



INVESTING IN ALGERIA
GUIDE
2007

SUMMARY

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1 General Introduction to Algeria

1.1 History and geography

1.1.1 The land and its history

Algeria, an African and Mediterranean country, spreads across an area of 2,381,741 km², with 1,200 km of coastline and common borders with the countries of the Arab Maghreb Union (AMU) — Tunisia, Libya, Morocco, [Western Sahara] and Mauritania — and with two (02) countries of the African Sahel — Mali and Niger. Endowed with this advantageous geographical location and considerable space, Algeria is the tenth largest country in the world and second largest in Africa, behind the Sudan.

Algeria is a land of contrasts and reliefs, where Mediterranean landscapes, vast, semi-arid high plateaus, and lunar desert-like spaces meet. Its reputation as a Mediterranean country notwithstanding, Algeria is arid and semi-arid. The areas of the Algerian territory receiving more than 400 mm of water a year fit within a band no more than 150-km deep from the coastline. Being parallel to the coastline, the mountainous ridges exacerbate the dryness of the climate heading south. Three extremely contrasting zones share the Algerian territory:

The Tell region, in the North (4% of Algeria's total area);

The high plateaus region (9% of Algeria's total area);

The Saharan region (87% of Algeria's total area).

Algeria is blessed with a Mediterranean climate, the sun shines throughout the year and winters are mild.

Algeria is also the ideal junction where three worlds converge (Mediterranean, Arab and African). A land of meetings, Algeria has always been coveted and often occupied by a succession of powers (the Phoenicians, the Romans, the Vandals, the Byzantines, the Arabs, the Turks and the French) in spite of the ferocious resistance of the original inhabitants, led by a succession of illustrious figures: Massinissa and Jugurtha (Roman period), Kahina and Koceïla (pre-Islamic period) and the Emir Abdelkader, Lalla Fathma n'Soumeur, El-Mokrani, Larbi Ben M'hidi, Ramdane Abane... (since the French conquest and colonization).



Algeria has formidable archeological sites from the Roman and Phoenician eras. No less than seven Algerian monuments and sites are now registered as part of the World Heritage by UNESCO Culturally, Algerians, whose population belongs to the same socio-cultural group as that of Morocco and Tunisia, were also influenced by the various civilizations that flourished and prospered around the Mediterranean.

The Arabs and the French are the ones that left the deepest imprints. The former with the establishment of the Islamic religion and a strong linguistic legacy, the latter with the considerable contribution of the French culture and language, which today makes Algeria a quintessentially French-speaking country, as French is the most widely used language of communication, particularly in the business sector.

Algeria is also characterized by major, diversified natural resources, its gas reserves being amongst the largest in the world, whereas the country's underground contains huge oil deposits, in addition to gigantic deposits of other resources (phosphate, zinc, iron, gold, uranium, tungsten, kaolin...).

Population - Demographics

As of the end of 2005, the Algerian population was estimated to be about 33.2 million people (29,276,767 people during the general population and habitat census of 1998).

From a rate of natural increase (RNI) standpoint, demographic growth is following a favorable evolution, as a net downward trend has been observed over the past twenty years (the rate went from 3.14 % between 1971 and 1975 to about 1.44% between 1999 and 2005).

Important changes have taken place with regard to principal characteristics. Life expectancy increased by nearly twenty years over the past thirty years, approaching 72 years in 2006. The infant mortality rate, which was above 15 % in 1970, went down by two thirds. The fertility index underwent a noticeable reduction, going from 8.3 children per woman in 1970 to 2.54 children per woman in 2005, under the combined effect of the lower rate of marriage and a noticeable spread of the use of contraception. This transition in demographic indicators leads to population forecasts of about 40 million people by 2020.

A cause for concern is the great imbalance in the geographic distribution of the population. Nearly 40% of the population lives on the coastline.

More than 12 million people live on a strip of land along the coastline that makes up for less than 4.7% of the territory, which represents an average density of 245 inhabitants per km². This density drops to less than 1 inhabitant per km² in the Great South region, for a national average of 13 inhabitants per km². The other trend that is a cause for concern is the uncontrolled growth of the urban segment of the population. While the urban sector only accounted for 12% of Algeria's population in 1960, it represented more than 60% of the population in 2004. The urban population is eleven times larger than it was four decades ago.

1.1.2 Main cities - Languages - Religions

The main part of the Algerian population is concentrated in some 121 urban centers, 68 semi-urban centers and 58 "potential" semi-urban centers. The main cities of the country are concentrated in the North and in the high plateaus: Algiers (the administrative, economic and cultural capital), Oran, Constantine, Annaba, Sétif, Tlemcen, Skikda, Béjaïa, Tizi Ouzou, Jijel, Tiaret, Batna, Biskra, Mostaganem, Saïda, M'sila, Chlef, Béchar, Ouargla, Ghardaïa, Adrar, El-Oued and Tamanrasset.

Arab is the national and official language, spoken by the majority of the population. Tamazight (Berber), recognized as a national language since 2002, is also widespread through its numerous regional dialects. French, taught from primary school, is very commonly read and spoken in the society at large and particularly within economic and business circles.

The vast majority of Algerians are Sunni Muslims. The country's constitution made Islam the state religion. Religious freedom is recognized and there is genuine religious tolerance in the country.

Algerian society as a whole is monogamous, although polygamy is allowed by Koranic law and by legal provisions, which add certain conditions to be met by the husband however.

1.1.3 Territorial and administrative organization – Political institutions

The commune is the basic component of Algeria's territorial organization. There are 1,541 communes, grouped into administrative districts (daïras, which number 227) and departments (wilayas, which number 48). Communes are managed by a Communal Popular Assembly (Assemblée populaire communale, APC), which is elected for five years.

The president of the commune is elected by the Communal Popular Assembly. The wilaya (department) has a Popular Assembly (Assemblée populaire de wilaya, APW), also elected for five-year terms. The wilaya is managed by a Wali (governor) named by the President of the Republic.

The heads of the daïra (administrative districts that are the equivalent of sub-prefectures) are also named by the President of the Republic. In Article 1, the Constitution states that Algeria is one, indivisible Republic. The Constitution of 1989 instituted a pluralistic regime which guarantees the full exercise of individual and collective freedoms in all forms and in all areas, and which distributes powers according to the principle of separation.

Algeria's institutional and political system establishes the presidential nature of the executive branch and also establishes the separation of the executive, legislative and judicial branches.

The President of the Republic is elected through direct, secret universal voting for a period of five years. The President can be re-elected.

The President of the Republic, Head of the State, embodies the nation's unity. In addition to the powers that other provisions of the Constitution grant him, the President of the Republic holds the following powers and prerogatives:

He is the chief commander of all the armed forces of the Republic;

He is responsible for National Defense;

He presides over the Council of Ministers;

He nominates the head of government and terminates his duties;

He signs presidential decrees;

He has the right to grant grace, to commute sentences;

He can, with regard to all matters of national importance, poll the people through a referendum;

He concludes and ratifies international treaties;

He awards decorations, distinctions and honorific State titles.

In addition to this, the President of the Republic names appointees to:

the posts and mandates provided for in the Constitution ;



civilian and military posts of the State;
the designations made by the Council of Ministers;
the President of the State Council;
the Secretary General of the government;
the Governor of the Bank of Algeria;
the Judges;
the officers in charge of the security agencies;
the Walis and the heads of daïra.

The President of the Council of Nations (Senate) is the second ranking officer of the State. He replaces the President of the Republic, in the event of a vacancy, but cannot be a candidate to his succession.

The Prime Minister, the head of government designated by the President of the Republic, is accountable for the policies of the government before parliament (both the National Popular Assembly and the Council of Nations).

Following the constitutional revision of November 28, 1996, which instituted a bicameral Parliament, the National Popular Assembly became the primary chamber of the Algerian Parliament. There are 389 members elected on the basis of the platform of their respective political party or from lists called “independent lists.”

The Council of Nations is the second chamber of parliament. It has 144 members, two thirds of whom, that is 96 members, are elected through indirect universal balloting by the elected members of the communal assemblies and the wilayas. The remaining third, that is 48 members, is designated by the President of the Republic, by virtue of a constitutional provision. The Council of Nations passes laws with a majority of three quarters of its members. The Council of Nations debates bills already adopted by the NPA, but does not have the power to amend these bills. In the event of disagreement with the NPA, a commission with equal representation from both chambers is established to prepare a revised text which is then submitted for the approval of both chambers, without the possibility of amendment.

To ensure that the provisions contained in the Constitution are respected, the Constitution of February 1989 created a Constitutional Council made



up of nine members. Only three officers of the State have the right to refer a matter to the Constitutional Council: the President of the Republic, the President of the National Popular Assembly and the President of the Council of Nations. In addition to its duties with regard to the constitutionality of laws, the Constitutional Council is in charge of ensuring that referenda, presidential elections and legislative elections are conducted lawfully. The Council proclaims the results of these operations.

The other main institutions of the Algerian State are: the High Security Council, the Supreme Court, the State Council, the High Islamic Council and the National Economic and Social Council. These institutions generally play an advisory role.

1.1.4 Political parties - Associations

The Constitution of 1989, which instituted a pluralistic system, proclaims the repudiation of the monopolization of political power by a single party (the FLN in this case).

The July 5, 1989 Act, promulgated by the application of Article 40 of the Constitution, was immediately followed by the creation of young partisan political parties or the appearance of formerly clandestine parties. The number of parties is around 50. The main parties are the National Liberation Front (Front de Libération Nationale, FLN — the former single party which traces its roots to the War of Liberation), the National Democratic Rally (Rassemblement National Démocratique, RND — essentially anchored in administrative circles), two parties whose sociological origins are essentially Kabyl: the Socialist Forces Front (Front des Forces Socialistes, FFS, created in 1963) and the Rally for Culture and Democracy (Rassemblement pour la Culture et la Démocratie, RCD); two Islamic formations: the Social Movement for Peace (Mouvement Social pour la Paix, MSP, affiliated to the Muslim Brotherhood) and El-Islah (The Renewal Party); the Workers Party (Parti des Travailleurs, PT — of Trotskyist allegiance), the Algerian National Front (Front National Algérien, FNA).

Freedom of association is guaranteed by the Constitution. There are 66,000 associations and NGOs in Algeria.

1.1.5 Judicial system

The Constitution provides for an independent judicial system, which protects society and its freedoms, based upon the principles of equality and legality. It authorizes recourse against public authorities. Judges are protected against all forms of pressure and obey only the law. They are accountable to the High Council of the Judiciary.

The Algerian judicial system is characterized by three main traits: the duality of jurisdictions, the simplicity of the procedures and the narrowing of the gap between the judicial system and the people.

The main structures of the system are:

The Supreme Court: the body which regulates the activities of the courts and tribunals, which ensures the unification of jurisprudence and that the law is respected;

The State Council: acts primarily as judge in cases of abuses of power, as appellate judge, as cassation judge, as judge of the decisions made by administrative authorities acting in a judicial capacity and as judge in matters pertaining to the legal process and abuses of the power of eminent domain;

The High Council of the Judiciary: is presided over by the President of the Republic. In particular the Council ensures the respect of the provisions pertaining to the status of the judiciary and the discipline of judges.

To improve the effectiveness of the Algerian judicial system and to stay within the framework of the reform of the State, there is an effort to achieve real judicial independence (though theoretically established by the Constitution), as well as conform to the international standards of the Criminal Code and Family Code.

In fact, the lack of transparency and specialization has given birth to specialized task forces to make the functioning of the courts conform to international standards and create the courts that are missing (land court, commercial court, etc.).



1.1.6 Staying in Algeria: conditions – procedures – work permit

Whether traveling in Algeria as a tourist or on business, you must have a valid passport and visa. To obtain a visa you must go to an Algerian Consulate and submit a professional or private invitation.

A new law (Presidential Decree of July 19, 2003) improves the terms and conditions for issuing visas for Algeria.

A consular visa, with a multiple reentry permit, can now be obtained for periods of three months, six months, one year or two years.

Stays cannot exceed 90 days in length, while the accumulated length of time spent in Algeria cannot exceed 180 days per year.

Two types of visas are issued:

1. The business visa: issued to the foreigner in possession of a letter of invitation from his Algerian partner, a letter of employment or an assignment order from the organization hiring the visa applicant and a hotel reservation or proof that the organization extending the invitation will take care of the applicant.

2. The work visa: issued to the foreigner in possession of an employment contract and a temporary authorization to work issued prior to the work permit by the relevant authorities in charge of matters pertaining to employment, as well as a certificate of the hiring organization stamped by the relevant authorities.

This temporary work visa can also be issued to the foreigner in possession of an assistance or service contract.

As for obtaining a resident card, it is necessary to submit a birth certificate, a family registry and a certificate of employment if the person has an employment contract in Algeria or to present the Articles of incorporation, in the case of a company. Registration will then take place at the consulate.

Upon entering the country, the traveler benefits from an exemption of duties and taxes, for goods and objects for personal use that he or she might need during his or her stay, with the exception of merchandise imported for commercial purposes. The traveler may import, without any limitation as to the amount, banknotes or other means of payment. The



traveler is required however, to declare in writing on a folded form, the banknotes, valuables and other means of payment imported on the Algerian territory.

After completing customs formalities, the foreign traveler is required to conduct foreign exchange transactions in banking agencies during his or her stay in Algeria. The details of those transactions must be written on the flap of the currency declaration form. This form, as well as the foreign exchange transaction receipts, can be checked upon exiting the territory.

Foreign nationals working in Algeria must also hold a work permit or a temporary work authorization issued by the labor inspection services of the relevant wilayas (administrative departments).

The capacity to accommodate travelers in Algeria has improved noticeably these past few years. In addition to a very advantageous exchange rate, business hotel chains (Sofitel, Mercure, Hilton, Sheraton) have established large five-star hotels, particularly in Algiers, which helped absorb the demand that the great old Algerian establishments (El-Djazaïr — ex-Saint-Georges —, El-Aurassi, Es-Safir — ex-Aletti) could not handle alone. The Accor Group, as well as an important private group, is considering building two-star hotels in the main Algerian cities and in the South of Algeria. World-class hotels are being constructed in the other major agglomerations of the country.

The currency

The monetary unit of Algeria is the Algerian dinar (AD); a dinar is subdivided into 100 centimes.

The conversion of foreign currencies into dinars, at the official rate, is authorized. For transactions in which dinars are converted into a foreign currency, conversion is currently only possible within the framework of domiciled commercial transactions and is thus subject to official rules.

The official exchange rate (end of 2006) is: 1 euro = 90.5 Algerian dinars (approx.), and 1 dollar US = 70.5 Algerian dinars (approx.).

Weekend: Thursday and Friday.

The branches of banks, financial and insurance institutions, as well as certain administrative services (civil status) are open from Sunday through Thursday (weekly days off: Friday and Saturday).



Work schedule: generally from 8:00 AM to 4:30 PM. However, the branches of the banking agencies close at 3:00 PM, while those of other public services (civil status and postal services, among others) remain open until 6:00 PM.

Holidays

Independence Day: July 5

Anniversary of Revolution: November 1st

Labor Day: May 1st

New Year's Day: January 1st

Religious holidays (set on the basis of the Lunar calendar of Islam, which is 10 days behind the Gregorian calendar each year) Eïd-Al-Fitr (Holiday marking the end of fasting during the month of Ramadan): two-day holiday.

Adha (the holiday of Sacrifice, 2 months and 10 days after Eïd-Al-Fitr): two-day holiday.

Awal Mouharem (Islamic New Year): one-day holiday.

Achoura, 10th day of the lunar month of Mouharem (Holiday of the Aumône) : One-day holiday.

Mawlid en-Nabaoui Echarif commonly called "Mouloud," 12th day of the lunar month of Rabi' Ul-Awal (celebration of the birth of the Prophet Mohammed): One-day holiday.

Time zone: G.M.T.+ 1

Making telephone calls

Calling Algeria from abroad

00213 (Algeria's country code) + wilaya code (without the zero) + number of the person you wish to call

Calling abroad from Algeria

00 + country code + area code (without the zero) + number of the person you wish to call.



1.1.7 Infrastructures - Transportation

The basic infrastructure in Algeria is as big as the country, and so are the deficiencies. Their development will be an asset for the economy. With about 104,000 km, the Algerian road network is the most extensive in the Maghreb with a ratio of 3.7 km per 1,000 inhabitants. Although well-connected, the network of roads suffers nonetheless from congestion and saturation, which underlines, in the view of the authorities, the urgency of stepping up the construction of the East-West highway that will cover 2,000 km. Included among the government's top priorities, construction of this large-scale project was recently relaunched and will be completed in 2012.

The railway network covers a large part of the country. It spreads over almost 4,500 km and comprises more than 200 operational commercial train stations. The obsolescence of the trains required plans for infrastructure and intercity traffic modernization and development, as well as the restructuring of the SNTF national company. The avowed aim is to increase the supply of railway traffic from 800 million km/seat in 2004 to 2.6 billion at the end of 2010.

The airport infrastructure comprises 35 airports, 13 of which meet international standards. A new airport, with great capacity and state-of-the-art equipment, began operating in June 2006. The avowed aim is to achieve the actual liberalization of 25 % of international air traffic through the years.

On the maritime front, Algeria possesses 13 main ports, 9 of which are multi-purpose, while the remaining 4 specialize in hydrocarbons. The port of Algiers receives more than 30 % of the merchandise imported into Algeria, and about 70 % of the containers have been earmarked for upgrade as part of a modernization and improvement program.

1.1.8 Telecommunications

The telecommunications sector has been undergoing major changes over the past three years. The July 2000 Law ended the monopoly that held sway over this crucial sector, separating activities connected with the operation of the postal system with those pertaining to telecommunications. This gives private and foreign operators the opportunity to invest in the sector. In addition to this, a regulatory body (Autorité de régulation de la poste et des télécommunications, ARPT) in



charge of ensuring that the regulation is respected and guaranteeing that the various operators compete on a level playing field, has been created.

The August 5, 2000 Act pertaining to telecommunications provides for three types of plans in this sector: license, authorization and simple declaration. This has allowed two new operators to enter the sector, thus sparking a real revolution in the Algerian telephone industry.

The telephone penetration rate is growing considerably. Global teledensity has climbed from under 5% in 2002 to 41% in 2006.

1.1.9 Medias

a) Press (dailies, weeklies, magazines)

The Algerian media has taken full advantage of the democratic openness and political pluralism instituted by the February 1989 Constitution.

Freedom of the press is now clearly a tangible reality. With thirty or so dailies and more than 150 periodicals, the media landscape is extremely diversified. The share held by the private media is predominant in the written press. The total circulation of the daily press amounts to nearly 1.6 million copies.

b) Radio and television

At the national or local level, several radio stations broadcast rich and varied programs: Network I (in Arabic), Network II (in Kabyle), Network III (in French, it's the most dynamic Algerian radio), Radio El-Bahdja (mixed languages: Arabic dialect or Classical Arabic interspersed with French or Arabic-French sentences). The major regional or local areas (Mitidja, Saoura, Soummam...) also have their own radios.

National television, under the auspices of the Entreprise algérienne de Télévision (ENTV), now has two networks (02), with the launching, a few years ago of Canal Algérie, whose programs (in French) are just as dynamic as those of Radio Chaîne III. Since the end of the 1980s, Algerians are getting programs from foreign television networks (France in particular), which, due to their quality, have become a nearly unavoidable element of the daily lives of Algerian citizens in urban as well as rural areas.

The state-owned audiovisual media have been experiencing a massive inflow of commercials over the past few years, as the audiovisual sector is also expected to open itself to private investment.

1.1.10 Education – Training – Fight against illiteracy

Education and training have always been a preoccupation for the Algerian State.

Since its independence, Algeria has opted for free, compulsory education until the age of 16.

Thanks to sustained budgetary efforts and substantial investments representing about one fourth of the total budget (operations and equipment), Algeria now guarantees access to education to approximately 98 % of school-age children and maintains a schooling rate above 85% for children between the ages of 6 and 14 years old. Meanwhile, Algeria's higher education system spreads across 36 cities comprising 53 university-level institutions, including 17 multidisciplinary universities, which welcome more than 600,000 students, 54 % of whom are female students.

It is important to remember that the number of students did not exceed 3,000, when national independence was achieved (1962).

The results obtained are not commensurate with the amount of effort invested in the sector however.

Indeed, in spite of the funds allocated to education, which exceed 20 % of the State budget, several deficiencies can be observed, namely a disquietingly high student attrition rate which translates into 500,000 students leaving the educational system every year for various reasons.

In addition to the financial losses resulting from this, this phenomenon feeds a social malaise within families, produces an alarming level of delinquency and reinforces the level of illiteracy and unemployment among young Algerians.

1.1.11 Water – Water resources

A vital resource that is increasingly rare, water in Algeria is recognized as a social and economic asset. This resource has never caught the attention of public authorities as much as it does now, as recurring forecasts pointing to possible shortages in the very near term have made the

authorities sensitive to the problem of managing water resources, even leading to the creation of a ministry exclusively in charge of dealing with these issues. Mobilized water resources represent only about 43 % of the exploitable volume of about 12 billion m³.

For the most part available resources originate from the priming of 43 dams, conducted between 1952 and 1995. But, due to the lack of adequate maintenance, those facilities are now facing a high rate of silting. Estimated at 19 billion m³ total, Algeria's potential is relatively limited in terms of the mobilization of water resources.

In order to deal with this serious threat, which could have catastrophic consequences, public authorities have granted exceptional credits to reinforce the infrastructure to store and distribute water and improve the daily allotment per person, which at the moment stands at only 170 m³ per person per year. This translates into a global demand amounting to approximately 5 billion m³/year. An integrated approach to the management of water has been adopted and a large-scale action and implementation plan has been launched.

In order to better master this resource, legal and regulatory provisions have been taken or are about to be taken in order to achieve genuine "water conservation."

1.1.12 Algeria: Premier energy power of the Mediterranean

With regard to Algeria's place in the global energy picture, it ranks 15th in terms of oil reserves, 18th in terms of production and 12th in terms of exportations. The refining capacity of Algeria amounts to 22 million tons/year (2005).

Algeria ranks 7th in the world with regard to proven natural gas resources, 5th in production and 3rd in exportations, behind Russia and Canada. In light of these numbers, Algeria looks like a true energy giant.

In the Mediterranean area, Algeria enjoys a dominant position as the premier producer and exporter of oil and natural gas. As for natural gas, with 50 % of reserves, 48 % of total output and an impressive 94 % of natural gas exports, Algeria really has no rival in the Mediterranean.

Algeria is the European Union's (EU) third supplier of natural gas and its fourth supplier of energy overall.

1.2 Algerian economy

1.2.1 The Algerian economy: an historical overview

At the end of a long and painful struggle to regain its national independence after 132 years of colonial rule, Algerians set out to transform the social and economic structures of the country inherited from colonization.

The first task was to break from the unequal social and economic organization prevailing during the colonial era. First, it was necessary to consolidate the State in order to give it the means to go ahead with economic transformations:

Recapture its national resources (colonized property, mineral and hydrocarbon resources);

Nationalize industrial enterprises and the banking sector;

Create a national currency and establish control over foreign exchange and external trade.

That was followed by the establishment of a planning system, which began in 1969 and became the foundation for development plans spread over several years.

As early as 1966, the Algerian economy was moving in a new direction, with the essential goal of ending the economy's lack of cohesiveness and the domination of foreign interests inherently linked to the country's colonial past. The building of an industrial base, agrarian reform and independence vis-à-vis the rest of the world were thus the three pillars of this deliberate policy. The goal, in addition to achieving national control over the country's resources and means, is to increase living standards of the population by offering the maximum amount of employment opportunities to Algerians.

A series of national plans thus followed one after another from 1967 to 1977.

In the hydrocarbon sector, an ambitious plan aiming to raise the value of all categories of energy resources (oil, condensate, natural gas) was launched in 1978. It was a 30-year program, whose cost was expected to exceed 35 billion USD, an amount representing four times the country's



outstanding debt at the time. This plan was abandoned upon the death of President Houari Boumediene (December 1978).

In 1980, the new President (Chadli Bendjedid, 1979-1992) adopted a policy focusing on the reimbursement of the country's external debt. As early as 1984, with the proceeds from oil exports diminishing, Algeria was hard pressed to pay down its debt. In 1986, with the collapse of oil prices, the vulnerability of the Algerian economy became fully apparent.

On October 5, 1988, popular riots exploded throughout the major cities and urban agglomerations of the country. The riots resulted in more than 500 deaths and dozens of injuries, following the harsh repression (arrests and torture) conducted by the army and security forces at the order of the President of the Republic.

October 5, 1988 definitely marked the end of the old monolithic system by making plain the political impasse in which the authorities had been since 1962, as well as the country's extreme dependence on energy resources.

The country resigned itself to rescheduling its external debt, estimated at more than 25 billion USD, at the beginning of the '90s. The rescheduling, accompanied by a structural adjustment plan (SAP) that was particularly painful for the more vulnerable social strata, made it possible to reduce the annual amount of money needed to service the debt by half. This agreement signed in 1994 with the IMF and its creditors forced Algeria to pay a large percentage of the currency proceeds generated by the exportation of hydrocarbons every year until 2006. Hundreds of thousands of jobs were lost and the average income of Algeria fell drastically.

Today, ten years after the implementation of the SAP, the country's external debt has been reduced from 32.2 billion USD to 16 billion USD in 2005 and less than 5 billion USD in 2006. Parallel to these efforts, Algeria committed itself to a liberalization policy with the adoption of a market economy and the implementation of a new legislative mechanism designed to support domestic private investors and make it possible to call upon foreign capital. Several laws have been promulgated or amended for this purpose:

the Currency and Credit Act;

the Commercial Code;



the Decree pertaining to the creation of the Securities exchange;
the Investment Code;
the Ordinance pertaining to the management of government assets;
the Ordinance pertaining to the privatization of public enterprises;
the Competition Act.

1.2.2 The reforms of the “second generation”

In order to establish the changes imposed by the SAP and Algeria’s new economic orientation, the so-called “second generation” reforms were adopted in order to reinforce economic development. These reforms focused on:

Integration to the global economy

This is seen as a means of breaking away from the dependence on hydrocarbons and improving the living standards of the population. The Association Agreement with the EU and accession to the WTO represent priorities. The Support of Economic Revival Program (Programme de soutien à la relance économique, PSRE) for 2001-2004 included reforms pertaining to customs duties with a view towards a total opening of external trade.

Promotion of investments and corporate environment

This is built around SMEs, which are considered growth and employment drivers. The regulatory and institutional framework (Investment Code, Competition Policy, standardization, metrology, industrial property), as well as the financing of SMEs are particularly targeted. A corporate upgrading program with an initial budgetary allocation of about 30 million Euros is planned as part of the revival program.

Privatization and public sector reform

The reform pertains to the new laws regarding government assets and privatization: the creation of a ministry in charge of privatization and of the State’s equity stakes in public enterprises.

Reform of the banking and financial sector

The reform aims to stabilize banks that have been completely recapitalized, with technical upgrades, as well as



an improvement and modernization of the payment and supervision system. A selective opening of selective opening of banks to private and foreign capital is being considered for as early as 2007, namely with regard to CPA and BDL.

The liberalization of infrastructures

The amendment of legislative rules will enable private firms to enter the energy, mining and hydrocarbon sector (the Mining Act adopted on July 3, 2001, the Electricity Act adopted on February 2002, the Hydrocarbon Act adopted in March 2005). In the transportation sector, the strategy included in the revival plan of 2001-2004 combines rehabilitation/extension investments with the opening to the private sector (commercial port and airport activities in particular), the gradual contracting of port management, in addition to important investments in the road and railway systems. The Complementary Growth Support Program (Programme complémentaire de soutien à la croissance P.C.S.C.), includes provisions for the construction of railways for high speed trains around 2009, the completion of the Algiers subway, the Algiers airport and the construction of new airport and port facilities.

Modernization of public finances

Endowed with a special status, the tax authorities are undergoing reorganization and modernization in order to combat fraud and upgrade their performance. Newly created, the Directorate of Large-Scale Enterprises (Direction des Grandes Entreprises, DGE) is devoted to firms with sales exceeding 100 million dinars. It has been operational since January 2006.

Agriculture/food security

The goal is to increase production and reduce Algeria's high dependence on imports. The program aims to clarify land status through an adapted legal framework meant to reassure operators, as well as expand the agricultural area through contracting, the transformation of cultures, the intensification of production, and the promotion of the sustainable management of natural resources and the development of fishing.

