journal Of Legal and Economic Studies ISSN 2602-7321/ EISSN 2773- 2649

Vol : 09 No: 01 Year: 2026 Page : 780- 791

NEW PROVISIONS INTRODUCED BY LAW NO. 23-09 ON MONETARY AND BANKING LAW

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Send Article Date: 10 /01/2026 Date of acceptance of the article: 18/04/2026

Abstract:

This study aims to highlight the most important developments introduced by the new Monetary and Banking Law No. 23-09, which we found to include many positive developments and provisions aimed at combating financial speculation through the mechanisms put in place by the government to enforce this law, in addition to strengthening the governance and role of the central bank, or the so-called bank of banks, in the field of monetary control, as well as the Monetary and Credit Council, the Banking Committee, banks and financial institutions. However, these developments are insufficient if they are not accompanied by a strong digital infrastructure and strict penalties for violators of the provisions of this law.

key words: New Monetary and Banking Law, monetary control, Bank, Banking Committee.

Introduction:

Algeria introduced its Currency and Credit Law in 1990 under Law No. 90/10, approximately 32 years ago. It was enacted in an economic climate that could not be described as either capitalist or socialist, given that the 1989 Constitution paved the way for a capitalist system by repealing all provisions relating to socialism that had prevailed in the 1976 Constitution, which was a rentier economy aimed primarily at protecting the national currency. This law was repealed by Decree No. 03-11 issued in [1]2003, which underwent several amendments in 2007, [2]2010, and most recently in 2017[3], but these amendments

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[1] Order No. 03-11 dated 26 August 2003.

[2] Order No. 10-04 dated 26 August 2010.

[3] Law No. 17-01 dated 11 October 2017, This law added Article 45 bis, which stipulates that the Bank of Algeria may, on an exceptional basis and for a period of five years, finance the public treasury directly by purchasing the financial bonds it issues in order to cover the treasury's financing needs, finance the internal public debt or finance the National Investment Fund.

were minor and aimed at restricting and limiting the powers of the central bank as a financial supervisory mechanism.

However, currently, in light of the profound reforms undergoing in the modern Algerian state, there is an urgent need to make radical amendments to the Currency and Credit Law, in line with the new Investment Law No. 22-18, and Law No. 23-01 on the prevention and combating of money laundering and terrorist financing, amending Law No. 05-01[4]. Law No. 22-08 of 5 May 2022, which provides for the establishment of the High Authority for Transparency, Prevention and Combating Corruption, its composition and powers[5], and Law No. 21-15 on the Prevention and Combating of Speculation[6]. because the success of any economy is based on the efficiency of consumption and investment, and it is monetary policy that drives it, which is what actually happened with the enactment of Law No. 23-09 on monetary and banking law[7].

This raises the question of the most important amendments and new provisions affecting the monetary and banking sector in Algeria under Law No. 23-09 on monetary and banking law, and the extent to which they are effective and appropriate for Algeria's new direction.

To answer this question, we have divided the study into two parts, noting that this law does not include technical matters, as these are dealt with in the regulatory texts.

THE FIRST TOPIC : INTRODUCTION OF NEW MECHANISMS IN THE FIELD OF INVESTMENT

Law No. 23-09 on monetary and banking law contains new provisions that are all aimed at encouraging investment in Algeria, whether by national or foreign investors, in line with the provisions of Law No. 22-18 on investment[8], which was confirmed by the Minister of Finance, Laziz Faid, when presenting the draft monetary and banking law to parliament, stating that: 'It will allow us to move towards modernising the banking system to keep pace with current and future developments, particularly in terms of technology, in order to provide a suitable environment for economic operators to use all modern banking tools.' The most

[4] Dated: 7 February 2023.
[5] Official Gazette No. 32, issued on: 14/05/2022.
[6] Official Gazette No. 99, dated: 29 December 2022.
[7] Dated: 21 June 2023, containing the Monetary and Banking Law, O.G. No. 43, dated: 27 June 2023.
[8] dated 24 June 2022, relating to investment, O.G. No. 50, dated 28 July 2022.

important new provisions in this area concern the introduction of exchange offices and the digital dinar, as explained in the following points:[9]

