount importance in promoting the stability of the financial system, transparency in transactions, and ensuring the effectiveness of the state's financial performance. Under Law 23-09, the Monetary and Banking Council is empowered to issue regulations and rules aimed at regulating the practice of this profession in line with developments in the sector and the requirements of economic development. There fore, these include: The point The forces Counting banking and accounting operations, prudent management rules, and mandatory reserves.

Paragraph 1: Rules for banking and accounting operations

Standing Monetary and Banking Council on Regulating the practice of banking activity by issuing a set of rules, including those related to banking operations as well as accounting.

-Banking operations: a task Banks and financial institutions are essential for transferring funds between different economic groups (Al Arabi, 2008, p. 45). By performing a set of vital tasks, these tasks are classified into: Primary and secondary operations:

- Operations Basic: Operations Primary banking, also known as the principle of banking specialization, is an activity that is exclusively confined within the scope of work of banks and financial institutions. (Baghu & Qali, 2023- 2024, p. 53) Law No. 23-09 confirmed...the necessity for these institutions to adhere to these operations, as stated in Article 66. Quoted from Order 03-11, without change in wording, In addition The law expanded new The scope of its regulation includes banking

operations compatible with Islamic banking, through the text in Article 68. (Regulation 2.-0. , 2023, p. 16) A set of operations has been identified under Articles 68 to 71 of the same law. (Baghu & Qali, 2023- 2024, p. 44), which relate to core banking activities.

- Receiving money process: custom the Article 69 on It is all the money received from others, which is basically in the form of deposits, which banks use for their own interests and return it according to the appropriate rules for each form of deposit. (Latrash, 2011) However, the following are not considered funds received from the public within the meaning of this law: funds received or remaining in the account and belonging to shareholders who own at least 5% of the capital, to members of the board of directors and managers, and funds resulting from shareholding loans (Ben Latrach, 2023, p. 119).

- Loan operations: He defined it in Article 70.on Any financial transaction for a consideration, in which a person undertakes to place funds at the disposal of another or to bear an obligation on his behalf, such as signing as a precautionary guarantee. Or a guarantee or a security, as according to this article, all purchase operations linked to the right to purchase, especially loan-to-lease operations, are considered similar operations to a loan. (Regulation 2.-0. 2023, p. 17)

- Managing and administering payment methods: Article 74 stipulates Availability Banks and financial institutions provide diverse payment methods for customers, managing them in a way that facilitates financial flows and expands their role in the economic system. These methods are an integral part of core banking operations. Their diversity and abundance reflect the quality and efficiency of the banking system and enhance its ability to meet the growing needs of beneficiaries. (Qasentini & Samar, 2023, p. 309).

- Operations related to Islamic banking: It was introduced by the Algerian legislator as a new type of banking operation, and Article 71 of Law 23-09 defines it as: “Any operation



carried out by Islamic banks or windows that comply with the provisions of Islamic Sharia.” At The transactions we discussed previously are related to the regular and continuous main activity that banks normally practice. In contrast, financial institutions can carry out all of these operations, including brokerage and financing, but they are not authorized to collect funds from the public.

- **Secondary operations:** It refers to the operations related to the activity, and they are stipulated in Article 79 from Law 23-09:

- Exchange operations for the benefit of customers. The organization has determined the mechanisms for carrying out exchange operations.

Regulation 07-01 also defined the rules and conditions applicable to current transactions with foreign countries and foreign currency accounts. (Regulation 0.-0. 2007, p. 16) ,These operations should not overwhelm the original operations, otherwise this would be considered a departure from the principle of specialization.

- **Accounting rules:** addition In addition to the obligations of public companies to accounting rules, banks and financial institutions in Algeria are required to manage their accounts in accordance with the regulations issued by the Banking Monetary Council, (Mahni, 2019, p. 40) · It was stated Regulation No. 09-04 on the chart of bank accounts and the accounting rules applicable to banks and financial institutions. (Regulation 0.-0. 2009, p. 21), and Regulation No. 09-05 on the controls for preparing and publishing financial statements for banks and financial institutions (Regulation 0.-0. 2009, p. 19) Law No. 23-09, in Article 114/1, reinforced this by stressing the need to adhere to these accounting standards.