Water - Environment

The goal is to improve services and reduce the waste of water through an effort to mobilize resources. The goal also includes stabilizing and



upgrading operators in the sector. Private sector involvement in the management of resources is planned for some time in the future. The environmental policy puts forth the idea of managing mining and energy resources economically, through the pricing of resources and tax incentives in particular.

1.2.3 Economic legislation: changes underway

A vast undertaking regarding changes to economic legislation is underway as part of Algeria's accession to the World Trade Organization (WTO). This process is in its final phase. With regard to the organization of commercial activities, the Ministry of Commerce has initiated a process pertaining to the following;

Revision of the Commercial Code;

Revision of the Commercial Registration Act (Act n° 04-08 of August 14, 2004) ;

Streamlining of commercial registration procedures (effective since January 2003);

Establishment of a framework for professions and commercial activities requiring special regulations (Act n° 04-02 of June 23, 2004);

Establishment of rules pertaining to commercial urban planning.

These reforms should enable the Ministry of Trade to:

Exercise its regulatory role and ensure the balance between supply and demand;

Adapt commercial activities to commercial urban planning standards in coordination with the technically relevant sectors;

Protect the health and safety of consumers, through the regulation of activities and professions requiring special attention with regard to certain aspects that are dangerous or present particular risks.

Reform of the Commercial Code

The Commercial Code is the main tool of the economic sector. Businessmen rely on it to create their enterprises, while judges refer to it when they rule on disputes. Thus the code must be able to match the complexity of the new economic reality. The reform of the Commercial Code pertains especially to the provisions relating to:



Commercial firms;

The introduction of a legal framework regarding the Articles of association of the chambers of industry and commerce;

The environment in which foreign merchants conduct their commercial activities;

The commercial leases now organized to match the realities of the commercial sector and economic evolution;

Group operations

Subsidiary and branch operations;

The law applicable to foreign firms established in Algeria, but whose headquarters are located in another country;

The conditions of establishment of foreign merchants.

Revision of the act pertaining to the commercial register

The provisions of the old law having shown their limits with regard to the evolution of the economic sector, the changes that have been made consist, among other things, in:

The registration of branches and trade representative offices with the commercial register;

The sanctions for failure to deregister from a commercial register when deregistration becomes mandatory;

The distinctions between corporate headquarters and the site where the operations are conducted with regard to the terms of registration to the commercial register;

The terms and conditions of group registration to the commercial register;

The definitions of opposition to registration to the commercial register and the terms of its implementation;

The sanctions for failure to abide by the provisions pertaining to publication in the Official Bulletin of Legal Announcements (BOAL) and the filing of corporate financial statements;



The clarifications of provisions relative to the right of review in the case of disputes stemming either from objections to the merchant's capacity or from the registration to the commercial register;

The integration of the provisions pertaining to prohibitions and incompatibilities with regard to the conduct of trade;

The terms and conditions for the establishment and conduct of commercial activities.

Streamlining registration procedures to the commercial register

Executive Decree n° 97-41 of January 18, 1997 pertaining to the terms and conditions for registration to the commercial register has been completely modified. Thus, certain items, such as the fiscal status certificate and tax clearance certificate that were formerly required for registration to the commercial register have been removed from the requirements. Only the following items are still required: CNRC form, birth certificate, receipts showing payment of registration fees and taxes, police background report, and accreditation in the case of regulated activities.

The foreign trade supervisory framework

The foreign trade supervisory framework has undergone gradual transformations that have now put the Algerian economy in a state of total openness. As early as 1991, the abolition of the State monopoly on external trade led to the following transformations:

The abolition of administrative measures supervising external trade (Global import authorizations (Autorisations globales d'importations, AGI), licenses, import and export programs);

The dismantling of the non-tariff protection system;

Reform of tariff protection, concomitant with the reduction in the number and levels of customs duty rates.

The dismantling of the State monopoly on external trade was sanctioned definitely in 1994 as part of the structural adjustment program, which allowed the free conversion of the Algerian dinar for commercial transactions and free access to the currency to all economic actors.

Nevertheless, and in spite of the fact that Article 19 of the Constitution specifically provided for a single law to organize external trade,



supervision is still overseen by a wide variety of legislative and regulatory texts, namely the Customs Duties Act, the Customs Code, the Currency and Credit Law, the Law on Investments, the tax laws and successive finance laws. The only legal provisions falling within the province of an external trade law are currently contained in the Customs Code. The provisions in question are the antidumping measures, the subsidies, the safeguard measures and import and export restrictions. An Ordinance on external trade was promulgated in 2004. The text, universal in character, reaffirms the sacred principle of the freedom of foreign trade, while detailing the exceptions, which also conform to international commitments within the framework of the WTO.

This text will integrate and harmonize the scattered legal provisions governing commercial exchanges (in particular the provisions of the financial laws and the customs code).

Trade in services and intellectual property rights, which are part of the WTO agreements, are now governed domestically by specific legislative texts.

Competition and transparency in the markets

By signing an association agreement with the European Union and by preparing to join the WTO, Algeria must abide by precise rules with regard to market transparency.

A new Ordinance was promulgated in 2003. This new text sets the competitive conditions in the market, prevents and penalizes restrictive practices and controls economic concentration.

With regard to prices, the new Ordinance sanctions the freedom of prices and states that the price of goods and services are freely determined by market forces.

In this regard, this Ordinance grants all prerogatives to the Competitive Council.

1.2.4 Algeria: the basic facts

Basic infrastructures

Road network: 104,000 km, including 1,350 km of freeways and expressways.

Airports: 35, including 13 conforming to international standards.



Main seaports: 13 (Algiers, Annaba, Arzew, Bejaïa, Béni-Saf, Dellys, Djendjen, Ghazaouet, Jijel, Mostaganem, Oran, Skikda, Ténès).

Railroad transportation: 4,500 km (200 operational commercial train stations).

Telecommunications: the network is totally digitalized and a national fiber optic backbone of 15,000 km has been laid out.

Fiber optic cabling: 8,000 km.

Number of telephone landlines: 2.6 million lines in 2002, 3.6 million lines in 2004, 4.4 million lines in 2005.

Mobile telephones: nearly 18 million lines in 2006, compared with only 600,000 in 2001.

Number of automobiles: 3.4 million units, 65 % of which are private vehicles. The remaining 35 % are utilitarian in nature. The market is experiencing very strong growth to reduce the average age of outstanding vehicles. 135,000 new vehicles were sold in 2005.

Internet: is experiencing very strong growth; there are already 800,000 Internet users, while thousands of cybercafés are in operation. An Internet platform with 100,000 subscribers will soon be initiated.

In addition to this, an ambitious governmental program — called Ousratic — was launched in October 2005 to encourage all Algerian households to get a computer.

Electricity: 95 % of the territory has electricity, 97 % of households are connected to the network. The 2002-2004 program contained provisions for connecting an additional 110,000 households.

Natural gas: 35 % of households are connected to the natural gas distribution network. The 2005-2009 program contains provisions for connecting 500,000 new households.

Population

Number of people: 32.4 millions, as estimated at the end of 2004.

Birth rate: about 1.6 % from 1990 to 2000. Estimated at 1.4 % in 2002.

Fertility index: 2.63 children per woman (2002 estimate).

Life expectancy: 70.5 years.



Population structure: 0-19 years: 50.2 %; 20-64: 45.9 %; 65 years and above: 3.9 %.

Written press: 150 weekly or monthly publications. Approximately thirty dailies. 1.5 million copies/per day.

Color TVs: 5 million sets.

Education – Training - Health

Primary and secondary schooling: 8.5 million students.

Higher education: 700,000 students.

Hospital infrastructures: 100,000 beds (13 university hospital centers).

Medical coverage: 1 doctor per 1,000 inhabitants.

Economy: key numbers – Macroeconomic data

Gross national product (GDP): 54.7 billion USD in 2002, 84.6 billion USD in 2004, 101.4 billion USD as of the end of 2005, 108.5 billion USD (2006 forecast).

Gross national product per capita: 1,600 USD in 2002, 2,096 USD in 2003, 2,600 USD in 2004, 3,129 USD as of the end of 2005.

Distribution of GDP/outside of hydrocarbons: 65 %, for the private sector and 35 % for the public sector.

Foreign exchange reserves: 22.5 billion USD in 2002, 43.1 billion in 2004. 60 billion USD in 2005 and 78 billion USD (forecast for the end of 2006).

Gold reserves: 173.6 tons (third in the Arab world).

Growth rate: 6.9 % in 2003, 5.3 % in 2004, 5.1% in 2005 and approx. 3% in 2006 (forecast).

Share of hydrocarbons: 30 % of the GDP; 97 % of foreign currency proceeds.

Revenues from oil taxes represent nearly 55 % of all fiscal revenues of the State.

Current account balance: 13.5 billion USD in 2004, 7.7 billion USD in 2003.



Trade balance: 13.5 billion USD surplus in 2004, 26.8 billion USD in 2005, nearly 28 billion USD in 2006 (forecast).

Total volume of exchanges: 45 billion USD (as of the end of 2004).

Inflation: 2.6 % in 2003, 2.5 % in 2005, 3.0% in 2006 (estimate)

Unemployment: 30 % of the labor force in 2004, less than 18% as of the end of 2005.

Outstanding debt: less than 6 billion USD as of the end of 2006, according to the most recent data. The debt amounted to 32.4 billion USD in 1994. The debt service ratio went from 22 % in 2001, to less than 10 % in 2005. The ratio was 47.5 % in 1998.

The main productive sectors (end of 2004)

Oil: 52 million tons (reserves of 1.5 billion tons).

Gas: 144.3 billion m³ (4th in the world).

Electricity: 6,000 megawatts, with an extra 1,200 megawatts planned for 2009.

Concrete: 11 million tons (consumption 13 million tons).

Iron: 1.5 million tons.

Phosphates: 1.4 million tons.

Foundries – Iron and Steel Mills: 700,000 tons (capacity: 2 million tons).

The Algerian agriculture

Main productions

Cereals: the annual average (1991-2003) is 23.4 million quintals. In 2003, production reached a record 42.4 million quintals

Dates: 420,000 tons in 2003, 516,000 tons in 2005.

Tomatoes: 900,000 tons (2004 estimate).

Oranges: 500,000 tons.

Livestock: 28 million heads, including 18 million ovines and 2 million bovines.

Wines: 650,000 h/l.



Fisheries: 130,000 tons (2004 estimate).

Milk: 1.9 billion litres (40 % of needs), a total consumption of about 3.6 billion litres.

Fresh vegetables: 45 million quintals in 2004.

Potatoes: an average of 160,000 tons.

The agricultural sector now represents nearly 10 % of GDP. Its contribution to overall growth went from 0.6 % in 2002 to about 2 % in 2004.

Cost of production factors

Salaries, SNMG and fringe benefits

a) Minimum interprofessional guaranteed salary (SNMG)

Salary paid per month (192 hrs): 10,000 AD/per month (39 hours a week system).

b) Net average monthly salary

Economic public sector

Managers AD 28,550.00

Supervisors AD 18,700.00

Production workers AD 14,500.00

Overall average gross salary by economic sector

Hydrocarbons and oil services AD 34,200.00

Industry AD 17,500.00

Building, public work, habitat AD 14,500.00

Services AD 22,000.00

Transportation AD 20,000.00

Commerce AD 18,000.00

Nota bene: it should be noted that the salaries exceeding the national guaranteed minimum salary are only given for reference purposes, as generally speaking, the salaries are set through negotiations between employers and unions as part of a collective bargaining agreement.



c) Fringe benefits and taxes

Taxes

Payroll tax: 1 % (base: paid salaries). Ended in 2006.

Professional tax: 2 % (base: sales figures)

Social security

Social insurance	12.50	%
Industrial accidents and illnesses	1.25	%
Retirement	9.50	%
Unemployment insurance	1.25	%
Early retirement	1.00	%
Promotion of social housing	0.55	%

Total 26.05 %

Deduction at source is calculated by applying the monthly-based OIT (overall income tax) scale to taxable amounts as stipulated in the case of salaries and withheld whenever a payment is made by the employer. The withholding rate is:

15 % for performance bonuses, usually paid by employers but not on a monthly basis; for sums paid to persons who, in addition to their main occupation as salaried workers, engage in activities linked to teaching, research or surveillance, or fill in as contingent workers; for back pay in connection with the compensations, indemnities, bonuses and allowances mentioned above;

20 % for the salaries of technical and supervisory staff of foreign nationality who are employed in Algeria by foreign firms.

The application of the respective rates of 15 and 20 % excludes the income tax abatement benefit provided to salaried workers and pensioners.

Overall income tax (OIT)

Fraction of taxable income (in AD) Tax rate (in %)



Not exceeding 60,000	0
From 60,001 to 180,000	10
From 180,001 to 360,000	20
From 360,001 to 1,080,000	30
From 1,080,001 to 3,240,000	35
Above 3,240,000	40

Nota bene: a 50 % abatement is awarded to workers residing and working in the wilayas of the Grand Sud: Adrar, Illizi, Tamanrasset, Tindouf.

A 10 % abatement for single salaried workers (that is 300 to 1,500 AD/month) and a 30 % abatement for married salaried workers (that is 400 to 1,500 AD/month).

Mutual: 100 to 150 AD/month.

Employee deduction: 9 %

d) Supplementary payments (% varies according to organization or economic sector)

Performance bonus.

Reporting pay (compulsory).

Shift work allowance.

Transportation allowance – Territorial allowance (South).

Energy

Electricity

Algeria's H.T. price per kW/h is still the lowest among countries of the Mediterranean Rim.

Supplier: SONEGAS (EPIC — State-owned industrial and commercial enterprise)

Transport distribution network: 150,300 km (is extended 150 km a year).

Connected to the electricity network: 97 %.

Oil products



Supplier: National enterprise for the refining and distribution of oil products: NAFTAL.

Tariffs: Users bulk prices (AD)

Products	Unit of Measure	To dealers	To consumers	Price at the pump
Premium grade	L	21.50	23.25	23.25
Regular gas	L	19.00	21.20	21.20
Gas-oil	L	11.65	13.70	13.70
LPG fuel	L	6.80	9.00	9.00
Unleaded super	L		22.60	22.60

Water

Supplier: **A.D.E. (Algérienne des Eaux)**

Water tariffs:

Categories of consumers	Consumption bracket in m³	Price AD
Households	1 to 25	6.30
	25 to 53	20.48
	54 to 82	34.65
	> 83	40.95
Local administrations and communities	single bracket	34.65
Tertiary sector	single bracket	34.65
Industry – tourism	single bracket	40.95

- The bill also includes a sewage treatment tax representing about one third of the total amount.

Telecommunications: services

Five service providers: Algérie Poste, Algérie Télécom and three private operators, OTA, Watania, ATC.



Postal establishments = 3,160 (the number of establishments increases by 50 a year).

Telephone lines: 3,600,000 (the number of lines increases by approx. 250,000 a year).

Rates for telephone services (Algérie Télécom) :

Per minute rate

- to landlines
 - Within the wilaya 2.34 AD, tax included
 - Outside the wilaya 7.60 AD, tax included.
- to mobile phones 10.53 AD, tax included
- International communications (Algérie Télécom)
 - Countries of the Maghreb 50.00 AD, tax included.
 - Europe 100.00 AD, tax included.
 - Countries of Africa 110.00 AD, tax included.
 - America, Asia, Oceania 150.00 AD, tax included.
- Fee schedule for mobiles (OrascomT. A)
- Monthly subscription (3 types of plans: 1,300, 2,100 and 3,000 AD)
- Per-minute rate (when exceeding basic package)
 - Djezzy to Djezzy : from 5 to 6 AD
 - Djezzy to landline: from 6.50 to 8 AD
 - Djezzy to other mobiles: from 9 to 10 AD
- Per-minute rate for faxes and data transfers
 - Djezzy to Djezzy: from 5 to 6 AD
 - Djezzy to landline and other mobiles: from 9 to 10 AD
- SMS rate (when exceeding basic package)
 - SMS to Djezzy: 3.50 AD



- SMS to other mobiles: 5 AD
- SMS to international: 14 AD
- Internet connection rate: 80,000 AD/per year, tax included.

Transportation

Tariffs are set according to the nature of the merchandise being transported, the distance, the itinerary, the tonnage, the zone of action, and whether it's in the North or the South Zone.

Rates and types of credit

Medium-term and long-term investment credits:

Length of medium term: 2 to 7 years.

Long term, more than 7 years: interest rates between 7 and 9 % + 17 % VAT on interest.

Exportation credit: short-term credit \leq 2 ans.

Different types of credit

Commercial discount credit;

Overdraft facilities;

Overdraft;

Seasonal credit;

Advances against receivables;

Advances against securities;

Advances against merchandise;

Advances against government contracts;

Pre-financing of export transactions;

Revolving pre-financing credits or specialized credits replaced, if need be, by foreign trade promissory notes (discounting of notes);

Commitments by signature (or indirect help from the bank to the company cash);

Deferred payment guarantees;



Guarantees: Customs duty bills, clearing credits, temporary admissions, private bonded warehouses, etc.

The rediscount rate went from 13 % in 1996 to 4.5% in 2003, and 4 % in 2005 and 2006.

VAT and customs duties on Com- imported equipment	mon Law	Investment Code
Customs duties on equipment	0 to 40 %	%
Customs services fee	2 %	%
Customs formalities fee	5/1000	4/1000
VAT (from January 1 st , 2001)	7 à 17 %	0 % (exempt)

1.2.5 Economic evolution

The Algerian economy evolves in step with the reforms put forth since 1994 under the aegis of the IMF.

The evolution of the Algerian economy is positive as far as trade performance and macroeconomic balances. The economy is still very dependent on the fluctuation of oil prices however, in economic terms (97 % of export earnings), as well as in budgetary terms (60 % of government revenues are generated by oil revenues).

While generating major budgetary surpluses these past few years, the Algerian economy is still characterized by a relatively weak growth rate and a persistently high unemployment rate that is rather worrisome (approximately 20 % of the labor force, and 80 % of young people, are unemployed. Some 200,000 young people join the labor market every year).

The necessary growth rate to achieve a definite, sustainable reduction in unemployment is believed to be over 7 % a year. The rate is currently under 6 %. Coupled with the effects of the structural adjustment, the reinforcement of Algeria's hydrocarbon export potential has enabled Algerian finances to post genuinely impressive performances with a balanced budget, a positive balance of payments and constantly growing foreign exchange reserves (32.5 billion USD in 2003 and 42.3 billion



USD in 2004, 78 billion USD (2006 estimate). Foreign exchange reserves were just 2.6 billion USD in 1994.

Having re-established macro-financial balances, the government, aiming to set the economic engine in motion lastingly, initiated an ambitious economic recovery support program in 2001 (PSRE) built around measures aimed at boosting agricultural production, reinforcing public services in the hydraulic, transportation and infrastructure sectors, as well as improving the living environment and contributing to local development and the development of human resources.

This program will then be completed by another program (the Complementary Support to Growth Program, PCSC), just as ambitious as the previous one, for the 2005-2009 period with a budget of 55 billion USD, that is 4,200 billion dinars.

The gross national product (in USD), which had been stagnating since 1995, has again been increasing since 2000: 51.5 billion USD in 2001, 56 billion USD, in 2002, 59 billion USD in 2003, 86 billion USD in 2004 and nearly 110 billion USD in 2006.

This progression has enabled the per capita GDP to register a clear improvement during the past three years, after an entire decade of regular, sometimes brutal, decreases. The per capita GDP was about 2,600 USD in 2006. A level that is still clearly insufficient considering Algeria's potential. In terms of purchasing power parity, this level of income is about equal to 6,500 USD (PNUD figures).

The improvement is just as obvious with regard to the aggregate debt. The public debt is constantly diminishing.

The external debt, which amounted to 20 billion USD in 2004 (now reduced to less than 5 billion USD), peaked at 32 billion USD in 1996. Algeria's rate of indebtedness is now lower than that of the other countries of the region.

1.2.6 Mining – Energy - Hydrocarbons

Algeria is a country rich in hydrocarbons. Spread over 1.5 million km², the country's mining resources are still greatly underexploited. Its proven reserves (in hydrocarbons) amount to 45 billion tons of oil equivalent.

Algeria is equipped with major infrastructures and has great production capacity. This sector has experienced important progress since the



adoption of Law n° 91-21 of December 4, 1991, amending Law n° 86-14 on Hydrocarbons and thus sanctioning the opening of this sector to foreign investment. This innovative approach has given a genuine boost to partnerships.

More than 60 exploration contracts have been signed since 1992 between Sonatrach, Algeria's national company, and foreign oil companies. Implemented in the exploration sector as production sharing contracts, partnerships are not limited to this sector, extending downstream with the creation of mixed enterprises in the service, maintenance and engineering sectors.

The liberalization of the hydrocarbon sector, which extended to activities of the oil downstream sector, has been reinforced by the promulgation of Law n° 05-07 on hydrocarbons of April 28, 2005. Although it was amended in 2006, this law confirms the abolition of the State's monopoly in this sector, thus making Sonatrach an economic and commercial enterprise completely stripped of the jurisdictional prerogatives it had enjoyed until then, which were restored to the State and delegated to agencies created specifically for that purpose.

The year 2002 was marked by the approval and promulgation of the Electricity and Gas Distribution Law. The law, which establishes a system of licenses with regard to the distribution of electricity and gas, also allows private investments in the production of electricity and the sale of energy.

This sector is still dominated by Sonelgaz, the public enterprise that provides electricity to nearly 5 million clients and natural gas to 1.5 million clients. Its electrical production capacity amounts to 6,000 megawatts. Overall investments in this sector for the 2000-2010 period, are estimated at 12 billion USD. A huge 2,000 megawatt project, of which 1,200 are earmarked for Europe, is currently underway as part of a partnership between Sonatrach, Sonelgaz and an international syndicate. These projects aim to double Sonelgaz's generating capacity.

In the mining sector, there is a disconnect between Algeria's mining potential and actual results. In order to spur the interest of investors in the exploitation of these resources, Algeria adopted a new Mining Law on July 3, 2001 encouraging investments from both Algerians and foreigners. Moreover, two texts pertaining to the application of the Mining Law of July 2001, one pertaining to the terms and procedures



regarding the allocation of mining claims and the other pertaining to their award, were published.

1.2.7 SME/SMI of the private sector

The growth of Algeria's private sector over the last two decades is revealing as to the change of direction and structure undergone by the Algerian economy. Private enterprise accounts for nearly 75 % of GDP, not including hydrocarbons, and 55 % of the value added. The number of SME/SMI keeps growing, in spite of difficulties linked to the business environment, banking and administrative red tape in particular. The total number of SME/SMI in Algeria in 2001 was estimated at around 180,000 enterprises. In 1999, the number of SME was 160,000, employing more than 600,000 salaried workers.

In order to promote this sector, henceforth considered a priority as it was a growth engine and a producer of value added, an orientation act pertaining to the promotion of SME/SMI was promulgated on December 12, 2001. This act rested on two main pillars:

The definition of small and medium-sized enterprises;

Support and aid measures to promote SMEs.

In the wake of the law, business incubators and centers for facilitating establishment procedures, as well as providing information, direction and assistance to businesses were created, along with a guarantee fund for SME-SMI (FGAR) and a fund guaranteeing credits to SME/SMI.

1.2.8 The banking sector

Before launching the far-reaching reforms of the Algerian economy some ten years ago, Algeria's banking system functioned and evolved as a privileged instrument of the public economy and centralized planning. Back then, banking activity focused exclusively on facilitating the operations of public enterprises, which represented the crucial component of Algeria's economic potential.

Starting with Law n° 86-12 pertaining to the banking and credit system, and since the promulgation of the Currency and Credit Law in 1990 in particular, the Algerian banking system began to regain some of its prestige. Since the adoption of this law, a new banking and financial environment has been created. It would turn out to be much more compatible with liberalizing the economy from the constraining



administrative guardianship it had been under, by making the Bank of Algeria the country's true monetary authority. The law confirmed the universal character of the Algerian banking and financial system by opening up the sector to both domestic and foreign banks and financial institutions.

The banking sector now numbers more than 40 banks and financial institutions. The share of private institutions — more than 10% of the market — is growing. This diversification of banking on the supply side, which is inherent to the opening of the Algerian banking system, allows foreign banks and financial institutions to establish a presence or be represented in Algeria, and is also accompanied by real, serious modernization efforts. Currently underway, this process aims to elevate the level of access to banking — still very low --of the Algerian economy and to make interbanking operations more fluid by improving the secure communications networks and introducing a wide array of modern means of payment.

Specifically, the beginning of this modernization-stabilization process translates into:

The recapitalization of the public banks and the stabilization of their commitment portfolios;

The launching of interbanking projects (a new array of products, international payment cards, data transmission networks, monetics) ;

The beginning of wider coverage for the needs of customers, households and individuals with the development of real estate credit and consumer credit.

1.2.9 Computer science – New information and communications technologies (NICT)

In these two sectors, Algeria currently appears to be the biggest market in the Euro-Mediterranean region. Sizeable equipment programs have been initiated: more than 18 million mobile telephone lines and 3 million additional landlines. Several hundred thousand computers to equip thousands of educational establishments, cybercafés, banks, administrations, local communities and tens of thousands of households.

Growth in the application of computer science and the Internet in Algeria is considerable. The interest in NICT is a real social phenomenon. The

International Telecommunications Union revealed in 2000 that there were close to 450,000 Internet users in Algeria, with almost 40,000 subscribers. From 10 sites in 1997, Algeria grew to more than 1,500 sites, more than a thousand of which are currently being built. The authorization system for opening cybercafés was abolished in 2000, replaced by a simple registration. There were more than 3,000 cybercafés as of the end of 2002. The Ministry of Telecommunications planned the creation of a platform for an additional 100,000 subscriptions to the Internet from 2003. On the legislative and regulatory front, a decree was promulgated in October 2000 authorizing and liberalizing the operation of Internet services. Foreign investors specializing in Internet ventures are now authorized to set up shop in Algeria through companies incorporated under Algerian law.

1.2.10 Health – Health infrastructures

Since 1962, Algeria has added a sizeable number of healthcare structures, accumulating a global capacity of almost 100,000 beds. A sustained effort to train qualified medical and paramedical personnel had a very positive influence on this evolution of the infrastructure. Algeria went from 258 doctors and specialists in 1962 to more than 45,000 in 2004 (many of whom are unemployed!). The overall coverage rate of the population by medical and paramedical personnel has also evolved positively, reaching a respectable rate of one (01) doctor for about every 900 inhabitants in 2004.

Confronted with serious challenges and problems pertaining to the modernization of the reception and care of patients in particular, the healthcare sector benefited from complementary budget assistance and adequate reorganization programs launched in 2002. Within 40 years, the life expectancy of Algerians increased by 26 years. During the same time span, women added more thirty years to their life expectancy.

1.2.11 Agriculture – Food processing – Fisheries

During more than two decades of development during which priority was given to Algeria's industrialization, agriculture did not receive an adequate amount of attention.

That translated into a series of substandard performances, producing a morose situation in the sector and leading to a high level of dependence



vis-à-vis imports in order to meet ever-growing needs with regard to cereals, durum wheat, soft wheat, milk, sugar, farm inputs, etc.

Algeria is one of the largest importers of durum wheat, soft wheat, milk powder and products and agricultural seeds in the world.

In order to stimulate a lethargic national production handicapped by a variety of factors (such as the legal status of land and old colonial domains, and a low level of mechanization), which on average covers only 30% of the population's consumption, the agricultural sector has now been made into a national priority. A national plan for agricultural development (PNDA) was started with the goal of creating all the technical, economic, organizational and social conditions necessary to give the agricultural sector a more dynamic role in Algeria's growth, as well as in its social and economic development. The PNDA generates and favors those elements that promote national economic integration, beginning with interactions between the agricultural production sector and the industrial transformation sector.

Forestation programs, land development efforts through a system of licenses, protection of the steppe and development of husbandry and agricultural production are the main features of this plan.

Two years after the beginning of its implementation, the PNDA has shown encouraging progress. In addition to the creation of almost 200,000 jobs and a preliminary modernization of agricultural exploitation and production, tangible results have been achieved:

New records have been posted with regard to some productions: dates, tomatoes, potatoes, eggs, white meat, milk, fruits and vegetables;

Record investments have been made in certain segments of the food processing sector (flour mills, semolina plants, oil refining plants, sugar refining plants, breweries, dairies, canneries ...).