FIRST REQUIREMENT: THE INTRODUCTION OF EXCHANGE OFFICES

Within the framework of defining the new powers of the Monetary and Banking Council in accordance with the text of Article 64 of Law 23-09 containing the Monetary and Banking Law, this Council: "is authorised, in its capacity as a monetary authority, in the following areas:... c) Rules of good conduct and professional ethics applicable to banks and financial institutions, independent intermediaries, exchange offices, and payment service providers.
e) Conditions for the accreditation of independent intermediaries and exchange offices, in particular the minimum capital requirements and the quality of their capital."
The second paragraph of the same article stipulates that the Monetary and Banking Council shall take individual decisions relating to the authorisation to open independent intermediaries and exchange offices, and the third paragraph of the same article stipulates that the Council shall exercise its powers under this law within the framework of the regulations.
Accordingly, the Bank of Algeria issued Regulation No. 23-01 of 21 September 2023 on the conditions for licensing, approving and operating exchange offices.[10]
Article 2 of this regulation defines exchange offices as any exchange company established in accordance with the provisions of Law No. 23-09 dated 21 June 2023, to carry out sales transactions in freely convertible foreign currencies against the national currency, on behalf of natural persons residing within the country under exchange rights or allowances, for the purposes of travel abroad, medical treatment abroad, mission expenses, and study and training expenses.
These offices also carry out sales of freely convertible foreign currencies against the national currency for the benefit of non-resident natural persons within the limits of their remaining balance in dinars at the end of their stay in Algeria, resulting from a prior foreign currency transfer.

Exchange offices under establishment shall submit a request to the President of the Monetary and Banking Council for consideration, accompanied by the establishment file, for the purchase of freely convertible foreign currencies in exchange for the national currency by natural persons, whether resident or non-resident, as provided for in the regulations.

[9] Ibid.
[10] O.G. No. 69, dated 30 October 2023, p. 24.

Article 5 of the same regulation states that an exchange office that obtains a licence must, under penalty of nullity, apply for accreditation from the Governor of the Bank of Algeria within a period not exceeding twelve months from the date of notification of the licence, and this application must be accompanied by the accreditation file.

With regard to the capital of a legally established exchange office, it must be paid up in full in cash upon its establishment, at 5 million dinars (5,000,000 DA) for an exchange office established as a joint stock company with a capital of 1 million dinars and 1 million dinars for an exchange office established as a limited liability company or a simple joint stock company.

An exchange office that obtains accreditation from the governor must commence operations within 12 months of the date of accreditation, under penalty of nullity, while exchange offices that were previously licensed are granted a six-month grace period, starting from the date of entry into force of this regulation, to comply with its provisions. After this period, their licence shall be deemed invalid.

It should be noted that this regulation repeals the provisions of Article 21 of Regulation No. 07/01, as amended and supplemented[11], relating to the rules applicable to foreign transactions and hard currency accounts, which stipulated that exchange transactions between the Algerian dinar and freely convertible foreign currencies could only be carried out through authorised intermediaries or the Bank of Algeria.

The issuance of Regulation No. 23-01 is therefore a positive step in clarifying the procedures and conditions for establishing and accrediting exchange offices. However, the success of these offices remains contingent on the issuance of regulatory texts specifying the details of their work and the mechanisms for implementing this regulation, because exchange offices need financing. How will this be done?

FIRST REQUIREMENT: INTRODUCTION OF THE DIGITAL DINAR

In fact, the idea of introducing the digital dinar existed even before the current Currency and Exchange Law was issued, but the economic climate did not allow for it, because issuing this type of currency requires a comprehensive reform of the financial system, through combating money laundering and corruption and issuing a new investment law with new incentives and privileges. This is because this law (investment) now allows the transfer of hard currency to and from abroad, whereas the previous currency and credit law did not allow this, as the complex and bureaucratic procedures involved in this process meant that it took at least five days to complete. Algeria is moving towards laws that stimulate the economy,

[11] O.G. No. 31, dated 13 May 2007, p. 14.

whether consumer or commercial, and therefore the introduction of the digital dinar has become an urgent necessity in light of the economic reforms that Algeria has undergone.

This raises a fundamental question about the challenges of digital currency and the impact of its issuance by the central bank on monetary policy instruments. First, digital currency can be defined as a set of intangible digital symbols that have no physical form. designed to function as a medium of exchange, using encryption to secure and control transactions, and relying on block chain technology to create and generate currency units[12].

Digital currency is a crypto currency and payment system that is traded electronically via the internet, without any physical presence on the ground. It is not controlled or printed like paper dinars, It does not have any serial numbers and is not backed by the state like paper currency. It can be obtained by participating in its production process, by purchasing it from a website specialising in its sale, or by exchanging it with other people[13].