Accordingly, every bank or financial institution must publish its annual accounts and budgets in the Official Gazette of Mandatory Legal Announcements within the six (06) months following the end of the fiscal year. (Knight, 2007. p. 27)

Paragraph 2: Cautionary rules in management

The prudential management rules constitute an integrated set of management rules and standards that require banks and financial institutions to comply with them in order to safeguard the interests of depositors. and the stability of the financial system, These rules aim to ensure its ability to fulfill its obligations on the one hand, and to achieve financial balance. (Halwaji, 2018, p. 82) On the other hand, it mainly includes two crucial elements:

-Liquidity rules: ensuring that sufficient cash is available to cover short-term liabilities, protecting the bank from sudden default., and The liquidity ratio of financial institutions measures their ability to meet their short-term obligations. Similar to what is required by Law 23-09, the Algerian legislator has set out strict controls through: "Instruction No. 08-04", which has set the liquidity ratio at 20%, calculated annually starting from December. This procedure is an effective means of controlling the volume of credit, as itto The bank is committed to maintaining a balanced relationship between equity and total loan risk (Assia & Riman, 2018, p. 315).

for-Solvency ratio: The solvency ratio represents the relationship between the bank's own funds and the total risks it faces through its activity. The importance of this ratio lies in ensuring the bank's ability to meet its obligations and side Potential risks of relying on his on capital.

To ensure this commitment, regulatory authorities require banks to periodically disclose the solvency ratio on June 30 and December 31 of each year (Harbi, 2018, p. 346). The system recognized it 91-09 in Article 2 states that: "The minimum ratio between the amount of net private funds and the total risks to which it is exposed due to its operations", According to Article 2 of Regulation No. 14-01, this percentage must not be less than 9.5%, which adds more security and stability to the financial institution's performance (Article 2 of Regulation, 2014, p. 21)



-Required reserve: Algerian banks are subject to a mandatory obligation to keep a portion of their deposits and cash assets in the form of a permanent balance with the Bank of Algeria. (bouda & Madsaa, p. 251) This measure is a central tool in the bank's policy to preserve the interests of depositors and ensure the overall financial balance of banking institutions.

This system stems from the mandatory reserve system defined in Bank of Algeria Instruction No. 04-02. (Regulation 0.-0. 2004, p. 25) Approved by Order 03-11 This system will remain in effect until it is issued. Organization that matches In accordance with the provisions of Law 23-09, Which does not yet include a specific text regulating the conditions for forming the mandatory reserve, and it is expected that the framework will be updated .Nazimi Later, to adjust these proportions within the new legal context (Baghu & Qali, 2023- 2024, p. 57).

SECTIONII : Regulating capital movements and the exchange marketForeigner

Takes over The Monetary and Banking Council of the Bank of Algeria is responsible for regulating the movement of capital, whether it is transferred from within the country to abroad or received from abroad to the country. It is also entrusted with the task of regulating the foreign exchange market and exchanging foreign currencies

First Requirement: Regulating the movement of capital

Systemsthe law **23-09** The movement of capital between Algeria and abroad is carried out with extreme precision, with the aim of enhancing the stability of the national economy and ensuring the stability of the monetary system.

Paragraph1 : Définition of capital movement

The Monetary and Banking Law did not include a general text defining the movement of capital, but rather was limited to setting conditions and controls for the transfer, which can be practically defined as the procedure of transferring capital across

borders, which is carried out through two basic operations. They are: (Boukattouf, 2022, p. 287)

-Conversion process: It refers to the transfer of capital from Algeria abroad by persons residing in Algeria and under its legal authority, often to finance projects and investments that they wish to implement outside the country..