Over the next few years, the following are expected to take place:

An increase in the amount of useful agricultural surfaces (SAU), which will go from 8 million to 9 million hectares;

The creation of 300,000 jobs by 2009;

The assurance of a growth rate of 10 % per year on average by 2009.



Similar efforts are being waged in the fisheries sector to make the sector more dynamic.

In addition to the promulgation in 2000 of a law pertaining to fishing and aquaculture, a plan to support the modernization of the fisheries sector is now being implemented.

The goal is to develop productive activities that generate jobs and ultimately increase the supply of fish products by raising the national food ratio from less than 3 kg/a year per capita in 1997 to more than 5 kg in 2005.

At the moment, production amounts to about 130,000 tons. The fishing area, estimated at 9.5 million ha, remains largely unexploited; the recovery program now underway contains provisions calling for an additional production of 30,000 tons of fish and the creation of 10,000 jobs.

These priorities are accompanied by the implementation of an action program pertaining to the organization of production activities, the organization of the profession and the distribution networks, both from a legal standpoint and from the standpoint of the necessary frameworks.

During the first two decades of independence, huge plants were built in all industries (iron and steel, metallurgy, hydrocarbons, textiles, leather, food processing, electronics ...). More than 60 % of the State's equipment budget was devoted to the country's industrialization. This rapid industrialization was supposed to equip the country with an impressive industrial infrastructure, but failed to deliver the results that the authorities had hoped for. The low level of intersectorial integration and the increased dependence on imports quickly rendered this sector vulnerable, so that now it is no longer able to follow technological evolution, nor is it capable of meeting the growing needs of the market both in terms of quantity and quality. These enterprises are suffering from an underutilization of installed capacity, as well as from an organizational and managerial deficit and very low competitiveness.

Having benefited from the State's support for years on end in most cases and having been sustained by the financial equivalent of blood transfusions through disastrous recapitalization operations, public industrial enterprises, whose capacity is still dominant in several sectors, are discovering the market economy by using the various avenues available to them.



Designated as a governmental priority, a complementary process of industrial restructuring and privatization has begun. Supported by an industrial competitiveness development program, the industrial restructuring now underway has three essential goals:

Improvement of the performance of public enterprises with regard to production;

Development of exports other than hydrocarbons;

Integration into the global market and adaptation to the structural and organizational mutations of global industry.

These efforts, which include the privatization process, have already made the development of partnerships between Algerian firms and foreign counterparts possible. Numerous opportunities have now appeared on the horizon. In the iron and steel industry, the example of the SIDER/ISPAAT partnership proved promising, just as the one linking the German group Henkel with ENAD, a partnership whose windfalls, besides maintaining the workforce on the production sites, included an ambitious upgrade program.

These far-reaching mutations of the industrial sector also translate into major inroads in the private sector, especially in the food processing, textiles, chemistry, metallurgy, electric-electronics, construction materials and chemicals-pharmaceuticals-fertilizers sectors. Important private groups also emerged in certain segments, even commanding considerable shares of the market and registering sustained growth with the mobilization of investment volumes ranging from a few million to tens of millions of Euros.

1.2.12 Public sector organization – Privatization

The Algerian economy is characterized by the existence of a relatively large state economic sector.

The economic reforms currently underway aim to validate the market economy and rehabilitate the corporation as an economic actor with complete autonomy vis-à-vis the State on the one hand, and to implement a system that will enable the State to devote itself to its role as strategic regulator and supreme authority, on the other.



In order to accelerate this reform process and enable the entities making up the state economic sector to adapt to the new realities, both new public sector organizations and new regulations were put in place.

This reorganization made it possible to transform state-owned economic enterprises into joint stock companies and to end the State's supervision, which is now exercised by trustees (beginning with equity funds, followed by holdings), to whom all shareholder attributes have been assigned, and by portfolio management firms, numbering 28, now in charge of managing government assets held by state-owned economic enterprises, and by 18 group enterprises, 11 of which are financial institutions enjoying a dominant position in the banking and insurance sectors in particular.

Heavily indebted and lacking structure, the majority of these state-owned enterprises are now eligible for privatization; an Ordinance pertaining to privatizations was enacted in August 2001, clarifying the regulatory framework and expanding privatization to all competitive segments.

This law clearly lays out the blueprint for a definite withdrawal from the economic field by the State. The government representatives who would negotiate with potential buyers are identified and their responsibilities have been expanded.

1.2.13 Real estate – Land – Public works

The housing crisis in Algeria is one of the recurring problems confronting the country and feeding intense social frustration. This problem manifests itself in a variety of ways, in spite of multiple efforts and programs launched in the hope of reducing its effects. The current deficit, based on an occupancy rate of five (05) people per housing unit amounts to approximately 1,200,000 housing units (2002 estimate).

A more realistic occupancy rate objective of 6 people per unit translates into a need for 800,000 housing units.

Paradoxically, over the past ten years the State has made quite substantial credits available to curb these deficits.

Moreover, the implementation of a mortgage market has contributed to the creation of the real estate credit necessary to give real estate development a genuine boost. Real estate development now benefits from incentives and guarantees. When it comes to carrying out programs such

as “social housing,” “participatory social housing,” “housing support” and “lease-purchase,” the deficiencies associated with the actual implementation surface as obstacles.

1.2.14 Land

Control over the land, a non-renewable resource, dictates the way in which housing, equipment and industrial programs evolve. Since independence, efforts have been waged to give Algeria an adequate legislative and regulatory structure, with the intent of ensuring that territorial organization is in step with the development policy.

It was from this perspective that legal texts organized land management procedures whose purpose was to take stock of individual ownership over privately-owned land (melk) and collectively-owned land (arch).

According to the public land law currently in force, there are two legal categories of public land: that of the public domain and that of the private domain of the state. The public domain is governed by the principle of inalienability. This does not preclude the industrial or commercial exploitation of public domain land, as private sector activities conducted by way of concessions may take place there.

Indeed, there is no incompatibility between the public domain status and the private nature of the rules governing the management of industrial and commercial services. Over the past few years the issue of access to land has been at the forefront of the debate over the revival of investment. Because of its non-availability, as well as the conditions under which it is managed, land is often presented as an obstacle to investment.

The promulgation of a new land orientation act will answer this desire to clarify the legal situation of Algerian land.

As for industrial land, the implementation of a centralized data bank at the Ministry of Participation and Promotion of Investment is underway.

There are 66 industrial zones throughout the nation, covering a total area of nearly 12,800 ha.

It should also be noted that a sizeable amount of available land is “frozen” within these industrial zones.

There are 477 activity zones covering a global area of nearly 7,300 ha.



A system called Calpi gives access to industrial land through private licensing agreements pertaining to public land destined to be used for investment projects. The said license may be converted to an outright transfer upon completion of the project.

The finance act of 2006 offers the possibility of transferring public land to investors through private agreements.

1.3 Development outlook for certain key sectors for 2010

1.3.1 Public works

Within the framework of Algeria's economic and social development and in the wake of the Economic Revival Support Plan (2001-2004), the public works sector is benefiting from fairly important programs with regard to the construction of infrastructures. This interest was again evident in the 2005-2009 plan. Important credits are being devoted to public works within the framework of the PCSC (Complementary Plan for the Support of Growth). In this regard, the public works action program pertains to the revival of the East-West highway, the opening up of the high plateaus and the Southern regions, and the construction of new port and airport infrastructures.

1.3.2 Energy - Electricity

The investment programs of Sonatrach and Sonelgaz over the next few years amount to tens of billions of USD for the development of new deposits, the increase of the hydrocarbon recovery rate of old deposits, the construction of new gas transmission lines, the increase of petrochemical production, etc.

For Sonelgaz (electricity), working in partnership or through direct investment, the goal is to achieve or support a growth plan that would increase electrical output by about 6,000 megawatts (current capacity). This translates into investments of over 10 billion USD, to which the domestic network of gas distribution times 3 must be added.

1.3.3 Pharmaceuticals and medical products

Estimations of cumulative future needs in medicine, consumables and medical devices amount to 1.5 billion USD a year. Local production covers less than 20% of the market's needs.

1.3.4 Industry

The Algerian market for industrial products as a whole shows great vitality. National production covers only part of the needs of a market estimated at more than 5 billion USD for industrial products (spare parts for cars, machine tools, semi-finished products, electronics, etc.).

Annual steel consumption amounts to 2 million tons. The production only meets 30 % of demand, with installed capacity of 2.5 million tons.

1.3.5 Food processing

With a relatively large agricultural production, more than of 12 % of GNP and imports of nearly 3 billion USD of, among others, cereals, milk and dairy products, sugar, coffee and pulses, the food processing industry suffers from a major deficit and offers great investment opportunities.

1.3.6 Infrastructures

Besides the activities linked to housing (1,000,000 housing units to be built by 2009), major infrastructure programs are being implemented, especially the construction of the 1,250 km long East-West highway, as well as dozens of projects pertaining to road transportation, ports, airports, bridges, aqueducts, dams and new cities. The Complementary Plan for the Support of Growth (2005-2009) contains provisions calling for:

- 700 billion AD for transportation (subway, high-speed trains, tramway...).

600 billion AD for public works (East-West highway ...)

400 billion AD for major hydraulic works (dams, canals...).

350 billion AD for the modernization of economic sectors having social implications (rural areas, agriculture...).

1.3.7 New technologies

Algeria currently represents one of the biggest new information and communications technologies (NICT) markets of the Euro-Mediterranean area. A major equipment acquisition program has been launched: 10 million mobile telephone lines, 3 million additional landlines and around 3 million computers to equip educational establishments, banks, communities, administrations and households.



- 50 billion AD are devoted to this goal by the State as part of the Complementary Plan for the Support of Growth (2005-2009).

2 Foreign investment in Algeria

2.1 The legal and institutional framework

2.1.1 Definition of investments

The legislator adopted a broad definition of investment.

Three types of investments are included:

Purchases of assets which fall within the framework of the creation of new activities or which are likely to expand production capacity, or to renovate or restructure production tools;

Participation in the capital of enterprises (in the form of in-kind or cash contributions);

Resumption of activities as part of a total or partial privatization.

Investments made through the award of concessions or licenses (patents, brands, etc.) are also targeted by Ordinance n° 01-03 of August 20, 2001 pertaining to the development of investment.

As well, investments in Building Operate Transfer (BOT) projects in which the concessionary ensures the financing of the investment by participating in the capital no longer are the most frequent.

It is true, on the other hand, that conversions of debts into assets have been done, with France and Italy in particular. In doing so, Algeria tried to attract investors from those countries by offering them the possibility of a nearly instantaneous return on investment.

The system, as created with France in 2004, rested on the repurchase by Algeria of debts that France held against it and in which certain firms (Alstom in particular) wished to invest. The repurchase price was higher than the market price, in order to leave a profit for investors. The profit is not monetized, but represents a consideration linked to the value of the projects carried out by the investor.

2.1.2 Freedom of investment and equality of treatment

The terms of Article 4 of Ordinance n° 01-03 refer to “investments made freely, subject to the legislation and regulations pertaining to the regulated activities and with respect for the environment.”

By regulated activities, we must take it to mean all activities governed by special rules organized by the laws and regulations defining them. In order to engage in a regulated activity, a commercial enterprise must obtain an authorization or an accreditation issued by the relevant administrative authorities.

By respect for the environment, we must take it to mean all the activities that do not violate the principles stated in the Framework Law on the Environment, amended and completed on February 5, 1983. Sustainable development represents one of the main concerns of the public authorities as stated by Algeria before the ratification of the Rio de Janeiro Convention on Biodiversity on June 5, 1992. The creation of a High Council on the Environment and Sustainable Development, on December 25, 1994, is proof of the fundamental importance that the Algerian State attaches to the preservation of natural resources and the ecological heritage.

As for the equality of treatment issue, it is brought up by Article 14, paragraph 1, which states that “foreign physical and legal persons shall receive treatment identical to that awarded to Algerian physical and legal persons with regard to their rights and obligations in connection with the investment.”

A nuance is introduced in the following paragraph however which states that “physical and legal persons all receive the same treatment, subject to the provisions of the treaties concluded with the countries of which they are nationals.”

It is through that provision that Algeria’s regulation appears to be incentive-driven rather than a command and control regulation based on the principle of neutrality, as was the case of its predecessor, namely Legislative Decree n° 93-12 of October 5, 1993.

Much like incentive-driven regulations, the Algerian law aims to attract investors. In order to do so, it must grant investors favorable treatment. Surely this departure from the principle of equal treatment is not clearly stated. But it is the logical outcome of the interaction between two legal



instruments, namely the treaty concluded by the Algerian State with the countries of which the investors are nationals on the one hand, and the treaty concluded between the National Agency for the Development of Investments (Agence nationale de développement de l'investissement, ANDI), which acts on behalf of both the State and the investor, on the other hand.

Algeria has concluded more than 25 bilateral treaties to protect investments, in addition to the multilateral treaties that have the same intent.

Country	Date of signature	Date of ratification	Period of validity	JORA Ref
South Africa	09/24/2000	07/23/2001	10 years	N°41 – 2001
Germany	03/11/1996	10/07/2000	10 years	N°58 – 2000
Argentina	10/04/2000	11/13/2001	10 years	N°69 – 2001
Austria	06/17/2003	10/10/2004	10 years	N°65 – 2004
Bahrain	06/11/2000	02/08/2003	10 years	N°10 – 2003
Bulgaria	10/25/1998	04/07/2002	15 years	N°25 – 2002
China	10/20/1996	11/25/2002	10 years	N°77 – 2002
Swiss Federal Council	11/30/2004	06/23/2005	15 years	N°45-2005
Korea	10/12/1999	07/23/2001	20 years	N°40 – 2001
Egypt	03/29/1997	10/11/1998	10 years	N°76 – 1998
United Arab Emirates	04/24/2001	06/22/2002	20 years	N°45 – 2002
United States of America	06/22/1990	10/17/1990	20 years	n°45 – 1990
Ethiopia	05/27/2002	03/17/2003	10 years	N°19 – 2003
Finland	01/13/2005	12/11/2006	20 years	N° 06-469
France	02/13/1993	01/02/1994	10 years	N°01 – 1994
Indonesia	03/21/2000	06/22/2002	10 years	N°45 – 2002

Iran	10/19/2003	02/26/2005	10 years	N° 15 – 2005
Italy	05/18/1991	10/05/1991	10 years	N°46 – 1991
Kuwait	09/30/2001	10/23/2003	20 years	N° 66 – 2003
Libya	08/06/2001	05/05/2003	10 years	N°33 – 2003
Malaysia	01/27/2000	07/23/2001	10 years	N°42 – 2001
Mali	07/11/1996	12/27/1998	10 years	N°97 – 1998
Mozambique	12/12/1998	07/23/2001	10 years	N°40 – 2001
Niger	03/16/1998	08/22/2000	10 years	N°52 – 2000
Nigeria	01/14/2002	03/03/2003	10 years	N°16 – 2003
Arab countries	10/07/1995	10/07/1995	05 years	N°59 – 1995
Poland	09/15/2004	05/28/2005	10 years	N°37 – 2005
Qatar	10/24/1996	06/23/1997	10 years	N°43 – 1997
Hellenic Republic	02/20/2000	07/23/2001	10 years	N°41 – 2001
Tcheque Republic	09/22/2000	04/07/2002	10 years	N° 25 -2002
Roumania	06/28/1994	10/22/1994	10 years	N°69 – 1994
Kingdom of Spain	12/23/1994	03/25/1995	10 years	N°23 – 1995
Denmark	01/25/1999	12/30/2003	10 years	N° 02 -2004
Jordan	08/01/1996	04/05/1997	10 years	N°20 – 1997
Kingdom of Sweden	02/15/2003	12/29/2004	20 years	N° 84 – 2004
Sudan	10/24/2001	03/17/2003	10 years	N°20 – 2003
Sultanate of Oman	04/09/2000	06/22/2002	10 years	N°44 – 2002
Syria	09/14/1997	12/27/1998	10 years	N°97 – 1998
Belgium-Luxembourg Economic Union	04/24/1991	10/05/1991	10 years	N°46 – 1991
Arab Maghreb Union	07/23/1990	12/22/1990		N°06 – 1991
Yemen	11/25/1999	07/23/2001	10 years	N°42 – 2001

As for the agreement which must be concluded between ANDI and the investor, it is freely negotiated by the two parties and is far from being an agreement reached in a public law context, as its prompt approval by the National Investment Council (Conseil national de l'investissement, CNI) as well as its publication in the Official Journal, would suggest. In reality it is a commutative contract in which the contributions required from the investor are largely compensated by the advantages and privileges that he enjoys by law and which are included in the agreement.

2.1.3 Guarantees – Protections – Treaties concluded by Algeria

First you might want to take note of a general provision which states that, once approved, the foreign investment regime is inviolable. By virtue of Article 15, revisions or repeals likely to take place in the future do not apply to investments already made unless the investor specifically asks that they be applied.

In order to prevent legislative and/or regulatory hazards, the legislator intends to confer complete stability to the investment regime.

Moreover, by virtue of Article 16, requisitioning through administrative channels is only possible if there are provisions in the law allowing it. In any event, it leads to a fair and equitable compensation.

Another protection (which they had continuously demanded since the '70s) especially appreciated by foreign investors is the submission of all disputes between them and the Algerian State to arbitration. Of course the general principle consists in granting jurisdiction to local courts, knowing that the dispute pertaining to the investment occurred on the territory of the state of destination, namely Algeria, and that Algerian rules regarding matters of jurisdiction automatically designate Algerian tribunals.

However, since Legislative Decree n° 93-09 of April 25, 1993, the State is now authorized to include arbitration clauses in its international contracts (either organizing ad hoc arbitration, or institutional arbitration).

Before the adoption of that decree, Algeria had been abiding by the New York Convention of June 10, 1958 for the acknowledgment and execution of foreign arbitration rulings (Act n° 88-18 of July 18, 1988).

Subsequent to a new law on arbitration (the first law on international arbitration since independence in fact), Algeria ratified the Convention of June 18, 1965 for the resolution of disputes pertaining to investments between countries and nationals of other countries (Ordinance n° 95-04 of January 21, 1995), as well as the Convention of September 1986 pertaining to the creation of the Multilateral Investment Guarantee Agency, which came into effect in 1988 (Ordinance n° 95-05 of January 21, 1995).

2.1.4 Capital transfers in Algeria

Article 31 of Ordinance n° 01-03 states that: “Investments made from capital contributions in freely convertible currencies, quoted regularly by the Bank of Algeria which duly takes note of the importation of the said currencies, benefit from the guarantees pertaining to invested capital transfers and associated income. This guarantee also pertains to the real net product from transfer or liquidation, even if that amount exceeds the invested amount.”

The application of this text created some problems. In fact, in order to determine the transferable portion, a distinction has to be made between the capital (in other words, all the assets used in production) and owner’s equity (the value of the capital owned by the enterprise: capital stock, reserves and retained earnings). Only the funds exported to Algeria as investment, not all upstream expenditures made in connection with the investment, are destined to serve as the base for calculating transferable capital and income.

However, the importation of goods and products for resale in the same condition does not give one the right to transfer the income generated by such sales.

In fact, it is the issue of capital movements and foreign exchange market organization as a whole that is raised by the transfer of dividends and capital.

The situation is much clearer since the adoption of Regulation n° 05-03 of June 6, 2005 pertaining to foreign investments.

This text defines the terms and conditions for transferring dividends, earnings and real net proceeds from the sale or the liquidation of foreign investments made within the framework of the aforementioned Ordinance n° 01-03.

While Regulation n° 2000-03 stated that “the transfer authorization was granted by the Bank of Algeria within a time period that could not exceed 2 months from the time the application was filed,” Regulation n° 05-03 now requires that the banks and accredited institutions “execute without delay the transfer of dividends, earnings, proceeds from the transfer of foreign investments, as well as attendance fees and percentages of profits for foreign administrators.”

But just as with Regulation n° 2000-03, Regulation n° 05-03 contains a provision stating that the earnings and dividends generated by mixed investments (domestic and foreign) are transferable up to an amount corresponding to the duly acknowledged foreign contribution to capital.

As for the transfer and the liquidation of investments, an amount corresponding to the duly acknowledged participation of the foreign investor to the structure of the total investment is transferable.

The Bank of Algeria only verifies transfers made by primary banks after the fact.

The implementation of this regulation is supposed to fix the slowness observed in transfer operations. Still the justification for the delays was not without merit: the idea was to allow the Bank of Algeria to have and analyze all the relevant data on capital import operations to the extent that these operations determined the transfer measures taken as a result.

2.2 Tax advantages likely to be granted to investors

These are the tax advantages provided for in Ordinance 2001-03 pertaining to the development of investment amended and completed by Ordinance 2006-08.

The Ordinance sets the regime applicable to domestic and foreign investments implemented as part of economic activities pertaining to the production of goods and services, as well as investments implemented within the framework of the granting of concessions and/or licenses.

It provides for two types of regimes in connection with the granting of tax advantages and other incentives, one being a general regime the other being a special regime.

In order to benefit from these advantages, investors must be declared eligible beforehand by ANDI and submit an explicit request for advantages.

2.2.1 Advantages of the general regime

Since 2006 these advantages are automatically granted to all investments that do not fall within the scope of application of the “black” list, which will be published by decree.

They are granted in connection with the implementation of the investment and its exploitation.

- The advantages granted in connection with the implementation of the investment:

Customs duties exemptions for imported equipment going directly into the implementation of the investment;

VAT exemption for goods and services going directly into the implementation of the investment;

Exemption of the property transfer tax in return for all property acquisitions made as part of the investment;

- The advantages granted in connection with the exploitation of the investment:

After confirmation that exploitation of the investment is underway, a three-year exemption on corporate income tax (IBS) and on the professional activity tax (TAP) is granted.

2.2.2 Advantages of the special regime

This regime is specifically meant for investments implemented in the zones designated for development (defined by the National Investment Council, Conseil National de l’Investissement) :

The following advantages are granted in connection with the implementation of the investment:

- Exemption of the property transfer tax in return for all property acquisitions made as part of the investment;
- Application of a fixed fee at the reduced rate of two per thousand (2‰) for the registration of the Articles of incorporation and the capital increases of the corporation benefiting from the advantages;
- Partial or total assumption of expenditures made in connection with the infrastructure works necessary to implement the investment;

- VAT exemption for goods and services going directly into the implementation of the investment , imported or acquired locally, when those goods and services are destined to be used to conduct operations subject to the VAT;
- Exemption of customs duties on imported equipment going directly into the implementation of the investment.

The following advantages are granted in connection with the exploitation of the investment:

- Exemption, for an effective 10-year period of activity, of corporate income tax (IBS) and professional activity tax (TAP) ;
- Exemption, for a period of ten years beginning on the date of acquisition, of the property tax on real estate properties acquired within the framework of the investment;
- Additional advantages likely to improve and/or facilitate the investment, such as loss carry-overs and depreciation extensions.

Investments bearing special importance for the national economy:

- In the case of investments bearing special importance for the national economy (a regulatory text is expected to define this type of investment), the investor is encouraged to seek an agreement with ANDI in order to benefit from certain advantages within the framework of the special regime. The aforementioned agreement usually follows negotiations between ANDI and the investor who must demonstrate the special importance of his project with a study of the technical and economic impacts.
- With regard to the investment phase, the texts provide for an incomplete list of advantages, namely including customs duties, VAT and registration fee exemptions for a maximum period of 5 years.
- As for the exploitation phase, IBS and TAP exemptions, among other advantages, can be considered for a period not exceeding 10 years.

2.3 Institutions in charge of promoting investments

Two regulatory texts were adopted in October 2006. Those are Executive Decree n° 06-355 of October 9, 2006 pertaining to the prerogatives, composition, organization and operation of the National Investment



Council (Conseil National de l'Investissement, CNI) and Executive Decree n° 06-356 of October 9, 2006 pertaining to the prerogatives, organization and operation of ANDI.

2.3.1 The National Investment Council

The council is an organization placed under the authority of the Head of the Government who presides over it. The council is the responsibility of the minister in charge of promoting investments. Its mandate is to issue proposals and studies, but it also has genuine decisional power.

Its main tasks are as follows:

With regard to its mandate requiring it to issue proposals and studies, the CNI :

- proposes a strategy and sets the priorities for developing investment;
- proposes adapting investment incentives to reflect observed changes;
- proposes any decision and measure necessary for implementing investment support and promotional mechanisms to the Government;
- studies any proposal pertaining to the establishment of new advantages.

With regard to the decisions it makes, these include:

- approval of the list of activities and assets excluded from the advantages, as well as their modification and update;
- approval of the criteria used to identify the projects bearing special importance for the national economy;
- establishing the list of expenditures likely to be charged to the fund devoted to investment support and promotion;
- determine the zones likely to benefit from the special regime provided for in the Ordinance of July 15, 2006.

We should add that the CNI estimates the necessary budgets to cover the national investment promotion program, fosters the creation of adapted institutions and financial instruments (...) and generally speaking, deals with any issue pertaining to investments.

All ministers with portfolios involving economic issues are members of the CNI, for a total of nine (9) members. The chairman of board and the



chief executive officer of ANDI attend CNI meetings, but only as observers.

An Executive Decree (Decree n°01-281 of September 24, 2001) defines the composition, organization and operation of CNI.

It should be noted that the CNI is not an independent administrative body and that its decisions and/or recommendations are not addressed directly to the investor, but are meant for the authorities in charge of the implementation of the legal texts pertaining to the promotion of investments, meaning, first and foremost, ANDI.

2.3.2 ANDI

ANDI is an administrative public institution (établissement public à caractère administratif, EPA) endowed with legal personality and financial autonomy. It has been placed under the authority of the minister in charge of promoting investments. ANDI's mission has seven (7) components: to provide information (a), to facilitate (b), to promote investment (c), to provide assistance (d), to participate in the management of economic real estate (e), to manage advantages (f) and, generally speaking, to provide a follow-up (g).

a) With regard to information, the most important thing to note is that ANDI provides investors with referral and information services, puts together information systems and sets up data banks.

b) With regard to facilitation, ANDI establishes a decentralized one-stop service (Guichet unique décentralisé, GUD) identifies obstacles to the implementation of investments and endeavors to make proposals to streamline procedures and regulations in connection with the implementation of the investment.

c) With regard to the promotion of the investment, ANDI ensures that business contacts between non-resident investors and Algerian operators are established and takes actions to disseminate information so as to promote the overall investment climate in Algeria.

d) Its assistance mandate consists in organizing a service to welcome, support and accompany investors, as well as in establishing a unique individual service to assist non-resident investors in fulfilling the necessary formalities.



e) Its participation in land property management translates into providing information to investors regarding the availability of land and land portfolio management.

f) With regard to the management of the advantages, ANDI is required to identify those project that bear special importance for the national economy, to verify eligibility to the advantages, to render a decision pertaining to the advantages, to confirm the cancellations of decisions and/or the withdrawals of advantages (total or partial).

g) Finally, through its general follow-up mission, ANDI is not only in charge of developing a service for observing and listening, but it must also provide statistical services, collect data pertaining to the progress of projects in close collaboration with investors, and finally it must ensure that investors abide by the commitments made in connection with the investment protection treaties (bilateral and multilateral).

h) Ensures that investors abide by their commitments during the exemption phase.

ONE-STOP SERVICE

This is a very important institution in that it must carry out the formalities of incorporation of corporations and enable the implementation of investment projects.

The one-stop service is a decentralized institution, as it is established at the Wilaya level. Local representatives of ANDI, as well as the representatives of the CNRC, the fiscal authorities, the domains, customs, the urban planning department, the national planning and environmental department, the labor department and the APC representative of the area where the one-stop service is being established all sit on its board. Decree n° 06-356 gives the representatives of all the aforementioned institutions a specific mandate in connection with the nature of the administrative authorities they represent.

Non-resident investors receive special attention from lawmakers. First, the director of GUD is the only direct counterpart for non-resident investors. Secondly, the director of GUD must accompany the investor, establish, deliver and certify that the investment declaration has been filed and that the decision to grant advantages has been rendered. Thirdly, the director must take over the cases examined by GUD members and ensure their successful completion, once they are channeled to the

relevant departments. All documents issued by GUD having probative force, all administrative authorities are required to abide by them.

As of January 31, 2006, six decentralized one-stop services (GUD) had been established throughout the national territory (Algiers, Blida, Oran, Constantine, Annaba and Ouargla).

3 The privatization system

3.1 The privatization policy

Only six years after paving the way to privatization with Ordinance n° 95-22 of August 26, 1995 pertaining to the privatization of public enterprises, the public authorities were led to adopt a bolder policy with Ordinance n° 01-04 of August 20, 2001 pertaining to the organization, management and privatization of public enterprises.