One of the characteristics of digital currency is that it is a means of exchange, a unit of account and a store of value without the need for intermediaries. It can also be used seamlessly to make cross-border payments and when connecting to global information devices and networks.

As for the Algerian dinar, it is a new form of currency that only exists in digital form. Instead of printing money, the central bank issues digital currencies that are widely accessible, making digital transactions and transfers simple. Efforts to issue central bank digital currencies are increasing around the world for many reasons. The coronavirus crisis has caused a shift in payment habits towards contactless digital payments and e-commerce due to the risk of banknotes being a means of transmitting infection, which has accelerated the decline in cash usage[14].

It should be noted that Article 02 of the Monetary and Banking Law stipulates that the privilege of issuing currency throughout the national territory is restricted to the Central Bank alone, while we have already pointed out that the issuance of digital currency in most countries of the world is currently decentralised. Article 3 of the same law refers to regulations to determine the conditions for the issuance and development of digital currency by the Central Bank.

[12] Ayman Saleh, The Reality of Digital Currencies, Abu Dhabi, International Monetary Fund, 2021, p. 07

[13] Bouthalja Aïcha, Central Bank Digital Currencies and Their Implications for the Economy, North African Economics Journal, Vol. 18, No. 29, 2022, pp. 395-414.

[14] Ibid., p. 07.

In fact, the digital dinar as a digital currency of the Central Bank has several advantages, including increased financial inclusion and improved monetary policy efficiency. It is also considered an alternative to counter the risks of private virtual currencies, reduce transfer costs in exchange for faster transaction processing, promote competition and open and free markets, and enable the emergence of new business models and economic growth[15].

It also enables the central bank to inject digital money into the economy to increase supply and create purchasing power that stimulates production with ease, as it can easily identify the beneficiaries of any cash transfers. The availability of the digital dinar to residents and non-residents in Algeria will affect capital flows and the exchange rate. The cash transfer mechanism will also become more flexible, and cash flow and bank lending channels will be strengthened[16].

In addition, start-ups rely on digital or electronic money in their commercial or banking transactions, and the Currency and Credit Law has come to value and assist these institutions, because talking about economic or financial governance without establishing a legal framework for electronic money and currency makes the monetary and banking law lame.

THE SECOND TOPIC: EXPANDING THE POWERS OF THE CENTRAL BANK, THE MONETARY AND CREDIT COUNCIL, AND THE BANKING COMMISSION

FIRST REQUIREMENT: EXPANDING THE POWERS OF THE CENTRAL BANK

We have already mentioned that the repealed Monetary and Credit Law No. 90-10 was enacted under difficult economic circumstances and was repealed by Decree No. 03-11. However, the latter underwent several amendments, all of which served to reduce the role of the Central Bank as a financial supervisory mechanism. The current Law No. 23-09, however, restored the Bank's dominance over the banking sector.

Referring to Law 23-09, we find that a whole section has been added to the chapter on the powers of the Central Bank concerning the granting of emergency liquidity to a solvent bank facing a temporary liquidity problem. One of the most important provisions introduced within the powers of the Bank of Algeria is that the aforementioned law authorises it to invest its own funds in real estate or bonds issued or guaranteed by the state, or in bonds issued by financial institutions

[15] Zidane Lakhdar and Mohamed Ferji, The Central Bank's Algerian Digital Dinar Project: Potential Gains and Implementation Scenarios, Al-Madir Magazine, Issue 08, pp. 214-243.

[16] Jamal Malki, The Impact of Central Bank Digital Currency Issuance on the Effectiveness and Future of Monetary Policy: A Case Study of the Algerian Central Bank's Digital Dinar, Economic Studies Journal, Vol. 17, No. 01, 2023, pp. 762-776.

subject to special legal provisions, after obtaining the authorisation of the Minister of Finance, in accordance with the explicit provisions of Article 55 of the same law.

Article 56 of the same law also authorises the Central Bank, in order to meet its own needs, to purchase real estate or to commission its construction, sale or replacement, subject to the approval of the Board of Directors.

It should be noted that under the current law, the term of office of the Governor of the Bank of Algeria and his three deputies is limited to five years, renewable once, whereas under the provisions of the repealed Decree 03-11, this term was open-ended and not limited to a specific period of time. This is a positive point for the legislator, given that an open term of office opens the door to abuse and corruption, while limiting the term of office will make the governor and his deputies more effective in exercising their monetary and supervisory powers, particularly in view of their responsibilities in the context of financial stability and the development of a national strategy for the development of means of payment. This was stated by the Governor of the Bank of Algeria, Salah Eddine Taleb, during a hearing held by the Finance and Budget Committee of the National People's Council, which was dedicated to discussing the draft monetary and banking law.