-Reconversion process: The repatriation of funds abroad resulting from the implementation of an investment previously financed with imported capital, as well as the repatriation of the original capital of investors residing in Algeria to their country. (Ziani, p. 121).

for-The legal basis for capital movements in monetary law Banker 23/09: The Monetary and Banking Law was approved. In the text Article 144, the principle of freedom of capital transfer, by granting non- residents the right to transfer their capital to Algeria for investment, while ensuring the retransfer of profits and returns achieved. (Boukattouf, 2022, p. 288) , In parallel residents are granted the right to transfer their capital abroad to finance projects and investments complementary to their existing activities outside the country.

As for to For regulatory procedures The Council issued Regulation No. 24-05, which amends the previous Regulation No. 1602. It regulates the ceilings for declaring the import and export of banknotes and negotiable financial instruments. and Allowing the withdrawal/input order in one payment or over several trips within the same year, provided that an official notification is submitted to withdraw the amount from a foreign currency account.

Paragraph 2 : Regulation of the foreign exchange market

Exchange is a process that occurs when different currencies are exchanged between them. Each country has its own currency that is used in internal payment operations. The need to use foreign currencies (currencies of other countries)



arises when commercial or financial relations are established between companies operating within the country and companies operating outside it, as importing companies need the currency of the exporting country to pay for imported goods., You are forced to go to the exchange market to buy the currency of the source country in order for this process to be completed. (Abdelaziz, 2014, p. 72) The legislator has given, in accordance with Article 64 of the law 23-09 The Bank of Algeria has the authority to regulate the foreign exchange market as the supreme monetary authority. This authority includes determining the legal framework governing the state's currency, regulating its issuance and circulation, and establishing regulatory and supervisory mechanisms for foreign exchange transactions.. (Lesheeb , p. 56)

This is in the rulings issued in Articles 1 to 8. As for its coverage, it is specified in Article 40 thereof. As stated in Article 42, Paragraph 3 The Monetary and Banking Council shall determine the methods for managing foreign exchange reserves, in accordance with Article 64. As stipulated in Article 145 of the Law 23-09 is the pillar that obliges the Bank of Algeria to adopt a national exchange policy, such that this policy is formulated within a frame work that takes into account the international commitments to which the country has committed, To implement this policy The Monetary and Banking Council has begun issuing a set of regulatory systems for the foreign exchange market, in an effort to control foreign exchange transactions between residents and non- residents, ensure the smooth flow of international trade, facilitate investment and capital flow, and create a clear legal mechanism that enables residents to obtain and sell hard currency within the official framework

Conclusion:

It is evident from This research paper The Monetary and Banking Council plays a central role in regulating and controlling the Algerian banking system, as the legislator has granted it broad powers that enable it to exercise prior and regulatory

oversight over everything related to banking and financial activity. Law 23-09 reflects a qualitative development in the legal process and institutions. By updating the legal framework for establishing financial institutions, regulating the mechanisms for practicing the banking profession, and regulating the movement of capital and the foreign exchange market, The legislator has been keen to establish the principles of transparency solvency, integrity, and efficiency to ensure the stability of the financial system and achieve sustainable economic development, The legislative update also represents a response to global transformations, which calls for further technical and regulatory reforms to keep pace with the dynamics of modern financial markets.

High lights Results The reached:

- The Monetary and Banking Council has a pivotal regulatory role in monitoring banking activity and regulating the conditions for establishing banks and financial institutions..
- Law 23-09 sets strict criteria for capital and the eligibility of founders and managers, enhancing the stability of the banking system..
- Modern accounting and regulatory regulation aims to enhance transparency and ensure banks' solvency to face risks..
- Opening the door to Islamic banking and improving the regulation of the foreign exchange market represents an opening to new alternatives in the Algerian financial system..

Suggestions:

- Enhancing digital oversight by adopting artificial intelligence and data analysis technologies to monitor banking risks in real time.
- Updating the reserve requirement system in line with the requirements of Law 23-09 to strengthen monetary policy mechanisms..
- Launching training programs for financial managers in accordance with the required ethical and professional standards to ensure the efficiency of banking leadership.



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