The legislator no longer distinguishes between enterprises from strategic sectors and those from competitive sectors. The two categories are eligible for privatization, and so are the enterprises that provide public services. However, in the case of enterprises considered by the State to be jewels of the economy or the industry, specific measures can be taken by the State, on a temporary basis, to prevent these enterprises from being acquired by foreign interests and to ensure that their original activities are protected.

The Algerian privatization policy aims, through the transfer of public assets to private acquirers, to improve management, acquire new technologies and reduce the debt owed by the Treasury to the Bank of Algeria. It is for that reason that the State, through the corporations in charge of managing the government's equity stakes in public enterprises (Sociétés de gestion des participations, SGP), negotiates tightly the price of transferring enterprises to private acquirers, as privatizations are supposed to generate new revenues for the Treasury.

The policy of the public authorities aims instead to favor beneficial privatizations. That is what transpires from Article 17 of Ordinance n° 01-04 of August 20, 2001, which states that "privatization operations by which acquirers commit to making the enterprise profitable or to modernizing it and/or maintaining part or all salaried jobs and keeping the enterprise in operation, may benefit from specific advantages negotiated on a case by case basis."

In other words, a useful privatization for the country is one that enables existing enterprises to benefit from an external contribution (financial, technological, managerial) in order to develop their activities, strengthen their production capacity and create new jobs. Moreover, in order for Algeria to abide by the commitments made to the international financial community in general and to Bretton Woods institutions in particular, the privatization policy rules out the idea of keeping alive moribund enterprises whose means of production are obsolete, inefficient, costly and even ruinous, as far as taxpayers are concerned.

3.2 Preparation for privatization

Article 18 of Ordinance n° 01-04 states that: “Prior to any privatization operation, the assets and securities targeted for privatization will have to be evaluated by experts on the basis of generally accepted methods in this field.”

As for Article 19, it states that “the terms under which property is transferred are governed by special specifications that constitute an integral part of the transfer contract defining the rights and obligations of the seller and the buyer.”

The methods used in evaluating enterprises are a central aspect of the preparation for privatization.

Three valuation methods are now being used by financial and accounting experts.

First, there are asset-based valuation methods, which are based on intrinsic value.

Then there are valuation methods based on enterprise value as determined by discounted future cash flows.

Finally, there are assessment methods based on stock market valuations.

That being said, since 1998 (the year when privatizations actually began) the evaluations of public enterprises clearly show that the asset-based valuation method represents the floor price, while the method based on discounted future cash flows yields a price based on wishes. As a result, evaluators are forced to use the asset-based valuation method in more than 90% of cases to determine the value of an enterprise.



The evaluation of public enterprises is not always just a technical matter. Issues of political and economic timeliness may also have to be considered.

With regard to the execution of the privatization program adopted by the cabinet, Article 22 of Ordinance n° 01-04 states that it is up to the Minister in charge of Equity Stakes to:

- have the value of the enterprise or assets earmarked for transfer assessed;
- study the offers, choose among them and prepare a well-documented report on the selected offer;
- protect the information and introduce procedures capable of preserving the confidentiality of the information;
- submit the transfer file, which, among other things, includes the evaluation and the price range, the chosen terms and conditions for transferring the assets, as well as the buyer's proposal, to the Council in charge of the State's Equity Stakes (Conseil des participations de l'État, CPE).

3.3 Privatization procedures

Article 26 of the aforementioned Ordinance states that privatization operations can be conducted

- either by resorting to financial market mechanisms (listing on the stock exchange or a fixed-price public offering) ;
- by a call for tenders;
- by resorting to private agreements;
- by encouraging public shareholding.

A whole chapter of the law is devoted to special provisions that benefit salaried workers. Three measures which are meant to facilitate the buy-out of an enterprise by its employees are worth a special mention:

- the acquisition, free of charge, of up to 10% of the capital of the enterprise;
- the exercise of a right of first refusal;
- a 15% maximum discount on the transfer price.

Resorting to market mechanisms may also translate into a stock exchange listing or result from a fixed-price public offering. In the first instance, the operation will consist in selling listed securities to institutional and individual investors. If the securities are already listed, they have a market value and the price will have to be set after the implementation of the chosen method of evaluation. This method remains theoretical however, as the Algiers Stock Exchange currently operates at a snail's pace, with just three listed stocks, each of which only makes 20% of outstanding shares available for trading.

In the vast majority of cases, the securities are not listed. Thus, in accordance with securities law, a prospectus about the enterprise eligible for privatization must be made available to investors. The mission of the Algerian Securities Exchange Commission (Commission de surveillance des opérations boursières, COSOB) is very important to the extent that it determines the price and the amount of transferable securities. It is only after publication of the commission's notice that the distribution of securities will get underway. It is up to the institutions in charge of distributing the securities to look for institutional or individual investors.

As for public offerings, in the case of public enterprises eligible for privatization, public offerings consist in making part of their capital stock available to the public at a price set in advance.

Resorting to the private agreement method consists in the transfer by the State of a public enterprise to a private buyer with whom the State negotiate directly to set the price of transfer and, if need be, the terms of privatization.

The promotion of public shareholding essentially falls into two categories:

- 1 the sale of a certain percentage of shares to workers (directly or to a group of shareholders);
- 2 the proposal to sell shares to the public, via the Stock Exchange, or by using the method called privatization "by warrants," which has the merit of encouraging the population to become interested in the capital market to the extent that people would now be required to keep track of the price of their shares and become seriously involved in the economic transformation process.

So far, only the shares of Hôtel El-Aurassi, of the Soidal Enterprise (pharmaceutical industry) and Eriad de Sétif (flour milling industry) have listed their shares on the stock exchange and even then only 20% of their outstanding shares are listed.

For the vast majority of the other enterprises, as soon as their evaluation is completed, a call for tenders will be issued, followed by negotiations with potential buyers, conducted under the auspices of the supervisory SGP in cases where the enterprises eligible for privatization have less than 500 employees, or under the auspices of the Minister in charge of the State's Equity Stakes, if the number of employees is above that number.

Once the proposal has been negotiated, it is then submitted to the Council in charge of the State's Equity Stakes for approval and the council then decides, completely independently, to either accept or reject the offer. In cases where the offer is approved, the deed of transfer is negotiated and the enterprise changes hands.

4 Legal forms of incorporation in Algeria

4.1 Commercial firms

4.1.1 Common elements to all commercial firms:

a) Formal requirements:

Corporate name: a corporate name already registered by another corporation or enterprise with the Commerce Register may not be chosen. A certificate of non-registration (corporate name), valid for six months, must therefore be submitted upon registering the company with the Commerce Register. The corporate must inevitably be followed by the corporate form.

Corporate object: the company is free to choose its object, subject to the respect of fixed conditions in the case of activities targeted by specific regulation.

- Contributions:

- Cash contributions: the funds generated by cash contributions are deposited with a notary or a financial institution. In the case of non-resident shareholders or partners, the funds are deposited in the name of



the company being formed in an Algerian bank in a pending account opened in a foreign currency.

- Contributions in-kind: one or more contribution auditors are designated by judicial decision at the request of the founders or one of the founders. As part of their responsibilities, the auditors appraise the value of the contributions in-kind. Their report is attached to the Articles of incorporation.
- Industrial contributions in the case of partnerships.

Capital stock: the minimum capital of a company involved in the importation of goods for the purpose of reselling the said goods in the same state must be twenty million dinars (20,000,000 DZD) regardless of the type of corporation.

Accountability: directors are accountable individually or jointly, as the case may be, vis-à-vis the corporation or third parties, for violations of legal provisions, violations of the Articles of incorporation or managerial misconduct.

b) Substantive requirements:

Articles of incorporation: signed by all partners, either in person, or through an authorized agent with special power of attorney, the Articles of incorporation must be drawn up by a notarized deed. The founding or managing directors and the statutory auditor are designated in the Articles of incorporation or during the statutory shareholders' meeting established by a notarized deed or by a private deed filed with a notary.

c) Pièces requises usuellement par les notaires pour la constitution de société :

- 1 Certificate of non-registration in the Commerce Register of the corporate name used by the firm about to be established;
- 2 The commercial lease at the address of the headquarters;
- 3 Proof of payment of cash contributions in the case of non-resident shareholders (bank certificate) ;

For each shareholder or partner who is a legal person:

- 1 Minutes of the corporation's governing body authorizing its representative to purchase shares in a company.



- 2 Registration certificate of the corporate shareholder.
- 3 Special notarized power of attorney, if the representative of the corporate shareholder does not have the statutory capacity.
- 4 Copy of the Articles of incorporation of the corporate shareholder.

For each shareholder who is a physical person:

- 1 Copy of birth certificate.
- 2 Copy of police background report less than three months old.

For the directors or members of the supervisory or managerial board:

- 1 Copy of birth certificate.
- 2 Copy of police background report.
- 3 Copy of piece of identification.

d) Documents required for the registration of the corporation:

Registration of the corporation with the Commerce Register is required in order for the corporation to have legal person status.

1. Registration form from the National Commerce Register Center (Centre National du Registre de Commerce, CNRC).
2. Ownership deed or lease for the space housing corporate headquarters.
3. Affidavit drawn up by a bailiff certifying the existence of the commercial space housing corporate headquarters.
4. Two copies of the company's Articles of incorporation.
5. Notice of publication in the BOAL and in a national daily newspaper.
6. Accreditation (for a regulated activity).
7. Certificate of non-registration of the corporate name.
8. Copy of the police background reports of the directors.

4.1.2 The characteristics of each type of commercial company:

4.1.2.1 The joint stock company (JSC)



The joint stock company is governed by Article 592 and the following Articles of the Commercial Code, which define such companies as “companies whose capital is divided into shares and which is constituted between partners who shoulder losses only in proportion to their contribution.” The company is required to designate a statutory auditor.

The company may be established by conducting a public offering.

Only the rules governing joint stock companies which do not conduct public offerings will be mentioned in this publication.

Establishment

a) Substantive requirements

Number of partners: the number of partners cannot be less than seven (07), except in the case of State-owned corporations.

Capital stock: the capital stock of the JSC that does not conduct a public offering must amount to at least one (1) million Algerian dinars and must be completely paid.

At least one-fourth of the par value of shares paid in cash must be paid upon subscription. The remainder may be paid in one or more installments, depending on the Board of Directors or the Supervisory Board’s decision, within 5 years following the company’s registration with the Commerce Register. Shares in-kind must be fully paid for upon subscription.

Management of a joint stock company:

Two systems of management can be chosen by the founding shareholders of the joint stock company:

- “French-style” management with a board of directors and a president.
- “German-style” management with a supervisory board and a managing board.

a) Management consists of a board of directors and a president.

- The board of directors

The board of directors is made up of at least three, but no more than twelve, members.



- Appointment: The directors are elected by the statutory shareholders' meeting or by the ordinary general assembly. The length of their term is determined by the Articles of incorporation but cannot exceed six years.

A physical person may not belong simultaneously to more than five boards of directors of joint stock companies headquartered in Algeria.

No condition is required as to nationality.

A legal person may be named as director, provided that it designates a permanent representative who is subject to the same conditions and obligations. The representative is liable for the same civil and criminal responsibilities as if he were a director in his own name.

A director may not receive an employment contract from the corporation after his appointment as director.

On the other hand, a salaried worker who is a shareholder of the company may only be appointed director if his employment contract preceded his appointment as director by at least one year and pertains to an actual job.

- Qualifying shares: the minimum amount of shares held by each director is set by the Articles of incorporation, but the total number of shares held by the directors as a whole must amount to at least (20 %) of capital stock.

All those shares are allocated as guarantee for all of management's actions, even those performed in an exclusively personal manner by one of the directors. They are inalienable.

If on the day of his appointment, a director does not own the required amount of shares, or if during his term, he ceases to be the owner of his shares, he will be deemed to have automatically resigned if he does not address his situation within three months.

- Dismissal: the directors may be dismissed at any time by the ordinary general assembly of shareholders.

- Powers: the board of directors is entrusted with the broadest possible powers to act on behalf of the corporation in all circumstances; the board exercises these powers within the limits of the corporate object and subject to the powers specifically assigned to the shareholders' meetings. The provisions of the Articles of incorporation limiting the powers of the board of directors are not valid with regard to third parties.



- Regulated agreements: Directors of the corporation are forbidden to contract loans from the corporation in any form whatsoever, to secure an overdraft from it, as a current account or otherwise, and to have the corporation guarantee or secure their commitments toward third parties.

With the exception of normal agreements with clients pertaining to corporate operations, agreements concluded between the corporation and one of its directors, either directly or indirectly, must be subject to prior authorization by the board of directors following the statutory auditor's report under penalty of annulment.

A similar provision applies to agreements between the corporation and another enterprise if one of the directors is the owner, partner, manager, administrator or director of the said enterprise. The director who finds himself in a situation such as the one described above is required to declare it to the board of directors.

The statutory auditors submit to the shareholders' meeting a special report on the agreements thus authorized by the board. The director or directors in question may not take part in the vote and the shares that they hold will not be taken into account when calculating the quorum and the majority.

- Compensation: the shareholders' meeting awards a director's fee in the form of a fixed annual sum to the directors as compensation for their activities and may also, in the event of a dividend distribution, provide for payment of a share of profits, as long as it does not exceed one tenth of distributable income, after deducting reserves and deferred amounts. The amounts are distributed among directors by the board of directors.

The board of directors may also award exceptional compensation to directors for missions or assignments that they were entrusted with, provided that the operation is put to a vote at the shareholders' meeting.

More generally speaking, the board of directors may authorize the refund of travel expenses and other expenses incurred by the directors to further the interests of the corporation.

- Quorum and majority: the board of directors only deliberates validly if at least half its members are present. The Articles of incorporation set the majority required to make decisions. Without the sufficient number of directors present, the board's decisions are made by the majority of



members present, and the chairman may have the casting vote in case of a deadlock.

- The chairman of the board

- Appointment: the board of directors elects a chairman among board members who must be a physical person as failure to do so will result in the nullification of the appointment. The board sets his compensation. The chairman, who is eligible for reelection, is appointed for a length of time that may not exceed that of his term as director.

- Dismissal: the board of directors may dismiss the chairman at any time. Any provision to the contrary is considered of no force or effect.

- Powers: the chairman of the board of directors assumes overall management of the corporation under his responsibility. He represents the corporation in its relationships with third parties.

Subject to the powers specifically assigned by law to shareholders' meetings, as well as the powers reserved especially to the board of directors by law, the chairman is invested with the broadest possible powers to act in all circumstances on the corporation's behalf within the limits of the corporate object.

The provisions of the Articles of incorporation or the decisions of the board of directors limiting his powers are not valid with regard to third parties.

b) Management made up of a supervisory board and a managing board

- Managing board

- Appointment: the joint stock company is governed by a managing board consisting of three to five members, who fulfill their duties under the control of a supervisory board. The Articles of incorporation set the length of the managing board's term within limits ranging between two and six years. In the absence of such specifications, the term's length is four years.

Members of the managing board, who must be physical persons, are appointed by the supervisory board, which appoints a member of the managing board as chairman.

- Dismissal: the members of the managing board may be dismissed by the shareholders' meeting on the recommendation of the supervisory board.



- Powers: the managing board is entrusted with the broadest possible powers to act on behalf of the corporation in all circumstances, within the limits of the corporate object and the powers specifically granted to the supervisory board and the shareholders' meetings by law.

The provisions of the Articles of incorporation limiting the powers of the executive board are not valid with regard to third parties.

- Accountability: in case of court-ordered settlement or bankruptcy, the members of the managing board may be held accountable for the liabilities of the enterprise.

- Regulated agreements: Any agreement concluded between a corporation and a member of the managing board, or between a corporation and an enterprise, if one of the members of the managing board is the owner, partner, manager, director or chief executive of the said enterprise is subject to prior authorization by the supervisory board.

Members of the managing board, other than legal persons, are prohibited from contracting any type of loans from the corporation or to have the corporation guarantee or secure any personal commitments toward third parties.

The chairman of the supervisory board notifies the statutory auditors of all authorized agreements and submits the agreements to the shareholders' meeting for approval.

The statutory auditors present a special report on those agreements to the shareholders' meeting which then rules on the report.

- Compensation: the deed of appointment sets the method and amount of compensation of the members of the managing board.

- Quorum and majority: the managing board deliberates and makes decisions under the terms defined by the Articles of incorporation.

- Powers of the chairman: the duties of the chairman of the managing board do not give the incumbent broader executive powers than those of the other members of the managing board.

- The supervisory board

- Appointment: the supervisory board is made up of a minimum of seven members and a maximum of twelve members, who can either be physical or legal persons. They are elected by the statutory shareholders' meeting



or by the ordinary shareholders' meeting for a maximum period of six years and are eligible for re-election, unless provided otherwise by the Articles of incorporations. No member of the supervisory board can be part of the managing board.

- Qualifying shares: their number and method of calculation are identical to those provided for the board of directors.

- Dismissal: the members of the supervisory board may be dismissed at any time by the ordinary shareholders' meeting.

- Powers: the supervisory board exercises permanent control over the corporation. The Articles of incorporation may require the prior authorization of the supervisory board for the conclusion of any transaction listed by the Articles, including all transfers. The board uses the controls it deems necessary and may request any document.

- Regulated agreements: the provisions relative to the members of the managing board also apply to the members of the supervisory board. The responsibilities and liabilities are also identical.

- Compensation: the ordinary shareholders' meeting may award a fixed amount to members of the supervisory board as compensation for their activities.

The supervisory board may make exceptional compensation payments for missions or assignments entrusted to its members.

- Quorum and majority: the supervisory board only deliberates validly if at least half its members are present.

Unless there is a contrary statutory provision, the board's decisions are made by the majority of members present or represented, and the chairman may have the casting vote in case of a deadlock

- Chairmanship: the supervisory board elects a chairman among its members who has the responsibility of convening the board and presiding over the deliberations. The length of the chairman's term is equal to that of the supervisory board.

- Shareholders' rights

- The right to information



The law determines the list of documents and other information which must be communicated or made available to the shareholders by the board of directors or the managing board.

- Terms and conditions for exercising voting rights

The Articles of incorporation may limit the number of votes that each shareholder may use during the meetings, provided that the limit is imposed on all shares regardless of category.

Shareholder decisions are made during meetings convened by the board of directors or the managing board, 30 days before the meeting.

- Extraordinary shareholders' meeting:

The extraordinary shareholders' meeting alone has the power to modify the Articles of incorporation and all their provisions; any clause stating otherwise is of no force or effect. The meeting only deliberates validly if the shareholders present or represented possess at least half the shares with voting rights for a first convocation and one quarter of such shares for a second convocation.

The meeting requires a two-third majority of votes cast to rule.

- Ordinary shareholders' meeting:

The meeting only deliberates validly on first convocation if the shareholders present or represented possess at least a quarter of the shares with voting rights. In the case of a second convocation, no quorum is required.

The meeting requires a majority of votes cast to rule.

Shareholders meet at least once a year, within six months after the end of the fiscal year, to approve corporate financial statements. The report of the board of directors or the managing board, the financial statement, the balance sheet and the summary report, as well as the report of the statutory auditor are presented at the meeting.

Within a month after their approval by the shareholders' meeting, the corporate financial statements mentioned in the paragraph above are filed with the National Commerce Register Center (Centre National du Registre de Commerce, CNRC). The filing is considered to be an official announcement.

- Financial rights



The shareholders are entitled to dividends, reserves and liquidating dividends.

- Terms and conditions for the transfer of shares

- Substantive requirements: except in the case of inheritance, or transfer, either to a spouse, a parent, a grandparent or a descendant, the transfer of registered shares of any type, may be subject to the corporation's approval by a clause in the Articles of incorporation, regardless of the method of transfer.

If an approval clause is contained in the Articles of incorporation, a request is presented to the corporation. Approval results from notification of approval or, in the absence of such notification, from a two-month silence on the company's part from the date of the request.

- Formal requirements: according to Algerian practices, transfers of registered shares are officially recorded. The transfers are valid with regard to the corporation and third parties only after the corporation has been apprised of, or has approved, the transfers by official deed.

Transfers are subject to registration fees (2.5 %), and one-fifth of the sales price must be deposited with a notary for a period of approximately six weeks as a guarantee of taxes potentially owed to the Algerian Treasury by the seller.

- Changes to the capital stock

- Increases:

Capital is increased, either by issuing new shares by decision of the extraordinary shareholders' meeting, or by raising the par value of existing shares, decided by unanimous consent of shareholders.

Increases are made either:

- in cash
- through compensation with debts in liquid funds due and payable by the corporation
- by the incorporation of reserves, earnings or issue premiums
- by contributions in-kind
- by the conversion of bonds, preferred or not.



The board of directors does not have the power to decide to increase capital, but may be entrusted with all powers to that effect by the general assembly.

The law sets the concrete terms and conditions for carrying out the increase.

Shareholders have a preemptive right, but may relinquish it individually.

- Reductions:

A reduction of capital may be authorized by an extraordinary shareholders' meeting, which may delegate all powers to undertake a reduction of capital to the board of directors or the managing board, as the case may be, subject to respecting the principle of shareholder equality.

When the shareholders' meeting approves a capital reduction plan that is not motivated by losses, the representatives of bondholders and creditors whose claims predate the filing of the minutes of the shareholders' meeting with the National Center of the Commerce Register may object to the capital reduction plan within thirty days following the filing date.

Losses of three quarters of the capital stock

If, due to losses acknowledged in the financial statements, the net assets of the corporation fall under one quarter of capital stock, the board of directors or the managing board is required to convene, within four months following the approval of the statements in which the losses appeared, an extraordinary shareholders' meeting to rule, if need be, on the early dissolution of the corporation.

If the dissolution is not declared, the corporation is required, at the end of the second fiscal year following the fiscal year during which the losses were acknowledged and subject to the provisions above, to reduce its capital by an amount that is at least equal that of the losses that could not be charged to reserves, if, within that period, net assets have not been restored to an amount equal to at least one fourth of the capital stock.



Transformation of the joint stock company

- Transformation:

Any joint stock company may transform itself into a different type of corporation if, at the time of its transformation, it has been in existence for at least two years and has drawn up a balance sheet for its first two fiscal years that has been approved by shareholders.

The decision to transform the corporation is made once the statutory auditors have certified that net assets are at least equal to the capital stock.

The transformation into a general partnership requires the agreement of all partners.

The transformation into a limited partnership or into a limited partnership with shares is decided under the terms provided for by the Articles of incorporation with regard to modifications and with the approval of all the partners who agree to be general partners.

The transformation into a limited liability company is decided under the terms provided for with regard to modifying the Articles of incorporation of that type of corporation.

- Mergers and spin-offs:

Even if it is in the process of being liquidated, a joint stock company (JSC) may be absorbed by another corporation or participate in the creation of a new corporation by way of merger.

The corporation may contribute its assets to existing corporations or participate in the creation of new firms with these corporations, by way of merger or spin-off.

Finally the corporation may contribute its assets to new corporations by way of spin-off.

The operations covered by the previous Article may be carried out between corporations of different types.

They are decided, by each of the corporations in question, in accordance with the conditions required for the modification of their Articles of incorporation.



If the operation involves the creation of new corporations, each of these corporations shall be established according to the rules applicable to the type of corporation that was chosen.

- Dissolution:

Except in various cases of court-ordered dissolution, the dissolution of the corporation results from the end of its statutory term or from a decision made at an extraordinary shareholders' meeting.

* Auditing the joint stock company

The annual shareholders' meeting must designate, for three fiscal years, one or several statutory auditors chosen among registered members of the national professional corporation.

Generally speaking, their permanent mission consists in auditing, without meddling in the management of the corporation in any way, the books and assets of the corporation and to control the truthfulness and accuracy of corporate financial statements. They also verify the truthfulness and accuracy of the information contained in the report of the board of directors or the managing board, as the case may be, and in the documents addressed to shareholders, regarding the financial situation and the accounts of the corporation.

They certify the truthfulness and accuracy of the inventory, of the corporate financial statements and the balance sheet.

The statutory auditors make sure that the principle of shareholder equality was respected.

They may, at any time of the year, conduct the verifications and controls that they deem necessary.

They may also convene an emergency shareholders' meeting.

4.1.2.2 The limited liability company (LLC)

The limited liability company is governed by Article 564 and following Articles of the Commercial Code. It is formed by two or more partners who shall be only liable for losses in proportion to their contributions.

The appointment of a statutory auditor is mandatory since 2006.

* Number of partners: the corporation may have a single partner when it is established as a private limited company under sole ownership (see



PLCSO below). The number of partners may not exceed twenty. If the corporation reaches a point where there are more than twenty partners, it must be transformed into a joint stock company within one year. Failure to do so will lead to the dissolution of the corporation, unless the number of partners is brought down to twenty or less during the said period.

* Capital stock: the capital stock of the LLC may not be inferior to 100,000 AD; it is divided in equal membership shares with an equal par value of at least 1,000 AD. The capital stock may be provided in the form of cash contributions or contributions in-kind, but not by contribution of services. Membership shares must be fully paid.

- Management:

- Appointment: the manager or managers, who must necessarily be physical persons, may be chosen from among the partners or third parties. They are designated in the Articles of incorporation or through a general meeting, by a majority of partners representing more than half of the capital stock.

- Dismissal: the manager can be dismissed by a decision of the partners representing more than half of the capital stock. If the dismissal is decided without just cause, it may result in redress for suffered prejudice. Moreover, the manager can be dismissed by the courts for just cause at the request of any partner.

- Powers:

1. In the relationship between partners: the powers of the managers are determined by the Articles of incorporation. Unless there are statutory limitations, the manager may conduct any managerial act to further the interest of the corporation. In cases where there are several managers, the managers separately hold the power to represent the corporation, each having the right to oppose any operation before its conclusion however.

2. In the relationship with third parties: the manager is entrusted with the broadest possible powers to act on the corporation's behalf in all circumstances, subject to the powers that the law specifically assigns to the partners. The corporation is liable for the manager's actions even when such actions go beyond the corporate object, unless the corporation is able to prove that the third party knew that the said action went beyond the corporate object, or had to be aware that it did given the



circumstances, bearing in mind that the mere publication of the Articles of incorporation is not sufficient proof.

The statutory clauses limiting the powers of the managers are not valid with regard to third parties.

In cases where there are several managers, opposition by one manager to the actions of another manager is without effect with regard to third parties, unless it can be established that they were aware of it.

- Regulated agreements: the law does not specifically prohibit agreements concluded between the corporation and the manager, but criminally punishes the manager who uses corporate assets in bad faith to further personal goals or to favor another corporation in which he has a stake, directly or indirectly.

If, in the aftermath of its bankruptcy, the corporation is found to have insufficient assets, the court, at the request of the trustee in bankruptcy, may decide that the corporation's debts will be borne by the managers up to an amount determined by the court, whether or not the managers are partners or salaried employees.

To free themselves of their liability, the managers and partners involved must prove that they applied to the management of corporate affairs all the industry and diligence of a paid agent.

- Rights of the partners:

- Right to information

Any partner has the right to review and obtain copies of a certain number of documents, accounting documents in particular, which he may examine with the help of an expert.

- Terms and conditions for exercising voting rights

- By assembly: the decisions of the partners are made by an assembly, by convocation of the manager or one or more of the partners representing more than one fourth of the capital stock, fifteen days prior to the assembly.

A partner may be represented, but only by another partner or his spouse, except if the Articles of incorporation specifically designate another person.



- By written consultation: the law authorizes the written consultation of partners if the Articles of incorporation provide for it.

- The annual general meeting to approve the financial statements:

Decisions are adopted by one or more partners representing more than half of the capital stock.

The report on corporate operations over the fiscal year, the inventory, the general operating account, the statement of performance and the balance sheet, as prepared by the managers, are submitted to the approval of the partners gathered in assembly within six months following the end of the fiscal year.

The terms and conditions for the filing and publication of the corporate financial statements are the same as those applying to joint stock companies.

- Extraordinary assembly:

Modifications to the Articles of incorporation are decided by a majority of the partners representing three quarters of the capital stock. The decisions of the extraordinary assemblies must be preceded by a report on the situation of the corporation drawn up by an accredited expert, except in the case of a transfer of shares to a third party.

- Financial rights:

Partners of the LLC have an equal right to the dividends. The terms and conditions for the payment of the dividends voted by the general assembly are also set by the assembly, or failing that, by the manager or managers.