SECOND REQUIREMENT: EXPANSION OF THE POWERS OF THE MONETARY AND CREDIT COUNCIL

The Monetary and Banking Council is composed of 10 members, compared to the Monetary and Credit Council, which was composed of nine members. It includes the seven members of the Board of Directors of the Bank of Algeria and a person chosen for their competence in economic and monetary matters. This law has added a person chosen for their competence in Islamic banking, in addition to an executive from the Bank of Algeria with at least the rank of director. We therefore note that Article 61 of this law has succeeded in adding a person chosen for their competence in Islamic banking, as introduced by the provisions of this law. However, we consider the addition of a member from the Bank of Algeria to be unjustified, given that the seven members of the Board of Directors of Algeria are themselves executives from the Bank of Algeria, in accordance with Article 22 of the same law: -the Governor as Chairman-the Deputy Governors-four senior officials appointed by presidential decree on the basis of their competence in the economic and financial fields.

As for the powers of the Board, Law No. 23-09 has clearly expanded them, enabling it to accompany the changes taking place in the banking environment by granting it the power to grant accreditation to investment banks, digital banks, payment service providers and independent intermediaries, and to authorise the

opening of exchange offices as explained above, which is clearly stated in Article 64 of this law.

THIRD REQUIREMENT: EXPANSION OF THE POWERS OF THE BANKING COMMISSION

Law 23-09 introduced fundamental changes to the composition of the Banking Commission. Whereas it was previously composed of six members under Decree 03-11, it now consists of eight members, with the addition of the Governor of the Bank of Algeria and three members selected for their competence in the financial, banking and accounting fields, as well as two judges, both of whom are appointed from among the judges of the Supreme Court. However, one of them is now appointed from among the judges of the Council of State and the other from among the judges of the Supreme Court, in line with the dual judicial system in force. Article 117 of the current law added a representative from the Accounting Council, chosen by the President of that Council from among the first two councillors, and a representative from the Ministry of Finance with at least the rank of director.

Article 119 of the current law has expanded the powers of the Banking Commission to include monitoring the compliance of banks, financial institutions, independent intermediaries, exchange offices and payment service providers, which are referred to in the text as being subject to its authority.

THE THIRD TOPIC: INTRODUCING NEW MONETARY POLICY MECHANISMS AND ADAPTING THEM TO THE SPECIFICITIES OF BANKING OPERATIONS (ISLAMIC BANKING)

By new provisions under monetary policy, we mean the new mechanisms included in the monetary and banking law on Islamic banking. In fact, we find that the previous amended and supplemented Monetary and Credit Law No. 90-10 referred indirectly to the Islamic banking system, and did not explicitly mention it. However, the Bank of Algeria remedied this by issuing Regulation No. 18-02 dated 4 November 2018, which contains rules for the practice of banking operations related to participatory banking by banks and financial institutions[17], which was repealed by Regulation No. 2020-02 dated 15 March 2020, which specifies banking operations related to Islamic banking and the rules for their practice by banks and financial institutions[18], as well as Instruction No. 20-03 dated 2 April 2020, defining products related to Islamic banking and specifying the procedures and technical characteristics for their implementation by banks and

[17] O.G. No. 73, issued on 9 December 2018.
[18] O.G. No. 16, dated 24 March 2020.

financial institutions, to be definitively and explicitly addressed for the first time by Parliament under the current Monetary and Banking Law of 2023.

According to Article 02 of the aforementioned Regulation 20-02, the Islamic banking system refers to any banking transaction that does not result in the collection or payment of interest. According to Article 71 of Monetary and Banking Law No. 23-09, it refers to any transaction carried out by Islamic banks or branches that complies with the provisions of Islamic Sharia.

The Algerian legislature explicitly adopted the Islamic banking system under Article 68 of Law 23-09 [19] for two reasons[20]:

- **First:** To attract liquidity from the parallel market, i.e. to encourage people who keep their money themselves for fear of usury to save with banks.
- **Second:** There are societal demands to enshrine this type of transaction, which is in accordance with the provisions of Islamic law, because the claimants do not want to deal with traditional forms of transaction due to the usury involved.