The payment of dividends must be done within a maximum of nine months after the end of the fiscal year. An extension of the deadline may be granted by a court decision.

Stipulating an interest, whether fixed or not, to the benefit of the partners is prohibited however.

- Terms and conditions for the transfer of membership shares.

- Substantive requirements: membership shares are registered and are freely transmissible by succession and freely transferable between partners, spouses, parents, grandparents and descendants, unless the Articles of incorporation contain an approval clause.



They may only be transferred to third parties not connected to the corporation with the consent of the majority of the partners representing at least three quarters of the capital stock.

If the corporation refuses to consent to the transfer, the partners are required, within three months after the refusal, to acquire or have someone acquire the shares at a price set by an accredited expert designated either by the parties or, if the parties fail to agree, by court order issued by the president of the tribunal at the request of the most diligent party.

The corporation may also decide, with the consent of the selling partner and within the same three-month period, to reduce its capital by an amount equal to the value of the shares of the selling partner and to buy back these shares at a price determined under the terms and conditions mentioned above.

- Formal requirements: the transfer of partnership shares can only be recorded by official deed. The transfer is only valid with regard to the company or third parties after the official deed has been drawn up and approved by the company.

The transfer is subject to registration fees (2.5 %) and one fifth of the sales price must be deposited with a notary for a period of approximately six weeks as a guarantee for taxes potentially owed by the seller to the Algerian Treasury.

- Changes to the capital stock

- Increases:

The capital stock may be increased or reduced by common agreement at a meeting of partners under the terms and conditions required to modify the Articles of incorporation.

Capital increases may be achieved through the subscription of partnership shares either in cash or in kind. The costs of increasing capital shall be amortized by the end of the fifth fiscal year following the year during which the costs were incurred at the latest.

- Reductions:

Capital reductions are authorized by an extraordinary meeting of the partners and may not violate the principle of equality between partners.



The reduction may not necessarily be motivated by losses. In all cases, it must be approved by the statutory auditor. The corporation's creditors may then oppose the reduction, within one month after the filing of the resolution. A court ruling either rejects the objection or orders the refund of the corporation's debts or the establishment of guarantees, if offered by the corporation and deemed sufficient.

Corporations are prohibited from buying back their own shares. However, the assembly which decided on a capital reduction not motivated by losses may authorize the manager to buy a set number of partnership shares in order to void them.

Losses of three quarters of capital stock

Managers are required to consult partners so that they may rule on whether to dissolve the corporation or not. In all cases, the decision of the partners is published in a newspaper authorized to publish legal announcements in the wilaya where the corporation is headquartered, filed with the clerk of the court where the said headquarters are located and registered with the Commerce Register.

- Transformation of the limited liability company

- Transformation:

A company with more than 20 partners must be transformed into a joint stock company within one year, or face dissolution.

The decision to transform a limited liability company into a different type of corporation must be reached by the majority vote required for extraordinary general assemblies and must be preceded by a report from an expert, with the exception of transformations into general partnerships, which require the unanimous agreement of all partners.

- Mergers and spin-offs:

Even if it is in the process of being liquidated, the LLC may be absorbed by another corporation or participate in the creation of a new corporation by way of merger.

The corporation may also contribute its assets to existing corporations or participate in the creation of new corporations with these corporations, by way of merger or spin-off.



Finally the corporation may contribute its assets to new corporations by way of spin-off.

The operations covered by the previous Article may be carried out between different types of corporations.

They are decided by each of the corporations in question, in accordance with the terms and conditions required for the modification of their Articles of incorporation.

If the operation involves the creation of new corporations, each of these corporations shall be established according to the rules associated with the type of corporation that was chosen.

- Dissolution:

Except in court-ordered dissolutions (loss of three quarters of the capital stock, capital stock reductions to a level lower than the legal minimum), the dissolution of the corporation results from the end of its statutory term or from a decision of the partners.

On the other hand, neither the death of one of the partners, nor the concentration of all the shares of the LLC in the hands of a single person, will result in the dissolution of the corporation.

- Auditing the limited liability company

The annual general meeting must designate, for three fiscal years, one or several statutory auditors chosen among registered members of the national professional corporation.

Generally speaking, their permanent mission consists in auditing, without meddling in the management of the corporation in any way, the books and assets of the corporation and to control the truthfulness and accuracy of corporate financial statements. They also verify the truthfulness and accuracy of the information contained in the report of the managing board and in documents addressed to partners, regarding the financial situation and the accounts of the corporation.

They certify the truthfulness and accuracy of the inventory, of the corporate financial statements and the balance sheet.

The statutory auditors make sure that the principle of equality between partners was respected.



They may, at any time of the year, conduct the verifications and controls that they deem necessary.

They may also convene an emergency general meeting.

4.1.2.3 The private limited company under sole ownership (PLCSO)

Algerian law has, by order n° 96-27 of December 9, 1996, sanctioned the principle of the limited liability company under sole ownership.

The law amended Article 564 and the following Articles of the Commercial Code pertaining to the limited liability company accordingly.

When the limited liability company is owned by a single person, it is called a “private limited company under sole ownership (PLCSO).”

The legal principles and the terms and conditions of operation underlying the PLCSO and the LLC are therefore the same, except for the following points:

*The partner: a physical person may only be the sole partner of one limited liability company. A limited liability company may not have a PLSCO as its sole partner.

The sole partner exercises the powers assigned to the partners’ assembly and may not delegate these powers. His decisions, made in lieu of the assembly, are recorded in a registry.

After receiving the statutory auditors’ report, he approves the accounting records within six (6) month after the end of the fiscal year.

*The manager: the sole partner may be the manager of the corporation. He may also designate a third party as manager.

4.1.2.4 Limited partnership (LP)

Although hardly ever used in Algeria, this legal corporate form brings together entrepreneurs willing to risk their personal assets as general partners, provided that they have the opportunity of making sizeable profits, whereas investors, as limited partners, act to limit their liability while partaking in profits.

The LP has two types of partners: general partners and limited partners. General partners are members of a partnership with the status of merchant



and unlimited liability, even solidary liability when there are several partners. As for the limited partners, they do not enjoy the status of merchant and are only liable for corporate debts to the extent of their contribution. The minimal number of partners is two, that is one general partner and a limited partner.

The Commercial Code does not set a minimal requirement as far as the amount of capital stock. The general partners have the possibility of making all kinds of contributions (in kind, in cash, and as an industrial contribution), whereas the limited partners are not allowed to make industrial contributions. The capital stock is divided in shares which are transferable with the consent of all partners. Nevertheless, all Articles of incorporation of the LP may contain provisions stipulating that the shares belonging to the limited partners be freely transferable among partners. The Articles of incorporation may also decide that these shares may only be transferable to third parties with the consent of all general partners and a majority of limited partners.

The manager: The manager may be chosen among the general partners or from outside the firm. Limited partners may not become manager to the extent that they are not qualified to get involved in the management of the firm. In the opposite case, their liability would no longer be a limited liability, but they would be liable for all managerial actions in solidarity with the general partners. This does not mean that limited partners must passively stand by and watch the firm being managed, as they may exercise control over the firm's management and take part in group decisions, which must be made in accordance with the stipulations of the Articles of incorporation.

Generally speaking, the LP stems from the transformation of a general partnership (GP) when upon the death of one of the partners, the heir, for one reason or another, is unable to acquire the status of merchant (minority, practice of a liberal profession). The heir not wishing to be indefinitely exposed to corporate debts, the partners of the GP agree to transform the latter into a LP, in which they become general partners, whereas the heir becomes a limited partner. In that case, the limited partner is only liable for corporate debts to the extent of his contribution, which is generally inherited from the deceased.

4.1.2.5 Limited partnership with shares (LPS)



The creation of this type of firm is considered when general partners, founders of the partnership, give themselves excessive managerial powers to thwart hostile takeover bids. Indeed, third parties are not tempted to acquire firms in which power is held by the general partners, even as the capital stock belongs to the limited partners.

The LPS's capital is divided into shares. There are two categories of partners. First, there is one or more general partners who have the same status as the partners of a GP. They are authorized to make all kinds of contributions, including industrial contributions. Their membership shares are not represented by negotiable instruments. They automatically have merchant status and are personally, indefinitely and solidarily liable for the firm's corporate debts.

Then there are the limited partners whose number may not be less than three (3). They have the same status than the shareholders of a joint stock company (JSC). As a result, their contribution may be made in cash or in kind. They do not have merchant status and their liability is limited to the amount of their contributions. The shares that they hold are freely traded and their treatment is similar to that of the shares issued by the JSC, with the possibility of including a consent clause in the provisions of the Articles of incorporation.

The rules applying to the JSC with regard to minimal capital requirements and initial public offerings apply to LPSs as well.

The rules pertaining to the management of a LPS are simple. This type of firm is not required to have structured corporate entities such as a board of directors or a CEO. One or more managers will be chosen from among the general partners or from outside the firm. The appointment of managers and the type of management itself are left to the free will of the limited partners. Generally speaking, the manager can be dismissed under the terms and conditions provided for in the Articles of incorporation, although the limited partners always have the possibility of agreeing to keep the manager irrevocably in place. That being said, the general partners are excluded from general meetings, except when they hold shares in addition to their membership shares. The extraordinary general assembly (EGA) is not authorized to amend the Articles of incorporation without the unanimous agreement of the general partners, unless a clause to the contrary is contained in the Articles of incorporation. The general partners are also excluded from the supervisory board, made up of at least three shareholders appointed by the ordinary general meeting, as the



objective of the council is to ensure permanent control over the firm's management.

4.1.2.6 Undeclared partnership

The undeclared partnership has three main characteristics: it's a secret, undeclared firm based on an intangible principle of liability for debts.

It is an undeclared firm in that it does not have the status of a legal person. The fact that the partners are not required to register the corporation with the commerce registry is justified by the partners' desire to keep third parties unaware of the existence of this corporation, as secrecy is the key to the success of their common enterprise.

Moreover, it is a secret partnership since the participants may not act as partners in a manner visible to third parties. The Commercial Code expressly deals with the remaining aspects of the matter so that the general provisions making up the preliminary chapter pertaining to commercial firms do not apply to it, whether it is the terms and conditions provided for in the law with regard to residence, headquarters, corporate object or formalities of incorporation. Title I pertaining to the rules of operation of the various commercial corporations is not destined to it either.

The third characteristic is that the undeclared partnership rests on the principle of liability for debt commitment. This is a major inconvenience for the partners, but the need to protect third parties outweighed the safety of partners. Thus if a partner acted in his or her own name, without revealing the existence of the partnership to third parties, he is committed to them. If the partner acted in his or her capacity as partner with regard to third parties, then all partners are personally and indefinitely liable for debts: in solidarity if the corporate object is commercial, jointly if the corporate object is civil.

4.2 The group / consortium

This is a special structure which is not truly a commercial corporation and which does not allow establishment in Algeria in itself. It is often used by foreign corporations to operate in Algeria however.

4.2.1 The goal of the group/consortium

Two or more legal persons may create, for a determined period of time, a group in order to harness all the means likely to facilitate or develop the



economic activities of its members, and to improve or increase the results of those activities.

The group thus represents a collaborative structure between existing enterprises which preserve their legal independence.

The goal of the group is not to generate profits, but to facilitate the economic activities of its members, or even improve or increase the results stemming from those activities.

4.2.2 Transparency of the group/consortium

If the activity stemming from its creation generates a profit, it must be shared among members. The group may not generate earnings by itself. Moreover, from a taxation standpoint, the group is said to be transparent. This means that members are taxed separately from the group on their share of the group's overall profits.

4.2.3 Legal personality of the group/consortium

The group is endowed with a legal personality from the moment it is registered with the commerce registry.

The group's activity is not necessarily commercial. It may be civil as registration with the commerce registry does not imply a commercial purpose.

As for the consortium, it is not a true legal entity. This structure is only used when two or more corporations agree with a third party to sign and jointly execute a contract. Thus the consortium does not have a legal personality.

4.2.4 Contractual freedom

The group essentially rests on the principle of contractual freedom. The mandatory rules of corporate law are not intended to apply.

Essentially, it is thus the contract of association which determines the group's organization and the conditions under which the decisions are made by the general meeting of members.

Again it is the contract, or, in its absence, the general meeting, which organizes the management of the group and appoints the manager(s) whose assignments, powers and conditions of dismissal it determines.

Moreover, the contract sets the terms and conditions for auditing the group's management and accounting and may depart from the principle of dissolution of the group due to the disability, personal bankruptcy or ban from managing a legal person of one of its members.

In principle, but not exclusively, the group contract contains the following elements:

- the name of the group;
- the name, corporate name, legal form, residential address or address of the headquarters///; the registration number with the commerce registry of each member of the group;
- the length of time for which the group is established;
- the goal of the group;
- the address of the group's headquarters.

Readers should be aware that all modifications made to the contract are established and published under the same terms and conditions as the contract itself.

Members of the group are not required to make contributions. In this case, the group will not have capital stock. The ownership rights of its members may not be represented by negotiable instruments.

4.2.5 Liability

The group operates like a partnership. Its members are indefinitely and solidarily liable for its debts. In other words, any creditor may, after unsuccessfully trying to be reimbursed by the group, turn to any member of the group.

In dealing with third parties, a manager commits the group by any action falling within its object, the clauses limiting his powers being unenforceable.

4.2.6 Practical use of groups and consortia

In practice, the group is used by foreign corporations which, in order to land a contract to carry out a project in Algeria, must join forces with other foreign corporations or with local firms.

Thus the group is frequently used to carry out major Algerian projects jointly, usually subject to the rules pertaining to public tenders.

As previously mentioned, a foreign corporation performing a contract in Algeria through the establishment of a group may not claim to exist in Algeria through the said group.

Indeed, the corporation must also establish itself as an independent structure by either using a firm incorporated under Algerian law, either a branch or a permanent establishment, in order to be able to claim existence in Algeria recognized by Algerian authorities, whether this existence is legal or merely fiscal.

4.3 Other types of professional organizations

4.3.1 The liaison office

The legal and tax systems of liaison offices are governed by the Inter-ministerial Order of July 30, 1986 pertaining to the financial obligations of the liaison offices of foreign businesses or groups of businesses accredited by the Ministry of Commerce.

4.3.1.1 The principle

According to Article 1 of the Inter-ministerial Order of July 30, 1986, a liaison office may not engage in profit-making activities nor have any local income. Its operating costs, including the compensation and fringe benefits paid to personnel, are borne by the parent company. They must be paid in Algerian dinars generated exclusively by the exchange of convertible currencies imported beforehand.

4.3.1.2 The accreditation of the liaison office

The accreditation of the liaison office is issued by the Ministry of Commerce for a renewable period of two years.

Accreditation is subject to the:

- Presentation by the liaison office manager of a 20,000 USD guarantee to the Ministry of Commerce. As collateral for the guarantee, an amount of 2,000 USD must be deposited in a frozen account with an Algerian bank throughout the period of validity of the accreditation.
- Opening of a CADA account (convertible Algerian Dinars account) with the same bank.
- Payment to the same bank of an amount in a foreign currency that is at least equal to estimated operating costs for one quarter.



Operations and obligations of the liaison office

The liaison office must keep its books in conformity with current regulations with regard to the costs and charges pertaining to the operation of a liaison office.

The costs and charges incurred as part of the office's activities in Algeria are payable by checks drawn from the CADA account. In order to meet small expenses, the liaison office may keep petty cash coming exclusively from withdrawals from the CADA account.

4.3.1.3 Advisability of resorting to a liaison office

When it was enacted, the Inter-ministerial Order of July 30, 1986, which pertains to the financial obligations of foreign businesses or groups of businesses accredited by the Ministry of Commerce, represented a notable exception to Act n° 78-02 of February 11, 1978, amended and pertaining to the State monopoly on Algeria's external trade.

In the past, a certain number of enterprises have used liaison offices to develop their activities in Algeria. The fact that the liaison office was the only possible form of local establishment for these enterprises often led them to stray from their original intent.

Act n° 78-02 was repealed and there are no longer any obstacles to the establishment in Algeria of a foreign enterprise under the legal form deemed most suitable by the enterprise to fulfill its own needs.

As a result, liaison offices are no longer as appealing as they may once have been when such offices represented the only form of establishment in Algeria for foreign businesses.

With regard to the legal framework governing liaison offices mentioned above, it seems that foreign enterprises cannot resort to liaison offices to intensify their presence in Algeria.

Let us reiterate that liaison offices may not conduct any commercial acts on a regular and autonomous basis and that their method of operation are, barring exceptions, unsuited to the requirements of a foreign business' development strategy in Algeria.

However, foreign businesses selling their products to Algerian importers and intending to develop and promote their sales networks in Algeria may find it advantageous to open a liaison office.

Indeed that would enable them to have a presence in Algeria, to promote their activities and their products while making direct sales abroad. The advantages are both tax-related, as direct sales enable the foreign corporation to avoid recurrent taxation, namely with regard to the tax on professional activities (see 16.2.1.12), and legal, as direct sales allow the foreign corporation to avoid establishing a foreign firm with capital of at least 20 million dinars. Moreover, this helps lessen operational costs (salaries, storage, customs clearance of merchandise...) with regard to all kinds of charges stemming from the establishment and the operation of a subsidiary.

4.3.2 The branch registered with the commerce registry

Like local firms, foreign corporations have the possibility of opening permanent business establishments in the form of branches.

Under the terms of Executive Decree n° 97-41 of January 18, 1997, any commercial enterprise headquartered abroad which opens an establishment of this type in Algeria is required to register with the Commerce Registry.

This registration with the Commerce Registry allows the branch to be considered like a resident Algerian entity, but does not endow it with a legal personality.

Indeed, the branch is first and foremost a representative of the parent company in Algeria. It has a legal existence in Algeria to the extent that it must be registered with the Commerce Registry. This registration is secondary, however, to the extent that it is in the name of the parent company that the registration is done.

The registration to the Commerce Registry enables the branch to conduct a commercial activity in Algeria, to develop a client base following the same rules as any Algerian merchant or commercial firm.

Foreign firms wishing to give a stable and sustainable image to their presence in Algeria are advised to adopt this structure.

In the current state of the legislation, however, this form of economic presence, does not offer the advantages usually expected from this type of establishment. Indeed this type of entity is governed by an ambiguous legal regime, which does not enable foreign firms to conduct their activities in Algeria with confidence.



There are inconvenient aspects, such as foreign exchange controls (profits may not be repatriated, the branch is not allowed to bill customers in a foreign currency...), the absence of legal personality (it is not possible to sign contracts with the parent company)....

4.3.3 The permanent establishment

The concept of permanent establishment includes the concept of establishment which is strictly connected to the application of double taxation treaties signed by Algeria (see item 16) and a more general concept of establishment defining the presence of foreign firms in Algeria as the period during which a contract is being performed.

In fact this is merely a tax entity and the foreign firm has no legal existence. It is recognized as an entity with a presence in Algeria by the authorities however and as such benefits from rights (right to have a bank account, right to hire personnel) and obligations (obligation to pay taxes).

The corporation exists through the contract it performs in Algeria. This contract must be domiciled with the tax authorities. Consequently, a firm may not declare to have an establishment in Algeria if it does not have a contract to perform in Algeria.

The establishment makes it possible to carry out temporary operations in Algeria without a heavy operational infrastructure and to freely repatriate an important portion of the revenues stemming from activities conducted in Algeria. However, its temporary nature prevents it from benefiting from several tax advantages.

Although a foreign firm can conduct its activities through a permanent establishment, in practice, it might encounter difficulties stemming from the fact that it is not registered with the Commerce Registry.

5 Trade legislation

5.1 Conditions under which commercial activities are carried out

5.1.1 The Commerce Register

This is a document that is kept by the CNRC. It is numbered and initialed by a judge



The Commerce Register certificate represents an official deed enabling any physical or legal person to conduct a commercial activity. It is an absolute proof of validity with regard to third parties until it is disputed.

Registration with the Commerce Register is required of any physical or legal person in order to conduct a commercial activity. Any person who regularly conducts commercial activities without being registered with the Commerce Register is guilty of a violation punishable by law.

Any physical or legal person registered with the Commerce Register has the status of merchant. The person is subject to all consequences associated with that status. Among other things, the person must indicate the registration number received on billheads, order bills, tariffs and prospectuses, as well as on any correspondence pertaining to its enterprise.

Certain activities are excluded from the scope of application of Act n° 04-08, such as:

- Agricultural activities.
- Arts and crafts
- Non-commercial associations.
- Non-profit cooperatives.
- Liberal professions.
- Public institutions in charge of managing public services, with the exception of State-owned industrial and commercial enterprises.

Any commercial corporation subject to registration with the Commerce Register is required to publish the legal notices provided for in the legislation and the regulation in effect.

The object of the publication of legal notices for legal persons is to inform third parties of the Articles of incorporation of the firm, of transformations, modifications, as well as operations pertaining to capital stock, collateral, lease management contracts, sales of business assets, financial accounts and notices.

The registration of commercial activities is done by referring to a list of commercial activities subject to registration with the Commerce Registry.



Executive Decree n° 03-453 of December 1st 2003 brought about some innovations with regard to the requirements for registering with the Commerce Register. We will mention those that we deem particularly worthy of interest.

In cases of multiple registrations, registration with the Commerce Register is done by reference to the basic incorporating activity or primary establishment and to reference to secondary establishments. The basic activity is the one resulting from the first registration with the Commerce Register. The secondary activity is the one representing the extension of the basic activity (in the area of jurisdiction of the wilaya where the person is established and/or other wilayas).

The economic activities declared secondary are summarily registered with the Commerce Register by referring to the main establishment.

The file required for registration with the Commerce Register of any legal person contains the following documents:

- An application written on forms supplied by the CNRC.
- Two (2) copies of the Articles of incorporation pertaining to the establishment of the corporation.
- A copy of the Articles of incorporation published in the BOAL and in a national daily newspaper.
- A birth certificate and a police background report of the managers, directors, members of the managing board or members of the supervisory board.
- The ownership deed of the commercial premise or the lease concluded in the corporation's name.
- A copy of the receipt confirming payment of stamp duties.
- The receipt confirming payment of the registration fees to the Commerce Register.
- The accreditation or the authorization issued by the competent administrative authorities in the case of a regulated profession.

5.1.2 Regulated activities

Regulated activities and professions subject to registration with the Commerce Register obey special rules defined by the laws and regulations specifically governing them.

Any person conducting a regulated activity or profession must seek accreditation or temporary authorization issued by the competent administrative authorities.

The performance of that activity only becomes possible however once the person in question has obtained the definitive authorization or accreditation.

5.1.3 The status of foreign merchants

Subject to detailed explanations regarding the organization and commercial activities of foreign physical or legal persons in Algeria which appear in other parts of this guide, let us mention the obligations required of the foreign merchant by virtue of Executive Decree n° 03-453 of December 1st 2003.

A distinction must be made between cases involving physical persons and those involving legal persons.

In the case of physical persons, the file required for registration with the Commerce Register must include the following documents:

- An application written on forms supplied by the CNRC.
- A copy of the police background report.
- The ownership deed or the lease of the commercial premise.
- A copy of the receipt confirming payment of stamp duties.
- The receipt confirming payment of the registration fees to the Commerce Register.
- The accreditation or authorization issued by the competent administrative authorities in the case of a regulated profession.
- The foreign merchant card.

In the case of legal persons, the file required for the registration of branch offices, agencies, commercial representative offices or any other



establishment under the control of a corporation based abroad, must include the following documents:

- An application written on forms supplied by the CNRC.
- A copy of the commercial registration of the parent company.
- The minutes of the deliberations regarding the opening of the establishment in Algeria
- A copy of the minutes of the deliberations pertaining to the opening of the establishment in Algeria published in the BOAL.
- The birth certificate and the police background report of the manager of the establishment.
- The ownership deed of the commercial premise or the lease concluded in the corporation's name.
- A copy of the receipt confirming payment of stamp duties.

The content and format of foreign merchant cards are established by joint order of the Minister of the Interior and the Minister of Commerce. These cards indicate the civil status, professional address and nationality of the card holder.

The merchant card is issued by the Wali with territorial jurisdiction. The card is valid for two years.

A register in which foreign merchants are listed is created in each wilaya.

It is necessary to have a foreign resident card to obtain a foreign merchant card.

The merchant card is taken away from the cardholder if, for instance, he has declared bankruptcy.

Upon leaving Algeria permanently, the foreign merchant is required to return his card to the competent administrative authorities. It should be noted that managers of foreign joint stock companies are also required to return the said document upon completion of their mission in Algeria.

5.2 External trade

5.2.1 Freedom of importation and exportation

Order n° 03-04 of July 19, 2003 pertaining to the general rules applicable to the importation and exportation of merchandise sets the general principle in this area. It is the principle of freedom.

By virtue of Article 2: “Operations pertaining to the importation and exportation of products are conducted freely.” Only those products that threaten security, public order and morality are excluded.

5.2.2 Restrictions

Operations pertaining to the importation and exportation of products are subject to foreign exchange controls (see 8.5 External trade operations).

Product importation and exportation licenses are liable to be introduced for the purpose of administering any measure taken by virtue of the above-mentioned order or international agreements to which Algeria is a party.

Imported products must conform to specifications pertaining to the quality and security of the products, particularly Act n° 89-02 of February 7, 1989 pertaining to the general rules of consumer protection, Executive Decree n° 90-366 of November 10, 1990 pertaining to the labeling and presentation of non-food domestic products, Act n° 04-04 of June 23, 2004, pertaining to standardization, and Order of June 15, 2002 establishing the terms and conditions of the application of Article 22 of the Customs Code pertaining to the importation of counterfeit goods.

5.2.3 Safeguards

The domestic production may benefit from tariff protection in the form of ad valorem customs duties, as well as trade defense measures.

These measures are safeguard measures, compensatory measures and anti-dumping measures.

The safeguard measures apply to products imported in such large quantities as to threaten segments of the domestic producers of similar or directly competing products.

Quantitative measures restricting imports may be adopted, as well as customs duty increases.



Countervailing duties aiming to offset any subsidy awarded to the production, importation or transportation of a product whose export to Algeria is likely to cause important damage to a segment of domestic production are introduced.

Countervailing duties are specific duties collected like customs duties.

Anti-dumping duties are introduced for any product whose export price to Algeria is lower than its normal value or that of a similar product.

Anti-dumping duties are specific duties collected like customs duties.

5.2.4 The adoption of emergency legislation

It is certainly in line with the spirit of Order n° 03-04, that Executive Order n° 05-458 of November 30, 2005, setting the terms and conditions of activities pertaining to the importation of raw material, products and merchandise earmarked for resale in the same condition, was adopted.

In order to fully grasp the scope of this text, it is important to ponder the reasons that led the legislator to stiffen the conditions under which import operations pertaining to products earmarked for resale in the same condition, in other words, products that are not transformed in a manner likely to give them any added value, were carried out.

Two main reasons seem to have played a pivotal role in the adoption of this text.

1. The fact that in many cases, almost systematically in fact, the minimum amount of capital stock—that of joint stock companies in particular— was not fully paid up at the time of the publication of the Articles of incorporation in the BOAL. In fact, capital stock was only paid as the corporation's operations progressed, after its registration with the Commerce Register. It was to strengthen the rule pertaining to the immediate payment of capital stock that Ordinance n° 05-05 of July 25, 2005, acting as complementary finance law, sanctioned Article 13 which stipulates that: "The capital stock of enterprises involved in the importation and exportation of merchandise resold in the same condition may not be less than 20, 000, 000 AD."

That Article radically alters the principle of separation between the corporate structure of partnerships and that of joint stock companies, as it is now the corporate object that matters, regardless of the nature of the company.

2. The second reason is that a great many corporations do not have the human, material, financial and logistical resources to carry out import activities. By choosing to tolerate the practices used by many importers for several years, the authorities in fact abetted the violation of many legal and regulatory rules that now represent the fabric of Algeria's external trade.

Now, commercial firms involved in import activities must fulfill the following three conditions:

- Possess appropriate warehousing and distribution infrastructures.
- Possess means of transportation adapted to the specific nature of their activities.
- Possess means of controlling quality and conformity, as well as means of ensuring the sanitary and phytosanitary control of imported foodstuffs and products.

Close examination of these three conditions lead to the following observations, which represent just as many unresolved questions.

What is the percentage of commercial firms that possess infrastructures to store and protect the merchandise? Do administrative services have the means of ensuring that this requirement is met?

There is still a lack adequate means of transportation throughout the country, in spite of sizeable efforts by public authorities to facilitate transport activities.

As things stand now, it seems largely illusory to expect import companies to acquire the means of ensuring quality control in the short term. Most of the firms are neither equipped with analytical labs, nor with other merchandise compliance structures or with competent personnel to enforce controls.

The State and all its agencies cannot merely intervene in this area as a complementary force as the above-mentioned decree would have you think. It is primarily at the community level that important resources will have to be put at the disposal of representatives of the State, in order to make the controls introduced in the law effective. On the other hand, it is imperative that firms reselling "as is," with no modification, products that are liable to permanently harm the safety and the health of

consumers be able to rely on private or public expertise which, it must be said, remains unfortunately lacking.

The problem posed by the Executive Decree of November 30, 2005 not only rests on the declared principle of the protection of consumer interests and the safeguard of free competition between operators. It should be noted here that the Algerian Constitution of 1996 (Article 132) and Algeria's international commitments (the Association Agreement with the EU and the upcoming accession to the WTO) required that the public authorities vigorously reassert control over external trade, and thus it was absolutely necessary that they put an end to the anarchic commercial practices that showed as little respect for market regulations as they did for the health and safety of consumers.

Nonetheless the forcefulness of this text should be noted. As the improvement of commercial mores and efforts to make them conform with current laws will require a great deal of time, the mobilization of major resources and increased efforts to raise the awareness of business operators, the overwhelming majority of whom have little sense of the qualitative demands of a true market economy.

In our opinion two other observations come to mind upon reading this text. First of all, it is said that communities, institutions and public organizations are not limited in their import operations by the restrictions imposed on other commercial firms, subject to the specific condition that these operations be conducted within the strict framework of their activities. It is not clear what exactly is meant by this restriction. Does it mean limiting imported quantities by State-controlled organizations in order to guarantee the freedom of importation by private firms? In that case, beyond a certain import threshold exceeding the limits of the corporate object of public operators, these operators would inevitably be subjected to the restrictive measures stated in Article 5 mentioned above.

Secondly, it is said that import operations carried out by a public operator on its own behalf must be conducted within the limits of the operator's own needs. We took this to mean that the import operations covered by this text are those aiming to subsequently generate added value (after the transformation of imported products in particular).

The difficulty of interpreting this document lies elsewhere. For what reason did the legislator subordinate the freedom of importation to the satisfaction of the operator's own needs here?

There are two possible interpretations:

1. Public authorities intend to set, in a purely formal and indicative fashion, ceilings to the volume of imports made by the operator, in order to be able to directly and indirectly control the quality or conformity of the products. In this case, the legislator gives itself, formally at least, the means of guaranteeing the protection of consumers and users.

2. The legislator wants to establish a link between the amount of capital stock of import firms and the volume of imported merchandise, particularly as to the method of payment. The most commonly used method of payment today in Algeria's international trade is confirmed irrevocable documentary credit. In the new context, only importers with sizeable financial means in the eyes of the bank would have access to this method of payment which provides suppliers with complete security.

6 Competitive law

6.1 Pricing freedom

A new text on the promotion of competition was adopted by the legislator who reinforces the system established by Ordinance n° 95-06 on competition.

Ordinance n° 03-03 of July 19, 2003 pertaining to competition reaffirms, as does its predecessor, the principle of pricing freedom, except for those goods that are deemed strategic and those that have experienced excessive increases.

With regard to excessive increases, they have to be caused by serious market disturbances, long-term procurement difficulties or natural monopoly situations.

In both cases however, the government can only adopt exceptional measures aiming to limit the increases, and just for a maximum of six months, after notification from the Competition Council.

The principle of pricing freedom is also subject to adjustments when retail prices are abnormally low considering the production, transformation and marketing costs.

Low prices could also be an attempt by the seller to force a competitor out of the market, or to prevent a potential competitor from entering the market by significantly lowering prices.

6.2 Unfair contract terms:

Probably because the Act of February 7, 1989, pertaining to general consumer protection rules, as well as the Act of June 23, 2004 setting the rules applying to commercial practices did not succeed in guaranteeing strict equality between economic agents and consumers, but mostly because they seemed insufficient to protect consumers, it has become necessary to legislate again in this matter by adopting precise and restrictive rules.

Legislators acted in three stages: first they drew up a list of examples containing the essential components of contracts (I), then they defined unfair contract terms (II), before finally establishing an institution devoted in to tracing unfair contract terms and eradicating them from commercial relations (III).

6.2.1 The essential components of commercial contracts

There are eleven (11) essential components. In every contract between an economic agent and a consumer, a certain number of contract terms must absolutely be included:

- the specificity of the goods and/or services ;
- the nature of the goods and/or services ;
- the terms and conditions of payment;
- the terms and conditions of delivery;
- the delivery deadline;
- the penalties for being late in paying;
- guarantee and conformity arrangements of the goods and/or services ;
- terms and conditions for dispute resolutions;
- contract cancellation procedures.

These contract clauses must be considered as driving and determining clauses, just like the obligation to inform, which rests with the economic agent, who is “required to inform consumers of the general and specific terms and conditions pertaining to the sale of goods and/or the performance of services and to allow consumers sufficient time to examine and agree to the contract.” (Article 4 of Executive Decree of

September 10, 2006 aiming to set the essential elements of contracts and the contract terms deemed unfair).

6.2.2 Contract terms deemed unfair:

Twelve types of contract terms are deemed unfair. They are as follows:

- those by which economic agents restrict the content of the contract to eliminate the contract terms protecting the consumer;
- those that unilaterally modify the contract;
- those that makes the cancellation of the contract by the consumer dependent on the latter paying an indemnity to the economic agent;
- those exempting the economic agent from compensating the consumer when the agent does not fulfill his obligations ;
- those that remove all possible remedies available to the consumer;
- those that impose new terms on the consumer after the contract has been signed;
- those that provide for the withholding of money paid by the consumer when the latter does not carry out the contract;
- those that do not require the economic agent to pay a compensation to the consumer when the former does not fulfill his obligations;
- those imposing unwarranted constraints on the consumer;
- those requiring that the consumer reimburse fees and expenses, as part of the forced execution of the contract, without requiring the same from the economic agent;
- those authorizing economic agents to free themselves of those obligations;
- those placing obligations that are the responsibility of the economic agent on the consumer.

6.2.3 The establishment of a controlling institution

The Unfair Contract Terms Commission is a commission presided by a representative of the minister in charge of commerce. This institution only has a consultative role. Its three main tasks are as follows:

- track down the unfair contract terms contained in the contracts between economic agents and consumers;
- conduct studies and develop expertise pertaining to the terms and conditions of the performance of contracts involving consumers;
- initiate any action within the scope of its jurisdiction.

The Unfair Contract Terms Commission may be petitioned by any administration, professional association or consumer protection association with regard to the application of the current decree. The Commission makes its opinions and recommendations public. It prepares a report of activities each year for the ministry in charge of trade, destined to be published (entirely or in excerpts).

6.3 Prohibited restrictive practices

Six types of restrictive practices have been observed. The common element of these detrimental practices is that they distort the competitive landscape. These practices consist in:

- limiting market access,
- limiting or controlling production, as well as outlets and investments,
- dividing up markets or supply sources,
- hindering the establishment of prices by market forces by artificially favoring price increases or reductions,
- applying unequal conditions for equivalent services to commercial partners, thus putting them at a competitive disadvantage,
- conditioning the conclusion of contracts on the acceptance, by the partners, of additional services that have nothing to do with the object of those contracts.

It is by virtue of Article 7 of Ordinance n° 03-03 that the legislator prohibits any abuse of a dominant or monopolistic position over a market or a market segment.

The prohibitions introduced for practices that restrict competition are the same as those applied to penalize the abuse of a dominant position.

The only exceptions provided for in the law are when, by resorting to restrictive practices, operators:

- further economic or technical progress,
- contribute to the improvement of overall employment,
- strengthen their competitive position in the market.

6.4 Regulation of economic concentrations

There is economic concentration in three cases:

1. Two or more enterprises formerly independent from one another merge.
2. One or more legal persons gain control of all (or parts) of one or more enterprises.
3. An enterprise performs all the functions of an autonomous economic entity in a sustainable way.

Economic concentrations as such, are not prohibited. It is up to the Competitive Council, alerted by the firms in the process of concentrating, to determine whether they are hindering competition or not. As soon as the concentration threshold exceeds 40% of the sales or purchases made in a market, the Competitive Council has the power to investigate.

The Competitive Council may, according to the level of concentration reached by the operators:

- either prescribe measures that will soften the effects of the concentration on competition,
- or reject the concentration.

In the case of a rejection, the decision made by the Competitive Council may give rise to an action for cancellation before the State Council.

That being said, considerations of general interest may justify maintenance of the status quo with regard to concentrations. It is up to the government to reestablish a concentration after its rejection by the Competitive Council (Article 21 of Ordinance n° 03-03 of July 19, 2003 pertaining to competition reaffirms).

6.5 Rules applicable to commercial practices

These were put into place by Act n° 04-02 of June 23, 2004. The scope of application of this law is very broad as it systematizes the transparency



and fairness of commercial practices, defines what constitutes an offence and sets penalties for violators.

With regard to the transparency of commercial practices, the enterprise has the responsibility of informing consumers of the prices, the tariffs, as well as the terms and conditions of sale. It is also required to issue invoices. Delivery slips are admitted in lieu of invoices for repeat and regular commercial transactions. A monthly consolidated invoice must be prepared and refer to the delivery slips in question.

As for the fairness of commercial practices, Act n° 04-02 lists five prohibited practices:

1. Illicit commercial practices.
2. Illicit pricing practices.
3. Fraudulent commercial practices.
4. Unfair commercial practices.
5. Abusive contractual practices.

Illicit commercial practices are, among others, those in which the actual cost price is not the purchase price per unit appearing on the invoice after adding duties and taxes, and, if need be, transportation costs. In other words, the seller charges a price lower than cost price in his invoice.

Illicit pricing practices are those consisting in selling goods or performing services for which prices are not set through the free interaction of market forces, but rather subject to regulation by public authorities.

Fraudulent commercial practices consist in making or receiving secret payments and in producing false or fictional invoices.

Unfair commercial practices are those that contradict honest and fair practices and by which an enterprise damages the interests of one or more economic actors.

Abusive contractual practices consist in imposing on the consumer, conditions, commitments and obligations that are completely contrary to the protection rules to which consumers are entitled by law and which flagrantly disrupt the balance between contractual obligations.

6.6 The Competitive Council

The council is an administrative authority under the Head of Government. It is endowed with a legal status and financial autonomy.

Any physical or legal person claiming to have been harmed by a restrictive practice can petition the council.

The Competitive Council renders decisions, issues opinions and orders investigations with regard to any issue involving competitive law.

Its main decisional powers are as follows:

- Issue justified injunctions in order to put an end to practices that restrict competition.
- Issue monetary sanctions (when the injunctions have no effect).
- Take temporary measures aimed at the suspension of restrictive practices or to prevent an imminent prejudice liable to harm enterprises whose interests are affected by those practices.

The Competitive Council issues opinions on any matter pertaining to competition submitted to it by the government. Local communities, financial and economic institutions, enterprises, professional corporations and labor unions, as well as consumer associations have the power to petition the council regarding the same topics.

Moreover, the Council voices its opinion on any proposed regulatory text pertaining to competition.

In addition, the competent jurisdictions may ask for the council's opinion, after the adversarial proceedings taking place before them have unfolded.

7 The legal regimes for hydrocarbons, mining and energy

7.1 Hydrocarbons

Promulgation of Act 05-07 had three (03) objectives:

- encourage investments in the hydrocarbon sector;
- reduce production costs by controlling exploitation costs;
- increase tax revenues in the mid-term.



The means implemented to achieve these objectives are:

- a reform of the legislative framework on the one hand and
- a reform of the tax system and namely the introduction of a tax depreciation system distinct from the accounting depreciation system on the other.

The foreign investor is considered fully subject to taxation in that as the person legally and really liable for tax, he is no longer subject to “deductions at source” with regard to income tax.

Indeed, within the framework of Act 86-14, the tax on compensation is withheld and then paid back by SONATRACH in the name and on behalf of his foreign partner, although the latter is subject to taxation on the one hand and the person legally and really liable for tax on the other.

Also, within the framework of Act 05-07 amended and completed, the foreign investor is required to liquidate and then pay back the taxes he is legally liable for.

All investors, including SONATRACH, have the same tax status in that each investor is:

- subject to taxation;
- legally liable;
- really liable, unless contractual provisions stipulate otherwise.

7.1.1 The legislative framework

The reform of the legislative framework translated into the redefinition of:

- the legal regime of exploration/production (upstream) activities on the one hand, and activities related to pipeline transportation, refining, transformation, marketing, storage, and distribution of oil products, as well as the works and facilities necessary to conduct (downstream) them on the other;
- the institutional framework to conduct those activities
- the rights and obligations of the persons conducting those activities.

Thus, Act 05-07 amended and modified confirms a certain number of rights and obligations to which various operators involved in the hydrocarbon sector are subjected.

In this regard, it is worth recalling that:

- The activities conducted within the framework of Act 05-07 amended and completed, are commercial acts and consequently the persons conducting those activities are considered to have the status of merchant, regardless of their legal status and even if the structure used to conduct those activities are not corporate.

- The contracting party may benefit from:

- the acquisition of land and related rights (Ord. n° 01-10 of July 3, 2001) ;
- the acquisition of utilization rights of the maritime domain (Ord. n° 76-80 of October 23, 1976)
- expropriation (Act n° 91-11 of April 27, 1991)

- The foreign contracting party may go to arbitration, after attempting to reach an amicable settlement, in the case of disputes pitting him against SONATRACH as well as those pitting him against ALNAFT. Moreover, the reform of the legislative framework translated into the establishment of two (02) agencies, that is ALNAFT and ANRH, whose organization and duties are defined by Articles 12 to 18 of the law.

Among other things, ANRH is in charge of ensuring respect of:

- the technical regulation applying to the activities covered by the law;
- the regulation pertaining to the transportation rates and the principle of free access to the transportation network;
- the specifications pertaining to the construction of transportation works;
- the application of the standards applying in this area;
- the review of applications to be awarded transport concession and issue recommendations to the minister.

As for ALNAFT, it is in charge of:

- promoting investments in exploration / production activities;



- issuing prospection authorizations;
- conducting calls for tender and evaluating offers;
- assigning exploration perimeters;
- following up and controlling the execution of the exploration/production contracts ;
- setting and collecting royalties.

7.1.2 The tax system:

7.1.2.1 The upstream (exploration and/or exploitation activities) tax system

Oil companies, whose activities consist in the exploration and/or exploitation of hydrocarbons, are covered by the tax regime of Act 05-07 amended.

Therefore, the firms are subject to:

A surface tax, oil royalties, a tax on oil revenues, an additional tax on performance, a flaring tax, a property tax, a specific tax on water, a fee on the transfer of ownership interests (farm in, farm out), a specific tax on CO2 emissions.

a) The surface tax:

The surface tax is an annual tax. It is owed by the operator who liquidates and pays this tax.

The surface tax is a non deductible charge from a tax standpoint. It is calculated on the basis of the size of the perimeter as soon as the contract becomes effective.

It may be paid in dinars or in dollars.

The amount of the due tax is updated annually (on January 1st of each year) according to the following formula:

$$(TCH_{mvn-1}) (M / 80)$$

- TCH_{mvn-1} = average exchange rate upon selling of the US dollar, in December of each year.

- M = amount of the date set according to the scale of the below chart////.



The tax is collected according to the following scale:

YEARS	PERIOD OF EXPLORATION			WITHHOLDING PERIOD AND EXCEPTIONAL PERIOD	PERIOD OF EXPLOITATION
	01 TO 03 YEARS	04 TO 05 YEARS	06 TO 07 YEARS		
ZONE A	4 000,00	6000,00	8 000,00	400 000,00	16 000,00
ZONE B	4800,00	8000,00	12 000,00	560 000,00	24 000,00
ZONE C	6000,00	10 000,00	14 000,00	720 000,00	28 000,00
ZONE D	8000,00	12 000,00	16 000,00	800 000,00	32 000,00

b) Oil royalties:

Oil royalties are an annual tax, paid in monthly installments, based on the amount of hydrocarbons extracted from each exploitation perimeter.

This tax is liquidated and paid by the operator.

The basis on which royalties are calculated is made up of the quantities produced in a given month times the average basic price.

The quantities liable to measured royalties, after deductions are:

- the quantities consumed for direct production needs;
- the quantities lost after the measuring point;
- reinjected quantities in the deposits, covered by the same contract.

However, the quantities excluded from the royalty calculation basis must be limited to eligible technical thresholds and must be justified.

As for the basic average price, it is calculated according to Article 90 of the law, which stipulates that the price used to calculate taxes are the FOB prices published by a reputable trade magazine for oil, LPG, butane and propane, as well as condensates, produced in Algeria.

In the specific case of condensates and in the absence of a published price, the price set by ALNAFT will be taken into consideration.

Royalties are deductible from the Additional Tax on Performance (Impôt complémentaire sur le revenu, ICR) assessment base and are considered to be a charge.

Installments are paid monthly by the operator without the issuing of a warning. A liquidation is conducted at the end of the fiscal year, before the annual return is filed. The liquidation balance is paid by the operator.

Excess payments represent tax credits to be applied to the installments of the next fiscal year.

A regulatory text will specify the practical terms and conditions.

➤ Level of production \leq 100 000 boe/ day

ZONES	A	B	C	D
0 TO 20 000 boe/day	5,50 %	8,00 %	11,00 %	12,50 %
20 001 TO 50 000 boe/day	10,50 %	13,00 %	16,00 %	20,00 %
50 001 TO 100 000 boe/day	15,50 %	18,00 %	20,00 %	23,00 %

➤ Level of production $>$ 100 000 boe / day

ZONES	A	B	C	D
> 100 000 boe/ day	12,00 %	14,50 %	17,00 %	20,00 %

c) Tax on oil revenues (TOR)

Tax on revenues, if it is called a tax, is a tax on the revenues stemming from the hydrocarbon exploitation activities.

It is an annual tax paid in monthly installments. It is liquidated and paid by the person legally liable without warning.

The assessment basis for the TOR is made up of the cumulative value of the annual production, minus legally deductible charges.

Deductible charges consist in:

- the royalties,
- the annual slices of investment to develop the perimeter of exploitation, approved in the annual budgets. The amortization expense of those investments is adjusted with the UP LIFT factor.
- the annual slices of exploration investments, adjusted with the UP LIFT factor.
- the withdrawal and/or restoration reserves.
- the human resource training costs destined to those activities covered by the law.
- the cost of purchasing gas earmarked for assisted recovery.

The UP LIFT factors are as follows:

ZONES	A and B	C and D	ASSISTED RECOVERY
AMORT RATE	20,00 %	12,50 %	20,00 %

UP LIFT RATE	15, 00 %	20, 00 %	20, 00 %
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The TOR rate depends on the value of the cumulative production of each perimeter going back to when exploitation of the deposits of the said perimeter began.

The rates are summarized in the table below.

PV (10 9 DA)	FIRST THRESHOLD (T1)	70
	SECOND THRESHOLD (T2)	385
	INTERMEDIATE THRESHOLD	$70 < PV < 385$
TOR RATE	FIRST LEVEL	30 %
	SECOND LEVEL	70 %
	INTERMEDIATE LEVEL	$(40/S2-S1) (PV-S1) + 30$

Thus the TOR owed depends on the level of production of a given perimeter on the one hand, and the price levels on the international market on the other.

These situations can be summed up by three (03) possible scenarios:

1. Valued output (10^9) = 70 tor rate = 30, 00 %.
2. Valued output (10^9) = $70 < x < 385$ tor rate = $(40/315) (x-70) + 30$
3. Valued output (10^9) = 385 tor rate = 70, 00 %.

Moreover, the TOR is considered to be a deductible charge and consequently, it is deductible from the ICR assessment basis.



The TOR is paid in twelve (12) monthly installments. It is liquidated and the balance is paid, without warning, before the annual return is filed.

In case of late payment, late payment penalties of 1% are added to the sums due.

d) The additional tax on performance

The additional tax on performance (Impôt complémentaire sur le revenu, ICR) is liquidated under the terms and conditions of ordinary law.

The ICR rate is 30 % (initially in Act 05-07, before it was amended, the ICR rate was indexed to the IBS rate).

In case of late payment, late payment penalties of 1% are added to the sums due.

The practical terms and conditions of the liquidation and payment of the ICR are defined by regulatory text.

e) Tax on flaring

The flaring of gas is prohibited.

ALNAFT may grant exceptional authorizations for periods which cannot exceed ninety (90) days however.

Under those conditions, the operator, benefiting from the authorization, must pay a tax of eight thousand (8,000.00 DA) per thousand normal cubic meter (nm³).

The payment of this tax does not free the operator from the obligations imposed on him by Art 109 of the law pertaining to the need to ensure that the facilities and operations are in compliance with the legislation setting the technical standards in terms of industrial safety, prevention and management of major risks and of environmental protection. Likewise the use of water sourced from public property for the purpose of assisted recovery is subject to the payment of a royalty of eighty (80.00 AD) per m³.

This tax is not considered to be deductible.

f) Property tax

The property tax is liquidated and paid according to the provisions of ordinary law.

g) Tax on ownership interest transfers

The transfer of ownership rights in an exploration contract or in an exploration / production contract or a production contract is taxed at the flat rate of 1%.

The tax assessment basis consists in the value of the transfer.

The said tax is not deductible. The exploitation and/or exploitation activities benefit from exemptions on:

- the value-added tax (VAT) ;
- customs duties.

The equipment and services benefiting from VAT and customs duties exemptions are those appearing on a list drawn up by regulatory text.

Moreover, the said activities are exempt from:

- the tax on industrial and commercial activities (TAIC),
- any tax on the performance related to those activities and collected on behalf of the State, territorial communities and any public corporation.

7.1.3 Downstream fiscal regime (gas pipeline transportation, liquefaction and transformation)

Downstream activities are taxed at the rate of 25% on corporate income (IBS) and at the rate of 2% on sales (Industrial and Commercial Activities tax, TAIC).

Consequently, downstream activities are excluded by Act 05-07 from the tax regime pertaining to hydrocarbons. They are covered by the ordinary tax system.

Those activities benefit from VAT and customs duties exemptions however. Moreover, the salaries of the employees of foreign oil companies are exempt from fringe benefits when those employees continue to be covered by the social security organization that covered them before their arrival in Algeria.

The rights and obligations of the foreign partner in contracts covered by Act 86-14 remain unchanged, except for the tax on exceptional profits levied on the partner's compensation.



Ranging from 5 to 50%, that tax is payable when actual prices exceed \$30 a barrel.

The tax rate depends on the level of prices on one hand, and the level of production in a given deposit on the other.

The tax assessment base consists in the difference between compensation, at a given price, and compensation, when the price is equal to or less than \$30 a barrel.

7.2 The mining system

This law is important in that, for the first time, it allows foreign operators to make sizeable investments in the exploration and exploitation of mineral resources. Act n° 01-10 of July 3, 2001, establishes four major principles: the separation of soil ownership and subsoil ownership, the non-differentiation of mineral substances, access to research, exploration and exploitation activities to any investor, and equality of treatment between investors.

This important law sanctions four major principles:

- the separation of soil ownership and subsoil ownership;
- the non-differentiation of mineral substances;
- access to research, exploration and exploitation activities to any investor;
- and equality of treatment between investors.

Mining activities are considered commercial acts carried out by physical and legal persons without distinction between them.

Mining research comprises two phases: a prospecting phase and an exploration phase.

The prospecting phase is open to any physical or legal person.

The exploration phase is more complex, in that the operator must prove that he possesses sound financial and technical capabilities. The operator may be the holder of a prospecting authorization issued by one of the competent administrative authorities, either because he was the first applicant or because he was the successful bidder.



The first applicant will be served first if the perimeter has not already been prospected.

7.2.1 - Mining:

It can be carried out through the award of a concession to a legal person in possession of an exploration license or to successful bidder.

In the case of small or medium-scale exploitation, it can be granted to either a legal or physical person, according to the following list of priorities:

- Holder of an exploration license;
- Holder of an authorization to prospect;
- Successful bidder.

7.2.2 - Assignment of mining claims for mining exploration:

In the case of mining research, the prospecting authorization is good for one year and can be extended twice, for six months each time. The exploration license is good for three years initially, with the possibility of extending it twice for two years with, if need be, a grace period of two years (in consideration of conditions deemed unfavorable).

As for mining exploitation, in the case of a mining concession, it is good for three years, with the possibility of an extension based on the deposit.

In the case of exploration licenses for small and medium-sized mining operations, licenses are good for ten years with an extension based on the deposit.

With regard to small-scale mining authorizations, they are good for five years with an extension also based on the nature of the deposit.

Mining titles are granted after an administrative investigation has been conducted.

The first applicant is favored if the discovery of the deposit was not financed with public funds. If the study of the deposits was financed with public funds or if exploitation was moved to an open surface perimeter.

The average times required for processing applications are:

- A maximum of one month for prospecting;

- A maximum of three months for exploration;
- A maximum of five months for exploitation.

7.2.3 Tax advantages granted

- Professional activity tax (PAT) exemption.
- VAT exemption on goods acquired or imported for mining.
- Customs duties exemption for all the equipment used in mining exploration.
- Exemption of all taxes, except for taxes on profits generated by mining.
- Depreciation of prospecting and exploration costs in the event of exploitation.
- Abatements on mining royalties.
- Possibility of carrying losses forward for ten years.
- Creation of a reserve consisting of 1% of sales (excluding taxes) deducted from operating results for restoring the deposit.

It should also be noted that the invested capital and the risks resulting from it are subject to a transfer guarantee.

The purpose of the law is to favor foreign investors, as evidenced by the principal elements on which the legal validity of the mining title rests:

- The rights of the inventor accrue to the benefit of the exploration title holder who has discovered a deposit;
- The stabilization of the legislation and regulation applicable to the title from the moment the agreement is reached until the expiration of the title.
- The assumption of responsibilities pertaining to environmental restrictions;
- The recourse to international private justice for the resolution of disputes (recourse to international trade arbitration).

8 The Electricity and Gas Act

Act n° 02-01 of February 5, 2002 pertaining to electricity and the distribution of gas by pipelines aims to establish the rules applying to



activities linked to the production, transportation, distribution and marketing of gas.

The distribution of electricity and gas is a public service. However, the legislator lays down the general principle of free competition for activities linked to the production of electricity.

In order to guarantee the effectiveness of the various methods for managing the production, transportation, distribution and marketing of electricity and gas, a commission (CREG) was created to regulate electricity and gas, which is an independent organization endowed with a legal personality and financial autonomy.

The commission's fundamental mission is to ensure that the electricity market and the national gas market function in a competitive and transparent manner in the interest of both consumers and operators.

Foreign operators should pay special attention to those provisions in the law that deal with their participation in the capital stock of public entities in charge of various activities linked to electricity and gas.

First, SONELGAZ, which had the status of a state-owned industrial and commercial enterprise until the law was promulgated, is transformed into a joint-stock holding company. The State remains the majority shareholder.

The capital of SONELGAZ SPA's subsidiaries is open to partnerships, as well as to scattered private shareholding or to both, in addition to employee stock ownership.

It is worth recalling that the essential pillars of the normative system of 2003 are as follows:

- the separation of electricity production, electricity transportation and gas transportation activities under legally independent and specific subsidiaries having their own assets;
- the subsidiarization of distribution activities and the implementation of the concession regime;
- the designation of clients capable of sourcing from the producer according to a level of consumption determined by regulation and set to gradually decrease;
- third-party access to the network.



The implementation of a regime assumes:

- a supply spread between electricity producers independent from one another;
- several clients (distributors, commercial agents, etc.) ;
- the existence of a system operator and a market operator;
- a strict regulation able to both guarantee reasonable rates and estimate costs for the regulated activities.

At the end of 2006, two important milestones were reached since the promulgation of the law: the separation of the activities of the incumbent operator (meaning SONELGAZ) and the establishment of CREG, an independent regulatory authority. SONELGAZ, Epic was transformed into a joint-stock company on June 1st, 2002.

In January 2004, three subsidiaries were created for core activities: Sonelgaz electricity production (Sonelgaz production d'électricité, SPE), Sonelgaz electricity transportation (Sonelgaz, transport de l'électricité, GRTE) and Sonelgaz gas transportation (Sonelgaz, transport du gaz, GRTG).