It should be noted that Islamic banks or Islamic exchange windows are established under a licence granted by the Monetary and Banking Council, similar to other traditional banks, and there is no special status for them in this area under the Currency and Credit Law. However, Regulation 20-02 added the requirement for banks to obtain a certificate of compliance with Sharia law, issued by the National Sharia Council for Islamic Finance[21]. Article 74 of Law No. 23-09 also confirmed this requirement with the approval of the Bank of Algeria.

Under the concept of monetary and banking law, any banking operation related to Islamic banking is considered to be any operation carried out by banks or financial institutions authorised exclusively to carry out operations related to Islamic banking, or through a structure called a counter at the level of traditional banks, which is exclusively dedicated to operations related to Islamic banking[22].

Although Islamic banking provisions are explicitly mentioned in Law 23-09 in Chapter I, Title V, under the heading of banking regulation, and Islamic banking is referred to as one of the banking operations alongside receiving funds from the public and lending operations, this type of banking has not received the importance it deserves. as it is mentioned only in three articles, namely Articles 71, 72 and 73 of this law, which is completely insufficient for the legal framework of all

[19] The text of this article states that banking operations include receiving funds from the public and lending operations, banking operations related to Islamic banking, as well as placing all means of payment at the disposal of customers and managing these means.

[20] Houhou Miloud, Reading of the provisions of Regulation 20-02 dated 15 March 2020, Algerian Business Law Journal, Issue 1, 2020, p. 84.

[21] See Article 14 of Regulation 20-02

[22] See Articles 72 and 73 of Law 23-09.

operations related to Islamic banking, and it will open the door wide for regulation to frame this issue.

THE FOURTH TOPIC: AGGRAVATION OF THE PENAL SANTIONS ON THE PERPETRATORS OF BANKING CRIMES

Although we support the jurisprudential approach that rejects the inclusion of criminalisation in specific texts and is satisfied with the general text, i.e. the Penal Code, so that there is no difference or conflict between the general and specific texts, we commend the current monetary and banking law for criminalising many acts that were punishable under the previous repealed law, i.e. 03-11, with more severe custodial penalties and higher financial fines. The current law has also introduced penalties that were not provided for in the previous repealed law.

We find this in Article 151 of Law 23-09, which has increased the penalties for the crimes stipulated in Articles 83, 87 and 88 relating to persons other than banks and financial institutions carrying out operations conducted by banks or using the name, trade name or advertising of any institution other than a bank, that may suggest that they are banks. The penalty for perpetrators of these offences is imprisonment for two to five years and a fine of 200,000 to 500,000 Algerian dinars. In addition, the judicial authority is empowered to order the publication of the entire judgment or an extract thereof in newspapers of its choice and to post it in places it designates, as well as to prohibit the perpetrator from practising in any bank or financial institution or branch of such banks or brokers and exchange offices of service providers.

We therefore find that the addition of these moral penalties will have a psychological effect on offenders and deter others from committing banking and financial crimes, especially those related to bribery, embezzlement and squandering of public funds, although we believe that the financial penalties provided for in this law are not excessive and are commensurate with the offences committed.

Conclusion:

In conclusion, we can say that the new monetary and banking law of 2023 includes many new developments and positive provisions aimed at combating financial speculation through mechanisms guaranteed by the government for the implementation of this law, in addition to strengthening the governance and role of the central bank, or the so-called bank of banks, in the field of monetary control, as well as the Monetary and Credit Council, the Banking Committee, banks and financial institutions, although these innovations are insufficient if they are not accompanied by a strong digital infrastructure. In the United States, a bank needs

only seven minutes to decide whether to grant a loan once a social security card is presented, which the bank uses to determine the person's eligibility for the loan.

The most important recommendations of this study can be summarised in the following points:

- The need to use the digital dinar in lending, support, control of the money supply, international payments and settlements.
- The need to expedite the establishment of exchange offices on the ground in order to eliminate the parallel or black market in this area.
- The need to issue legislative texts specific to Islamic banking in view of the inadequacy of the provisions of Law No. 20-02, as explained in this intervention.
- The need to include a separate section or chapter on Islamic banking within the monetary and banking law, given the inadequacy of Articles 71, 72 and 73 of this law to cover the various aspects related to this system.
- It is necessary to upgrade the infrastructure in the field of digital technology, because the various positive aspects and developments introduced by the Monetary and Banking Law will not be sufficient if they are not accompanied by adequate digital technology.
- The penalties imposed on persons and entities that violate the provisions of the monetary and banking law must be more severe, especially those relating to financial penalties imposed on violators, particularly those relating to crimes of bribery, embezzlement and misappropriation of public funds.

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