It is within the GRTE that the System operator project and the Market operator project were implemented. In 2006, the system operator was created as a subsidiary and its capital is open to third parties.

CREG, as an independent regulatory authority, was endowed with an executive committee on January 2005. Finally in 2006, the restructuring of the electricity and gas distribution organization, which began in 2004 with the creation of four general directorates in charge of distribution (Algiers, Centre, East and West) followed by their subsidiarization, was completed.

One can see that the organizational restructuring was conducted in accordance with the planned schedule, whereas the implementing documents of Act 02-01 have not yet been adopted, except for decree n°05-182 of May 18, 2005 pertaining to the regulation and compensation of activities related to the transportation, distribution and marketing of electricity and gas.



It's important to know that as we await the publication of those texts, the terms and conditions pertaining to the application of the law, namely those having to do with the production of electricity, the transitory provisions regarding the treatment of calls for tender, as well as the granting of export authorizations, are currently being applied.

Since CREG must intervene to regulate the electricity and gas market and since, in order to do so, it must act in the interest of consumers and that of operators, it is useful to recall under what circumstances it is called upon to intervene.

It intervenes in six areas:

1. With regard to authorizations and concessions, in that it provides information in connection with the applications and delivers authorization for the construction and exploitation of new electricity production facilities.
2. With regard to forecasts pertaining to demand and the scheduling of investments, it drafts the programs indicating needs and approves electricity and gas transportation network development plans.
3. With regard to the compensation of operators and to the rates, it determines the compensation of operators and the rates applying to captive customers and manages the electricity and gas fund.
4. With regard to the access of third parties to the network and to the markets, CREG guarantees the rules of procedure and functioning of the system operator, while supervising and organizing the markets.
5. With regard to technical and environmental control, CREG controls the application of the regulation in the area of hygiene, safety and the environment (HSE) and proposes rules of behavior with regard to the quality of performance and customer service.
6. With regard to the protection of consumers, CREG evaluates how operators fulfill their public service obligations, gathers the information pertaining to complaints from operators, stops administrative sanctions and publishes information in the interest of consumers.

9 The telecommunications system

Three operators are now involved in the telecommunications sector: Algérie Télécoms (AT), the incumbent public operator, and two private operators, Orastcom Algérie (OTA) and El-Watania Télécoms Algérie (WTA).

Since 2004, following major investments primarily made to modernize its GSM network, AT has managed to perform a satisfactory service upgrade.

As for OTA, whose network has been in operation since the first quarter of 2002, it made major investments and now has approximately eight million subscribers.

The Wataniya Group, which has only been active in Algeria since August 2004, had 1.2 million subscribers as of December 31, 2005.

Act n° 2000-03 of August 5, 2000 which set the rules pertaining to post and telecommunications created an “independent regulatory body endowed with a legal personality and financial autonomy.”

Among the twenty or so tasks assigned to this institution, we will list the main ones, which consist in:

- Ensuring effective and fair competition in the telecommunications market
- Ensuring that telecommunications infrastructures are shared.
- Granting authorizations to operate.
- Ruling in disputes pertaining to interconnections.
- Mediating disputes pitting operators against one another or against users.

Moreover, the Post and Telecommunications Regulatory Authority (ARPT) is asked by the minister in charge of Post and Telecommunications to:

- prepare any proposed regulatory texts pertaining to the post and telecommunications sector;
- Prepare the specifications.

In addition, the Regulatory Authority gives its opinion on:

- All matters pertaining to post and telecommunications;
- Establishing maximum tariffs for universal post and telecommunications services;
- The adoption of regulations pertaining to post and telecommunications;
- The development strategies for the post and telecommunications sectors.

Finally, the Post and Telecommunications Regulatory Authority (ARPT) is empowered, among other things, to:

- formulate any recommendation to the competent authority;
- propose the amounts of the contributions to finance universal service obligations;
- conduct any verification required as part of its duties, in conformity with the specifications.

Two other points should be noted here with regard to the operation of the Regulatory Authority according to the rule of law. First, by virtue of Article 17 of the afore-mentioned law: “Decisions rendered by the Council of the Regulatory Authority may be appealed before the State Council within one month after notification.”

Secondly, to ensure respect for market competition and protect users and consumers, the Competitive Council may be petitioned with regard to practices involving the telecommunications sector, in which case, the council must send a copy of the file to the regulatory authority asking for an opinion. That obligation comes from the general principle laid down by the legislator, which is that “the Competitive Council shall develop relations based on cooperation, consultation and exchanges of information with the regulatory authorities.”

Competition developed throughout 2006 between the three mobile phone carriers, that is DJEZZY, Watnyia Telecom Algérie and Mobilis. The prefixes (05), (06) et (07) each include a block of 10 million numbers.

Djezzy having exhausted that number, the ARPT issued a new prefix (09) over which the Egyptian carrier does not have a monopoly, as Mobilis also uses it. OTA protested the ARPT’s decision, claiming that it created some confusion in the minds of subscribers; to which the ARPT answered that it was the scarcity of available numbers that forced it to adopt the



measure, while specifying that number portability will now enable subscribers to switch carriers while preserving their original number. The implementation of this system requires that all three carriers agree on the terms and conditions of its operation however.

An Association of New Communications and Information Technology Users (Association des utilisateurs des nouvelles technologies de la communication et de l'information, NTIC) will be created by the end of 2007. This association will essentially work to defend the interests of users of mobile telephones, the web and VOIP telephones. The association will be independent.

Meanwhile, the ARPT has ordered telephone carriers to disseminate precise and complete information to users, in order to avoid misleading advertising. With regard to VOIP, an impact study whose conclusions will be made public at the beginning of 2007 should evaluate its importance and the need for it.

The volume of investments in the ICT sector has reached five (5) billion dollars since 2001. 250,000 direct or indirect jobs were created. The number of mobile phone subscribers amounts to 19 millions against 3 millions only for landlines.

Finally, it is useful to point out a major dispute over the setting of rates, which took place at the end of 2005 and regarding which the State Council was petitioned at the beginning of 2006. Indeed OTA protested ARPT's method for setting end call rates before the State Council. The State Council has not yet rendered a decision. If the rates set by the ARPT are too low according to the Egyptian firm, the ARPT considers that the rate was set on the basis of real costs to operators, and that Djezzy's EBIDTA (meaning net income margins before taxes and amortization) is the second highest of all of OTA's subsidiaries (53,7% as of December 31, 2005); moreover, Djezzy accounts for 42% of OTA's EBIDTA, whereas it only accounts for 33% of its sales.

10 Insurance

The insurance sector has evolved in three stages since the country's independence (1962).

The first stage took place just after Independence and was characterized by the takeover of the existing insurance companies, which fell under the



control of the Ministry of Finance, and by the introduction of the principle that risks incurred in Algeria can only be insured by accredited organizations.

A second stage saw the establishment of a State monopoly, which translated into the nationalization of existing insurance companies and the creation of certain companies, such as the Central Company for Reinsurance (Centrale de réassurance, CCR), and the introduction of mutual insurance with the creation of the National Agricultural Mutual Fund (Caisse Nationale de la Mutualité Agricole, CNMA) .

The third and last stage is characterized by the liberalization of the insurance sector, which was essentially sanctioned by the promulgation of Ordinance n° 95-07 of January 25, 1995 pertaining to insurance.

Insurance market activities are open to private investments.

10.1 Configuration of the Algerian insurance sector

There are currently 17 public or private insurance companies in the Algerian insurance sector (see the list of companies below). These companies are organized in the form of joint stock companies (JSC) or mutual benefit associations.

You can thus count eleven (11) accredited direct insurance companies practicing insurance operations covering all segments of the industry, including reinsurance:

- Three (03) specialized public insurance companies: CAGEX, to guarantee exports; SGCI, for real estate credit, and AGCI, for domestic credit linked to investments.
- CASH, a general-purpose company which is the primary insurer of the hydrocarbon sector.
- Two (02) specialized mutual insurance companies: CNMA, for agricultural insurance, and MAATEC, to meet the needs of the workers of the national education and cultural sectors.
- One (01) public reinsurance company: Central Company for Reinsurance (Compagnie centrale de réassurance, CCR)

Insurance companies market approximately 100 insurance products in the various insurance categories.



The insurance product distribution network

These products are distributed through a network made up of 1,340 outlets, including 432 general agents and 20 brokers spread out throughout the country.

Insurance companies are represented in a professional organization called “UAR” (Union des assureurs et réassureurs / Union of Insurers and Reinsurers).

General insurance agents (Agents généraux des assurances, AGA), considered “insurance” intermediaries linked by a representative’s contract, are assigned by one or more companies and belong to an association.

As for brokers, the profession is considered a commercial activity, and as such is subject to registration with the Commerce Register. Plans to create a professional association in this category are currently being formalized.

The activities of these various economic actors take place within the framework of a National Insurance Council (CNA), chaired by the minister in charge of finance.

The assignments of this organization have to do with all aspects pertaining to the situation, organization and development of insurance and reinsurance activities.

Within the council, four commissions are given the responsibility of examining the accreditation application of insurance companies and brokers.

10.2 Market organization

The council is also endowed with a permanent secretariat organized around four specialized technical divisions.

The current situation of the insurance market is as follows:

- The public companies register the strongest sales in the insurance sector with a 80% market share.
- Sales recorded in the second quarter of 2005 amounted to 11.1 billion AD.

- The market is dominated by the “automobile” segments, whose growth can be explained by the current movement towards newer cars.
- Property and casualty insurance companies (fire, accident and miscellaneous risks) are also recording a slight growth.
- Personal insurance also had a good year in 2005, with regard to travel insurance products and the development of consumer credit in particular.

10.3 The legislative framework and qualifying conditions for accreditation

The documents governing the accreditation of insurance companies are as follows:

- Ordinance 95-07 of January 25, 1995 pertaining to insurance (Official journal n° 65 of March 8, 1995).
- Executive Decree n° 95-344 of October 30, 1995 pertaining to the legal capital requirements of insurance companies (Official journal n° 65 of October 31, 1995).
- Executive Decree n° 96-267 of August 3, 1996 setting the terms and qualifying conditions for accreditation of the insurance and reinsurance companies (Official journal n° 47 of July 7, 1996)

The qualifying conditions for accreditation are:

- incorporation under Algerian law in the form of a joint stock company (JSC) or in the form of a mutual benefit association;
- the exclusive performance of the insurance operations defined in the accreditation;
- the good moral character and professional qualifications of the principal managers of the corporation;
- the creation of capital stock or an establishment fund in the case of mutual benefit associations, with a minimum depending on the type of corporation:
 - Two hundred million (200,000,000) AD, for joint stock companies (JSC) exclusively conducting personal insurance operations without transferring risk to foreign re-insurers;



- Three hundred million (300,000,000) AD, for joint stock companies (JSC) active in all segments of the insurance market without transferring risk to foreign re-insurers ;
- Four hundred million (450,000,000) AD, for joint stock companies (JSC), which are active in all segments of the insurance market but transfer risk to foreign re-insurers;
- Fifty million (50,000,000) AD, for mutual benefit associations active exclusively in the personal insurance segment;
- One hundred million (100,000,000) AD, for mutual benefit associations active in all segments of the insurance market.

The accreditation application must be filed with the Insurance Department of the Ministry of Finance and requires the favorable opinion of the accreditation commission created within the National Insurance Council.

The accreditation is granted on the basis of the elements in the application that make it possible to assess the feasibility and solvency of the corporation.

The accreditation is issued by order of the minister in charge of finance and is published in the official journal.

The refusal to grant accreditation must be accompanied by a decree duly outlining the rationale for the decision.

10.4 Reforms underway and development prospects

The insurance sector is currently undergoing a complete mutation, and is also experiencing important structural changes that should enable the sector to truly fulfill its role of supporting and providing financial protection to investment projects.

A new proposal to modify Ordinance n° 95-07 of January 25, 1995 with regard to insurance is currently being examined for possible adoption by the National People's Assembly (APN). The proposal would entail a major restructuring of the sector from a regulatory standpoint, as well as an organizational standpoint.

The main areas of concern are sector stimulation, financial security and the good corporate governance of insurance firms.

The control of these firms' activities is also taken into account, through a proposal to create controlling and supervisory bodies whose mission will be to bolster the solvency of insurance companies and ensure that the rights of the insured are protected.

Real estate development

Housing crises have been a recurring problem in Algeria since the 1970s, in spite of the State's commitment to curb them and the various methods it has used to curtail the size of the cumulative housing unit deficit which has been increasing for more than forty years.

The current deficit is evaluated at 1,200,000 units, but the more pessimistic analyses put the number at over two million housing units, with an occupancy rate of five people per unit.

Of the 4,200 billion dinars (55 billion USD) earmarked for the Complementary Growth Support Plan, 555 billion will be devoted to curbing the housing unit deficit, with the goal of building one (1) million units by 2009. In order to raise the awareness of all the parties involved in this large-scale plan, numerous colloquiums, seminars and other workshops were held to bring together a large number of specialists in order to debate the avenues and the means likely to help achieve the goals set by the public authorities in this field.

The renewed interest in architecture and building engineering as career paths and in international earthquake-resistance standards, following the murderous earthquake that struck the Boumerdès Wilaya in May of 2003, is now forcing the authorities in question to be more rigorous and vigilant with regard to the quality of construction.

Moreover, the growth of the real estate market following the creation of institutions (SGCI and SRH) specializing in real estate credit will probably translate into much easier access to home ownership and will surely stimulate professionals of the building sector to work at gathering the funds needed to broaden and develop real estate investments, by including real guarantees and safeguards.

11 Development and urban planning

It's because of Act n° 04-05 of August 14, 2004 that the rules pertaining to development and urban planning underwent a long overdue

clarification, that is to say since Act n° 90-629 of December 1st 1990 became effective.

The new legislative text delineates the concept of constructible parcel, defines the zones subject to a special regime, given their special characteristics, defines the construction projects, strengthens the control of public authorities and establishes special rules for failure to abide by the building permit.

11.1 The concept of constructible parcels

It includes five categories:

1. those that respect the urban economy, based on the fact that they are located inside portions of the commune apt to be developed;
2. those located on farm land, but which do not threaten the viability of agricultural activities ;
3. those located on natural sites, but which are not likely to upset the basic ecological balance;
4. those that do not hinder the preservation of archeological and cultural sites;
5. those that are not exposed directly to technological and natural risks.

Moreover, any construction for residential purposes must have a proven drinkable water supply source and be equipped with sewerage works so that the discharge of effluents not be done on the surface.

11.2 Zones subject to a special regime

It is thanks to the development and urban planning tools that the measures limiting or prohibiting construction projects may be taken.

There are two categories of zones where construction is subject to strict conditions.

1. seismic zones identified according to their level of vulnerability;
2. the zones exposed to technological risks whose protection perimeters are determined beforehand.

The content of construction projects

It is drafted by a builder and an accredited architect, within the framework of a project management contract.

11.3 The architectural plan includes:

- the plans and documents pertaining to the implementation of the works;
- the plans and documents pertaining to their organization;
- the plans and documents pertaining to their volume measurement;
- the plans and documents pertaining to the frontal expression;
- the plans and documents pertaining to the choice of material and colors highlighting the local specific characteristics related to the civilizational aspects of Algerian society.

In addition to the architectural plan, there are technical studies that namely cover the civil engineering aspects as well as the parceling of secondary lots.

11.4 Strengthening the control of public authorities

This strengthening is first evidenced by the increase in the categories of personnel with the power to look for and record violations to the provisions of the law. They are urban planning inspectors, community agents in charge of urban planning and civil servants of the urban planning and architectural administration.

The moment that a violation is recorded, a ticket is given which must be signed by both the officer reporting the offence and the perpetrator. The violation may either lead to modifications to ensure that the construction is in compliance with the legislation if it's built, or to its demolition.

In all cases where the construction is built without a permit, the president of the APC with jurisdiction is required to issue a demolition order within eight days, from the date when the ticket recording the offence was handed out. If the president of the APC fails to do so, it's the Wali who issues a demolition order within a time limit which shall not exceed 30 days.

Demolition is carried out by the commune's services. If the commune does not have the means necessary to carry out the demolition, the Wali requisitions all the means necessary to implement the order. Execution of the decision to demolish is not suspended when the offender initiates legal action.

11.5 Failure to comply with the stipulations of the building permit

The courts are automatically notified within 72 hours of the failure of a construction to comply with the stipulations of a building permit when the violation has been recorded by a duly mandated agent. A copy is addressed to the president of the APC and to the Wali.

The competent court rules on public actions. It orders the construction to be made to comply or to be totally or partially demolished and also sets the deadline for when this must be done.

If the offender does not comply with the legal decision (in other words if he does not take the necessary steps to ensure that the demolition works are conducted), the president of the APC or the Wali will automatically execute the work at the expense of the offender.

12 Contract law and contractual obligations

Since its inception in 1975, when Algeria's economy was primarily planned and controlled by the state, the Civil Code has undergone several modifications. One must understand however that contract law was essentially liberal, owing to the binding power of contracts, the relative effect of treaties, contractual liability and the acknowledged right of the contracting parties to release themselves from their obligations for just cause.

Algerian law is subdivided according to the classic distinction between domestic contracts and international contracts, in that the former are only effective in Algeria. They are regulated by Algerian law and disputes stemming from them are referred to Algerian courts. The latter are effective in at least two countries. Such is the case for all contracts pertaining to external trade, whether they are sales contracts, equipment contracts, technical assistance contracts, contracts pertaining to the transfer of technological processes, etc. Those contracts may be subject to other laws in addition to Algerian law and disputes stemming from them fall either within the province of Algerian courts, foreign courts or more and more frequently (namely since 1993) of international arbitration.

According to the new Article 18 of the Civil Code, contractual obligations are governed by the autonomy law whenever there is a real relationship with the contracting parties or the contract. If this is not the



case, the law of the common domicile or common nationality shall apply. If this is not the case, the law of the place of conclusion of the contract shall apply.

Algerian law also makes the distinction between contracts signed under private law and contracts signed under administrative law. The former rests on the principle of strict equality between the parties and on the fact that the parties are private corporations. The latter is either signed between two public corporations or between a public corporation and a private corporation. Administrative law applies and disputes stemming from the contract are referred to administrative courts, whereas the administration party to a contract with a private corporation has the possibility of implementing clauses not covered by ordinary law, that is to say clauses which reflect the dominance of the administration with regard to private individuals. A concession is an example of an administrative contract.

It is also important to make a distinction between consensual contracts and formal contracts. Consensual contracts are established by the mere exchange of consents, whereas formal contracts are only recognized as valid when they are certified by a competent authority, usually a notary (thus a firm's contract of incorporation is a formal act; Civil Code, Article 418). Under the terms and conditions of the new Article 324 of the Civil Code, acts in solemn form are recorded by the public officer in the presence of two attesting witnesses, as failure to do so results in nullity.

With regard to the establishment of the contract, it should be noted that formal and basic requirements must be met. The basic requirements are extremely standard: consent, power to enter into a contractual agreement, lawful purpose and cause. The formal requirements are also standard: official deeds as well as private documents must be in writing. Written documentation represents the most indisputable form of proof. The proof is of primordial importance in business law, as if it is not possible to examine the evidence of a legal situation, the protection of the contracting parties becomes an illusion. Act n° 05- 10 of June 20, 2005 which modifies the Civil Code stipulates that writing in electronic form is admissible as evidence in the same way that writing on paper is, provided that the person from whom it emanates is duly identified and that it is drawn up and stored under conditions which guarantee its integrity (new Article 323).

It is rare in business relations for the use of witness evidence to be widespread. Indeed, Article 333, paragraph 1 of the Civil Code states that proof of a legal act or proof of the extinction of an obligation cannot be made by witness if its value exceeds 100.000 AD or is indefinite.

12.1 The issue of the effects of the contract

Article 106 of the Civil Code according to which the contract makes the law between the contracting parties is the starting point. This provision represents the legal foundation for the obligation to perform the contract, in that the parties must strictly fulfill their obligations while respecting the principle of good faith. This does not mean however that the parties do not have the possibility of modifying the content of the contract, even of revoking it, provided that the revocation not be unilateral. As for revising the contract, it is allowed, provided that an event disrupting the economics of the contract and inflicting excessive losses on the obligor has occurred (Article 107, paragraph 3).

The principle of contract amendments is very important in international business relations, especially when it comes to preserving the future of contractual relationships. In this regard, the judge may, after considering the interest of all parties concerned, reduce, to a reasonable extent, the obligation that has become excessively costly and thus reestablish the contractual balance.

The issue of the contract's interpretation is very important in international contracts where the parties do not always belong to the same geographical and cultural areas. The interpretation of the contract becomes necessary in numerous cases: when the contract contains gaps, ambiguities and contradictory clauses. Since the Executive Decree of September 10, 2006 came into effect setting the essential elements of the contracts entered into by economic agents and consumers and the contract terms considered unfair, the interpretation of the adhesion contract (Article 90) becomes especially necessary to the extent that the risks of imbalance between the position of seller or service provider and that of the consumer are considerable, whether it is in terms of price, of conformity of the product, of delivery conditions, etc.

12.2 Contractual liability and breach of contract

Firstly, the terms and conditions of liability are known: it is the existence of a wrongful act and of actual damage. But enforcement of the liability

assumes that the obligee has issued a formal notice beforehand. The formal notice represents a warning from the obligee to the obligor which aims to force the latter to perform the contract. The formal notice is not subject to formal procedures (Article 180), but logically it is only worth resorting to if performance of the contract is still possible.

With regard to the issue of breach of contract, it springs from the failure to fulfill the obligation, as provided for in Article 119 of the Civil Code. It may be total (failure to deliver the good) or partial (late delivery). In such contracts entered into by Algerian and foreign partners, failure to fulfill the obligation is not assessed with respect to the traditional obligation of means or the obligation of results. Failure to fulfill the obligation is assessed with respect to the obligation of guarantee. Sometimes, this guarantee is so broad that even in the event of an Act of God, the obligor is not exempted from his contractual obligation. Such contracts are extremely rare however. In practice, all contracts include both obligations of means and obligations of results; in some cases, an obligation is considered simply as an obligation of means, whereas in other cases it is considered an obligation of result. When it is simply an obligation of means, the burden of proof falls on the obligee, whereas in the case of obligations of result the burden of proof falls on the obligor. However, it must be noted that in the latter case, even if the obligor has not committed any wrongful act, whenever the promised result has not been achieved, the obligor must compensate the obligee to the extent of the damage suffered by the obligee as a result. In the case of an act of God, of an intervention by a third party, or if the obligor contributed, through his own fault, to the breach of contract, the obligor is exempt from liability in the first two instances, whereas in the third instance his liability is reduced to the pro rata of the share of the obligee's responsibility in the breach of contract.

As for damages, the chain of causation between the breach of contract and the damages suffered has to be established. The minute a total or partial breach of contract occurs, or the contract is performed in a faulty manner, the existence of damages justifying compensation logically results. It is Article 182 of the Civil Code which regulates the system of compensation; in principle compensation completely covers damages, which is comprised of two elements: losses suffered (*damnum emergens*) and lost opportunities (*lucrum cessans*). One should not believe that the compensation for damages is absolute however. Indirect damages are not taken into consideration. Article 182 states that compensation must

pertain to damages that are a “*normal consequence of the failure to fulfill the obligation or lateness in doing so*”. Moreover, only those damages that the obligee could not have avoided can be compensated. In international commercial law, the assessment of the extent of compensable damages is done in relation to the obligation on the obligee’s part to minimize damages (it is a general principle of international law that arbitrators tend to apply systematically). Under Algerian law, only predictable damages are subject to compensation, unless the obligor has committed a major wrongful act or fraud. Compensation is made in kind, in conformity with Article 176 of the Civil Code. In the case of contracts of successive performance (construction of an industrial entity) what the Algerian client is interested in is the complete performance of the works according to accepted practices, not a monetary compensation which would represent mere consolation for a poorly executed contract.

Conventional compensation also exists. A distinction should be made between several situations. There is the case where the parties agree on limitation of liability clauses. There are cases, increasingly rare, where the contract contains an exemption of liability clause provided that the obligor has not committed major wrongdoing or fraud (Article 178 of the Civil Code). On the other hand, the most frequently occurring case has to do with contracts containing penalty clauses. The parties themselves set the compensation, outside the province of a third party’s (namely judges) intervention. However, when the amount of compensation is determined to be excessive in relation to the damages suffered, the judge may intervene to reduce it. Judges tend to do so if the main obligation has been partially fulfilled (Article 184, paragraph 2). This provision even has a public nature, as the parties may not avoid it by private contract.

Failure to perform the contract is not simply resolved by the implementation of the obligor’s liability and compensation for the damages suffered by the obligee. The obligee may petition to have the contract annulled. This is an act with extreme consequences as it is retroactive to the date when the contract was entered into, nullifying all the effects that have occurred since. The judge is often asked to declare the legal annulment of the contract. But the annulment is only implemented when it is proven that the breach of contract is the result of a lapse by at least one of the contracting parties. Moreover, in order for the annulment to fully apply, execution must be impossible due to external factors.

The legal annulment is not automatic however. Indeed, according to the terms of Article 119, paragraph 2 of the Civil Code, the judge may grant an extension to the obligor, just as he may reject the petition for annulment, if he deems that the failure to fulfill the obligation is not important in relation to the promises that were made with regard to performance. When the annulment is legal, there is no need to issue a formal notice. Once the annulment has been declared, the contractual link is retroactively ended.

Next to the legal annulment is the unilateral annulment of the contract provided for in Article 120. The obligee must send a formal notice to the obligor. It would be wrong however to believe that the unilateral annulment excludes the intervention of a judge. The judge may intervene at the request of the obligor to ensure that the conditions for an annulment have actually been assembled and that the contracting parties truly intended to make failure to execute this or that obligation cause for contract cancellation.

Then finally there is the exception for non-performance, meaning cases where one of the parties refuses to perform his obligation by alleging that the other party did not fulfill his. According to the terms of Article 123 of the Civil Code, in bilateral contracts, if corresponding obligations can be required, each of the contracting parties may refuse to carry out his obligation if the other party does not fulfill his. Exceptio non adimpleti contractus may not be implemented without prior conditions however. Particularly, this assumes that there is perfect congruence between the contractual obligations required of the obligor and the obligations of the obligee respectively. On the other hand, it matters very little whether the performance is substantial or marginal, just as delivery of a formal notice prior to an exception for non-performance is irrelevant. However, the effects of the exception for non-performance are not final. They are temporary, in that the contractual obligations are merely suspended.

13 Regulation of government contracts

13.1 Scope of application

The explanatory statement of Presidential Decree n° 02-250 of July 24, 2002 pertaining to the regulation of government contracts, amended and completed by Presidential Decree n° 03-301 of September 11, 2003, indicates in essence that, in addition to establishing the fundamental

principle of competition, good governance in connection with government contracts essentially calls for the establishment of other principles that strengthen the principle of competition, that is:

- non-discrimination,
- fairness,
- integrity,
- transparency,
- and effective public spending.

Therefore, in this context, the main objective of tendering and performance procedures pertaining to government contracts is to ensure that the works are performed, the supplies acquired, the services delivered and the feasibility studies conducted under the best terms with regard to price, quality and deadlines.

In other words, the best possible interaction of market forces is sought.

In order to verify to what extent the procedures currently in force favor the best possible interaction of market forces and a more balanced execution of government contracts, it is useful to enumerate the more important modifications introduced by the new government contract regulation beforehand.

Thus the legal provisions go from extending the scope of application of government contract regulation to significantly overhauling the dispute resolution system (which now puts more emphasis on out-of-court settlements, with the intervention of the National Government Contracts Commission in particular), as well as giving more weight to feasibility studies in order to encourage public operators to better outline their projects. In addition to public administrations (the central administration, local communities) and the administrative public establishments (Établissements publics à caractère administrative, EPA), other types of organizations (research and development centers (Centres de recherche & développement, CRD), science & technology public establishments (Établissements publics à caractère scientifique et technologique, EPST), scientific, cultural and professional public establishments (Établissements publics à caractère scientifique, culturel et professionnel, EPSCP), state-owned industrial and commercial enterprises (Établissements public à caractère industriel et commercial, EPIC)) are subject to the application of this regulation when they are given the responsibility of carrying out public investment projects with the financial participation of the state.



Also worth noting is the simplification of procedures pertaining to the importation of products and services whose availability or price fluctuations may justify significant regulatory relaxation.

The publication of the call for tenders must give readers all the information needed to present an acceptable bid.

As for the terms and conditions for granting the contract, the announcement is provisional and is published under the same terms as the call for tenders. Rejected bidders may thus dispute the selection with the contract commission of the contracting department.

The requirement that a bid deposit of at least 1% of the contract amount be posted should help discourage frivolous bids.

The precise definition, in the specifications, of the selection criteria that must be respected in order for the call for tenders to be valid.

Prohibiting negotiations with bidders after the opening of tenders and during the evaluation of the offers to select the co-contracting partner is the essential characteristic to ensure the selection of a partner on a competitive basis.

The contracting department is obligated to make progress payments and pay the balance within a period not exceeding thirty (30) days from the moment of acknowledgment of the situation or receipt of the invoice and to automatically face late payment penalties in case of tardiness in making the progress payments and paying the balance.

Late payment penalties are made to the Government Contract Guarantee Fund (Caisse de garantie des marchés publics, CGMP), which is the bank of the State in charge of facilitating the performance of government contracts. The CGMP sees to the delivery of all required guarantees to the benefit of the co-contracting partners.

Performance bonds are transformed into guarantee bonds when a defects liability period is stipulated in the contract and performance deductions are substituted for performance bonds for certain types of feasibility studies and services. In that case, the reserve created from all deductions is transformed, upon practical completion, into a guarantee bond.

Direct payment of the subcontractor by the contracting department would, if well managed, be likely to make subcontracting firms true partners of the contracting department, just like the main contractor.



The establishment of terms and conditions for collateralizing government contracts and the participation of the CGMP in the financing of government contracts are two rules which will facilitate the funding of contracts.

Allowing the National Government Contract Commission (Commission nationale des marchés, CNM) to intervene and work towards the definite settlement of disputes guarantees quick, and especially balanced settlements, thanks to the proven competence of the members of the commission.

The Bid Opening Commission meets in public in the presence of the bidders who have been notified beforehand according to the specifications of the call for tenders, with the last day representing the deadline for presenting bids. These rules obviously favor letting market forces determine winners and losers in the selection of the co-contracting partner by the contracting department.

The global visa issued by the government contract commissions is needed by the contracting department, the financial comptroller and the accounting officer.

13.2 Tendering process for government contracts

To what extent does this process favor the best possible interaction between market forces and a better, more balanced, execution of government contracts?

Although some improvements are still needed (see conclusion below), the current regulation regarding government contracts calls for a series of new rules that clearly favor improvements in the way that market forces are allowed to interact with regard to the selection of the co-contracting partner.

These rules are organized around three basic axes.

The nature of the rules governing the selection of the co-contracting partner.

The rules governing the selection of the co-contracting partner greatly limit the freedom of the contracting department, which has to establish the selection rules beforehand in the specifications, down to the most minute detail.



Moreover, the selection of the partner being temporary at first, it opens the way for an appeal before the National Government Contracts Commission from bidders who believe that they have been unfairly rejected.

The objectivity of this selection becomes all the more evident in view of the obligation imposed on the contracting department to conduct the selection in two stages:

- The first choice pertains to all the bidders whose bids meet the technical requirements with regard to the work, supply, performance of services and studies related to the contract about to be concluded,
- The second choice, which becomes definite when all the means of appeal have been exhausted, pertains to the bidder whose financial offer is the most favorable; save for exceptions, this selection is automatic.

This goal is supported by the terms and conditions of payment and financing provided for in the law

13.3 Improvements made to the terms and conditions of payment of the co-contracting partner and financing of government contracts

The time limit for making progress payments and paying the balance is thirty (30) days from the time that the situation is accepted or the invoice received.

Moreover, to counterbalance the late payment penalties imposed on the co-contracting partner, he is entitled to interests on overdue payment by the contracting department, which is calculated ipso jure and without any other formality as soon as a delay in payment is recorded.

The notion of co-contracting partner could even be extended to the sub-contracting firm who could negotiate direct payment by the contracting department with regard to the services it performs.

It must be pointed out however, that the CGMP, as the bank of the State, can participate in the financing of government contracts in order to facilitate their execution.

13.4 Dispute resolution

The law favors the out-of-court settlement of disputes which may arise from the tendering and performance of government contracts.

Should this procedure fail, the parties may submit their dispute to Algerian courts with territorial jurisdiction or to international commercial arbitration. It is also possible for the partners to resort to the National Government Contract Commission (Commission nationale des marchés, CNM) established as a true “tribunal,” whose distinctive feature is that it renders immediately effective decisions within thirty (30) days.

14 Intellectual and industrial property law

Intellectual property is governed by several legal and regulatory texts in Algeria. These texts protect industrial property rights, as well as literary and artistic property rights.

14.1 Industrial property rights

Industrial property rights protect industrial and technological creations. These creations are varied and touch on many areas, ranging from inventions in the industrial field, industrial drawings and models, distinctive signs such as trademarks and service marks, or appellations of origin.

Information that should not be disclosed also benefits from special protective measures.

All protection standards are also accompanied by rules against unfair competition.

Industrial inventions

Industrial inventions are protected by Ordinance n° 03-07 of July 19, 2003, pertaining to patents and by Decree n° 05-275 of August 2, 2005 setting the terms and conditions for the filing and issuance of patents.

Protected inventions are new inventions resulting from an inventive activity and likely to be used industrially. The protected invention may pertain to a product or a process.

The inventions meeting the afore-mentioned criteria are granted a patent giving its holder exclusive rights to prohibit:

- the manufacturing, use and sale of his product.



- the use, sale and importation of a product obtained with his process.

Patentable inventions pertain to a variety of fields on the basis of the afore-mentioned criteria, especially food products, cosmetics, pharmaceutical products or microorganisms.

Among the industrial inventions which are not patentable, we find computer programs in particular.

The protection of the patented invention is ensured for a non-renewable period of twenty (20) years, from the application filing date. Patents of addition expire with the initial patent.

Holders of foreign patents are protected by Algeria's participation in international agreements, especially the Paris Convention for the protection of industrial property of March 20, 1883, amended, which Algeria joined in 1966.

Invention patents are filed with the Algerian National Institute of Industrial Property (Institut National Algérien de la Propriété Industrielle, INAPI) and are published in the Official Bulletin of Patents (Bulletin officiel des brevets), formerly the Official Bulletin of Industrial Property (Bulletin officiel de la propriété industrielle).

The National Institute of Industrial Property is a state-owned commercial and industrial enterprise placed under the authority of the Minister of Industry. The institute is governed by Executive Decree n° 98-68 of February 21, 1998.

14.2 Trademarks

Trademarks in Algeria are governed by Ordinance n° 03-06 of July 19, 2003 and by Executive Decree n° 05-277 of August 2, 2005 setting the terms and conditions for filing and registering trademarks.

A trademark is a distinctive sign which aims to distinguish the products or services of a physical or legal person from those of other persons.

A trademark may consist of "any signs capable of being represented graphically, particularly words, including personal names, letters, numerals, drawings or images, the characteristic shape of goods or of their packaging, the colors, alone or in combination, provided that such signs are capable of distinguishing the goods or services of one physical or legal person from those of other persons."



The trademarks may have the shape of a sign of one or more dimensions.

Only signs that can be perceived visually are likely to constitute trademarks.

In Algeria, the trademark is mandatory for any product or service offered, sold or put up for sale on the national territory.

Registration with INAPI is also mandatory before the trademark can be used on the national territory.

Priority is given to the first person to file when the filing is made validly.

Categories of trademarks:

By virtue of Ordinance n° 03-05, there are several categories of trademarks:

- the product or brand name,
- the service mark,
- the trademark,
- the collective marks,
- the certification marks,
- the notorious trademarks.

Term of trademark protection:

The trademark is protected for a period of ten years, renewable indefinitely

Requirements :

Trademarks must be registered at the Algerian National Institute of Industrial Property (INAPI).

In order to do that, the filer must:

- present a duly filled trademark registration application form supplied by INAPI,
- submit a 9 X 9 cm reproduction of the trademark
- submit a complete list of products and services set in accordance with the Nice classification.
- prove payment of the filing and publication taxes.

The owners of a trademark may assert their rights and exercise their prerogatives through industrial property agents.

Trademark rights



A validly registered trademark gives its holder a right of ownership over that trademark and the right to allow the use of the trademark with his prior authorization.

Sanctions

Counterfeiting a trademark is punishable by:

- a prison sentence of between six (06) months to two (02) years,
- and a fine ranging between two million five hundred thousand (2, 500, 000) and ten million (10, 000 ,000) dinars or one of the two sentences.

International agreements

Algeria is a signatory to:

- the Paris Convention of 1883 for the Protection of Industrial Property (since 1966),
- the Madrid Agreement Concerning the International Registration of Marks (since 1972).
- the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (since 1972).

14.2.1 Industrial drawings and models

Industrial drawings and models in Algeria are governed by Ordinance n° 66-86 of April 28, 1966 and by Executive Decrees n° 66-86 of April 28, 1966 and n° 66-87 of April 28, 1966.

Condition of protection:

An industrial drawing consists of “any composition of lines, of colors, aimed at giving a special appearance to a product of industry or handicraft, whereas a model is any plastic shape associated or not to colors and/or products of industry or handicrafts which can serve as a pattern for the manufacturing of other units and which distinguishes itself from similar models by its configuration.”

Only original and new drawings and models are protected.

Ownership of an industrial drawing or model belongs to the first person to file.



Foreign nationals may also file in Algeria, subject to being represented by an Algerian agent residing in Algeria.

Filing procedures :

In order to be protected, industrial drawings or models must be filed or addressed to INAPI by registered mail with acknowledgement of receipt.

The filing must include:

- four copies of a filing declaration written on a form supplied by INAPI,
- six identical copies of the representation or two specimens of each object or drawing,
- a signed power of attorney, if the filer is represented by an agent
- a receipt for the payment of due taxes.

Period of protection:

An industrial drawing or model validly filed with INAPI is protected for a period of ten years from the date of the filing.

That period is subdivided in two:

- a first period of one year,
- the second period, which lasts nine years is subordinated to the payment of a maintenance fee.

Sanctions:

The infringement of a drawing or model is punishable by a fine ranging between five hundred (500) to fifteen thousand (15,000) dinars and in the event of a repeat offence, the infringer is punished by a prison sentence ranging between one to six months, with the seizure of the objects violating the rights of the patent holder.

14.2.2 The layout designs of integrated circuits

The layout designs of integrated circuits are governed by Ordinance n° 03-08 of July 19, 2003 and by Executive Decree n° 05-276 of August 2, 2005.

The layout designs of integrated circuits are protected when they are original.

Patent holder's rights

The layout designs of integrated circuits grant the patent holder the right to prohibit third parties from:



- reproducing the layout partially or totally,
- the importation, sale or distribution of this layout for commercial purposes.

Filing procedures

In order to benefit from the protection, the layout design of integrated circuits must be filed with INAPI directly by its author or through an agent.

The application must be accompanied by the payment of prescribed fees.

The registration of the layout design of an integrated circuit is subject to the publication of a notice in the Official Bulletin of Industrial Property

Sanctions

The infringement of layout designs of integrated circuits is punishable by:

- a prison sentence ranging from six (06) months to two (02) years and a fine ranging between two million five hundred thousand (2,500,000) to ten million (10,000,000) dinars,
- or one of those two sentences.

The court hearing the case may also order the destruction and the ban from commercial distribution networks of the infringing goods and the confiscation of the instruments used to manufacture them.

14.2.3 Appellations of origin

Appellations of origin are governed by Ordinance n° 76-65 of July 16, 1976.

An appellation of origin is a "geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.

The following may not be considered appellations of origin:

- the generic names of products,
- names contrary to public order and good morals.

Parties entitled to create appellations of origin

Appellations of origin are created by the ministerial departments affected by the product, possibly in coordination with interested ministerial departments and at the request of:



- any legally constituted institution
- any physical or legal person conducting activities of production in the geographical area in question.

Period of protection

Appellations of origin are protected for a period of ten (10) years, renewable indefinitely.

Registration procedures

To benefit from the protection, the appellation of origin must be registered with INAPI.

The registration application may originate from an Algerian national or from a foreign national represented by an Algerian agent residing in Algeria.

The application must include:

- the name and address of the filer, as well as his activity,
- the appellation of origin in question, as well as the relevant geographical area,
- the list of products meant to be covered by this appellation,
- the part of the text pertaining to the appellation, especially the part including:
 - the special characteristics covered by the appellation of origin,
 - the terms and conditions regarding the use of the appellation of origin, especially with regard to the method of labeling defined by the rules pertaining to use,
 - the list of authorized users, if need be.

The registration of an appellation of origin is subordinated to the payment of a tax.

Sanctions

Infringement of an appellation of origin is punishable by:

- a fine ranging between two thousand (2,000) and twenty thousand (20,000) dinars and a prison sentence ranging between three (3) months and three (3) years,
- or one of these sentences.

14.3 Literary or artistic property rights

Literary or artistic property rights protect creation in the literary and artistic fields, including computer programs.

They are subdivided into copyrights and related rights.

Literary and artistic property rights are governed by Ordinance n° 03-05 of July 19, 2003 pertaining to copyrights and related rights.

14.3.1 Copyrights

Copyrights protect creation in the literary and artistic fields.

In particular, the following are protected:

- written or oral literary works, whether literary, scientific, poetic, etc.
- computer programs,
- original data bases,
- cinematographic works and other audiovisual works,
- dramatic or dramatico-musical works,
- works in the plastic or graphic arts,
- architectural works, as well as the blueprints and the models associated with them
- creations in clothing, fashion and ornaments. . .

Recognized rights

The author of an intellectual work possesses moral and economic rights over his work.

- Moral rights

Four moral rights are recognized to the author:

- the right to disclose his work at the time of his choosing,
- the right to the integrity of his work,
- the right to have his name on his work,
- the right of withdrawal.

- Economic rights

These are the economic rights granted to the author by virtue of his exclusive right to authorize or prohibit the use of his work and receive remuneration for its use.

The recognized rights are:

- the right of reproduction of the work in any form,
- the right of communication of the work to the public,
- the right of performance of the work,
- the right of rental,
- the resale royalty right for creators of works of plastic art,
- the right to remuneration,
- the right of translation, adaptation, arrangement or other alterations of the work.

Term of protection

Moral rights are permanent, inalienable and transmissible to heirs upon the author's death.

Economic rights are generally protected throughout the lifetime of the author and fifty (50) years after his or her death.

This time period is valid for all categories of works. However, the starting point of this period varies according to the category of work.

Limitations and exceptions

- Exceptions

There are two exceptions to the protection of copyright:

- the compulsory translation licenses,
- the compulsory reproduction licenses.

These may be granted to meet the needs of scholastic and university education when a work has not been translated or reproduced on the national territory during:

- one (01) year after first publication in the case of the compulsory translation license,
- three (3) years for scientific works,
- seven (7) years for works of fiction,



- five (5) years for other works associated with the compulsory reproduction license.

- Limitations

The reproduction of all or part of a work in a single copy without the authorization of its author is possible:

- for the purpose of quoting, borrowing and demonstrating, provided that the name of the author and the source are mentioned,

- strictly within family circles,

- for the purpose of safeguarding and protecting the information,

- for the presentation of evidence as part of legal or administrative proceedings.

Transfer of copyright

The transfer of copyright must be done by a written contract.

Three main types of contracts are provided for in Ordinance n° 03. 05 :

- the public communications license,

- the publishing contract,

- the performance contract.

Mandatory minimum clauses are provided for in these contracts.

Sanctions

The infringement of literary and artistic works is punishable by severe sanctions:

- a fine ranging between five hundred thousand (500,000) dinars and one million (1,000,000) dinars,

- a prison sentence ranging between six (6) months and three (3) years, or one of these two sentences,

- the destruction of the instruments used to manufacture the illicit material,

- the destruction of illicit material,

- the publication of the ruling in the press,

- the temporary (up to six months) or permanent closing of the establishment operated by the violator or his accomplice.

14.3.2 Performing rights

Performing rights are the rights recognized to the auxiliaries of the creative process: the performers, the producers of phonograms and videograms and broadcasting organizations.

Recognized rights

- Moral rights

Only performers enjoy moral rights. Those rights are:

- the right to preserve the integrity of the performance,
- the right to be identified as the performer with regard to his performance.

- Economic rights

The performer enjoys the right:

- to authorize the communication or the reproduction of his performance,
- to be remunerated for the use of his performance.

The producers of phonograms enjoy the right:

- to authorize communication to the public or the reproduction of their phonograms,
- to be remunerated for the secondary commercial use of their phonograms.

Broadcasting organizations enjoy the right to authorize communication to the public or the reproduction of their programs.

Term of protection

Moral rights are permanent, inalienable and transmissible to heirs upon the death of the performer.

Economic rights are protected for a period of fifty (50) years from.

- the end of the calendar year of the performance, for the performers,



- the end of the calendar year of the release of the phonogram, for producers of phonograms,
- the end of the calendar year in which the broadcast took place, for broadcasting organizations.

Exceptions and limitations

The exceptions and limitations to performing rights are the same as the ones for copyrights.

Sanctions

The sanctions for infringement of literary and artistic works also apply to performing rights.

The following must pay copyright royalties and performing rights fees:

- establishments playing music in public spaces,
- the owners of Internet sites playing music,
- advertising agencies for the use of music in commercials,
- organizations using music on their telephones lines for callers on hold,
- concert and show organizers,
- movie theatres, video rental stores and cybercafés,
- producers of phonograms and videograms,
- audiotex,
- makers and importers of recording devices and recording mediums (including digital mediums).

The calculation of royalties:

Royalties are calculated as follows:

- in proportion to recorded sales with a guaranteed minimum, with applied rates ranging between 1 and 10%;
- in a lump sum in cases stipulated by collection rules;
- pursuant to the provisions of the Order of May 16, 2000 of the Minister of Culture pertaining to royalties for private copies.



The administrative obligations of licensees subject to payment of royalties

The main obligation consists in declaring the titles of the works that were used to the National Office of Copyrights and Related Rights (Office National des droits d'auteur et des droits voisins, ONDA).

Where to apply for the Office's authorization:

Applications for copyright licenses and authorizations may be presented to ONDA agencies, whose addresses and other contact information are available on the site: www.onda.dz

15 The financial and banking system

15.1 The legal framework of banking activities

Banking activities have clearly improved in Algeria since the adoption of the Currency and Credit Law in 1990. Ordinance 03-11 of August 26, 2003 pertaining to currency and credit, which repealed the aforementioned law, follows in its wake nonetheless and offers a new legal framework for conducting banking operations comparable in all respects to that of countries with liberal economies. It has complete autonomy vis-à-vis the Public Treasury.

Ordinance 03-11 of August 26, 2003 pertaining to Currency and Credit was adopted in reaction to a certain number of dysfunctions observed in the conduct of economic reforms in general and of banking reforms in particular. The Ordinance clarified certain provisions which were not explicit enough in the abrogated Currency and Credit Law and introduced new prescriptions with regard to the supervision of banks and financial institutions.

The new banking legislation contained in Ordinance 03-11 of August 26, 2003 pertaining to Currency and Credit, puts banking activity in Algeria into a new context.

Compared to the old banking law promulgated in 1990, the Ordinance pertaining to Currency and Credit clearly sets a more appropriate framework for the monitoring of the banking system and ushers in a new type of relationship between political authorities and the Central Bank.

The fundamentals underpinning the monetary power of the Central Bank have not been completely called into question. The Central Bank



maintains its autonomy vis-à-vis the Public Treasury, while losing some of its independence.

The functions of the Central Bank:

The Bank of Algeria fulfills the following roles:

- It exercises the privilege of issuing bank notes and coins that are legal tender within the country;
- It is the bank of banks;
- It is the financial agent of the State;
- It manages foreign exchange reserves;
- It is responsible for the proper functioning of the banking and financial system;
- It ensures the proper functioning of the payment system;
- It acts as the secretary general of the Banking Commission.

Pursuant to Article 35 of the Ordinance pertaining to Currency and Credit, the Bank of Algeria has the general mission of ensuring the internal (prices) and external (exchange rate) stability of the currency. In that capacity, it defines and implements the monetary policy.

In addition to the traditional duties of any central bank, the Bank of Algeria is responsible for executing the decisions made in a regulatory format by the Currency and Credit Council with regard to:

- the regulation of foreign exchange and capital movements with other countries;
- the conditions for the establishment of banks and financial institutions;
- the rules governing banking operations and relations between banks and customers;
- the establishment of management standards applicable to banks and financial institutions;
- the objectives pertaining to the evolution of different components of the money supply and the volume of credit.

The Bank of Algeria is endowed with three decisional bodies and one monitoring body.

The decisional bodies include:

- the Governor;
- the Currency and Credit Council;
- the Board of Directors.

The controlling body is made up of censors.

15.1.1 The provisions of the Ordinance on Currency and Credit.

15.1.1.1 The monitoring of the payment systems

The legislator of Ordinance n° 03-11 has resolutely chosen to modernize the banking system by broadening the mission of the Central Bank to include the functioning and monitoring of the payment systems (mass payments, large amount payments called RTGS, settlement-delivery-titles, etc.).

15.1.1.2 The adaptation of international accounting standards.

In addition to defining and disseminating accounting standards and rules, the Currency and Credit Council, which is the accounting standardization body in the field of banking, has been entrusted with the mission of adapting to international evolution in the field through the introduction of IAS-IFRS (International accounting standards) standards to the accounting framework peculiar to banks and financial institutions.

15.1.1.3 The strengthening of banking supervision

Another important point has to do with the supervision of banks. The established method of control gives exclusive competence to the banking commission, which is in charge of organizing the supervision of banks and financial institutions.

15.1.1.4 Minimum capital requirements

The law stipulates that: “Banks and financial institutions must have capital, fully paid up and in cash...”

The Bank of Algeria has amended regulations pertaining to minimum capital requirements by demanding, since 2004, the full payment of capital with the establishment of new thresholds. Banks must have at least 2.5 billion dinars in capital, while financial institutions must have at least 500 million dinars.

15.1.1.5 The status of financial institutions

The status of financial institutions was clarified to dispel any ambiguity as to the nature of their activities and the operations they are authorized to carry out. That is why the provisions of the banking Ordinance specify that financial institutions cannot receive funds from the public, nor



manage the means of payment, which means that they cannot offer customer services to clients by opening current accounts and issuing checkbooks. Their activity must be confined to credit in all its forms (typical credit, leasing, factoring, venture capital, etc.).

15.1.1.6 The equity investment system

Of note among the concerns addressed by the law is the acquisition by banks and financial institutions of equity stakes in existing firms or firms in the process of being created, which was limited to 50% of owner's equity. The new Ordinance did away with the 50% limit and entrusts the Currency and Credit Council with the responsibility of establishing limits, but solely for banks this time. What this means is that financial institutions are no longer bound by these ceilings. Financial institutions no longer face limits and may now devote their resources to the extension of credit and to the acquisition of equity stakes in existing businesses or businesses in the process of being created, that is to say that financial institutions are allowed to make equity capital investments in firms. This is the primary role of firms that have the legal status of financial institution, which derive their economic justification from it and are reinstated in order to invest in venture capital, investment capital, development capital and the management of investment funds, in addition to specific credit activities such as leasing, factoring, bonds and guarantees, among other things.

15.1.1.7 Organizations outside the banking legislation.

The law excludes some organizations from the banking legislation applied to banks. The excluded organizations are the Public Treasury and non-profit organizations. The law provides for a system of waivers only for housing organizations. This means that any banking operation must be accredited by the monetary authorities or face penalties.

15.1.1.8 Group treasury operations

The new banking legislation renews the provision that enabled firms belonging to the same group to conduct treasury operations (loans) amongst themselves. Theoretically based on the monopoly of banks and financial institutions, the criterion taken into consideration to tolerate such operations finds its justification in the notion of control. Thus what is called "inside banking," a procedure that opens up many possibilities in terms of organization and management provided that the firms belonging



to the same group know how to use it, may represent a solution to their treasury problems.

15.1.1.9 Regulated agreements and normal operations

However, this authorization granting firms of a same group the right to conduct intra-group loan operations is void when banks and financial institutions are involved. This is confirmed by Article 104 of the Ordinance which lays down the principle of total prohibition, with no exceptions, as far as permitting banks and financial institutions to extend credit to their managers, shareholders and firms belonging to the group.

15.1.1.10 The withdrawal of the Public Treasury from the deposit insurance fund

Deposit insurance was reorganized as we are no longer dealing with joint stock companies but with funds. Moreover, the public interest aspect, which had led the legislator of the old Currency and Credit Law to involve the Public Treasury in the financing of the deposit insurance fund for 50% of the amount paid by the banks, is no longer apparent.

15.1.1.11 The abolition of the right to a bank account

The citizen whose application to open an account is rejected by a bank can no longer appeal to the Central Bank to have another paying bank designated.

The strengthening of cooperation with foreign monetary authorities.

That aspect is addressed by the law, which thus makes it possible to organize collaborative relationships and information exchanges with foreign monetary authorities.

15.1.2 The principles of the Algerian banking system laid down by Ordinance 03-11 pertaining to Currency and Credit.

The legal categories of the Ordinance pertaining to Currency and Credit

Banking activities may only be performed by two categories of establishments: banks and financial institutions. The two legal categories that full-service banks and specialized financial institutions represent, constitute in fact the most appropriate basis for the development of all



financial intermediation as a result of the recognized universal nature of full-service banks and the specialized nature of financial institutions.

The decision to go with the full-service bank model is the outcome of an evolution that has taken place in countries with a market economy and has led to the rejection of distinctions between commercial banks, deposit banks and special status banks along with all the restrictions imposed on these types of institutions.

The full-service bank is certainly the most sensible choice for domestic, and even international, competition, as it prevents any distortion of the competitive landscape.

Thus, accredited banks may engage in any banking activity without having to solicit prior authorization, nor having to wonder if an authorization is needed.

In that regard, the Ordinance pertaining to Currency and Credit, just like the old legislation, has provided the most innovative answer by giving banks all the freedom they need to choose their customers, their products or organizational structure.

The existence of this unique legal framework represents a guarantee with regard to the equality of competitive conditions and the safety of operations.

In addition to banks and financial institutions, it is worth mentioning that the legislator has introduced a third category, which is the mutual association.

Equality of treatment

The Ordinance pertaining to Currency and Credit extends equal treatment to all banks and financial institutions whatever the nature, the status of the owner, or the origin of the capital providers (resident or non-resident). No discrimination or differentiation is tolerated. They must all be accredited under the same conditions and be subject to the same prudent monitoring.

15.1.2.1 The privileges granted to banks and financial institutions

The Ordinance pertaining to Currency and Credit granted banks and financial institutions some privileges in terms of guarantees and debt



collection, which benefit from a waiver system with regard to common law.

Respect of universal management standards

As with the old legislation, the Ordinance pertaining to Currency and Credit grants banks and financial institutions the status of enterprise, with all the consequences it entails in terms of profitability and performance.

Safety standards force banks to measure the risks they take as part of the activity, quantitatively (ratios) and qualitatively (internal controls).

Consultation between authorities

The Ordinance pertaining to Currency and Credit has also introduced consultation and cooperation between the Central Bank and the authorities in charge of the economy. The procedural rules are specified in the Ordinance. The completely independent central bank model, in which the central bank only manages the money supply without worrying about the rest, no longer exists.

15.1.2.2 Broad delegation of power to monetary authorities

The legislator's decision to delegate broad powers to the banking authorities, so that they may quickly take charge of the adaptations that should be applied to the sector, stems from a desire to facilitate the implementation of practical measures, in conformity with the managerial needs of the banks and financial institutions. A legislation that is too detailed would certainly not help the banking sector in need of a flexible and evolutionary framework with regard to intervention.

That is why it seemed sensible to delegate the powers enabling the monetary authorities to regulate the areas of interest to the banking profession through simple measures, thus allowing the gradual modernization observed in the banking system over the past few years.

The rules adopted since 1990 by the Currency and Credit Council in areas as varied as accounting, safety rules, foreign exchange controls, banking conditions, requirements for the establishment of bank branches, guarantees, methods of payment, etc., all originated from this new vision.

15.1.2.3 Separation between the regulatory authority and the supervisory authority

The legislator introduced a separation between the regulatory authorities and the supervisory authorities by awarding them autonomy and independence to protect them from any interference. However, it is worth specifying that the legislator recognizes a regulatory power to the Banking Commission, limited to operating processes (base pattern, explanations) associated with the safety provisions adopted by the Currency and Credit Council, which require technical details due to the complexity of their implementation by the banks and financial institutions.

15.2 The characteristics of the Algerian banking sector

The development of the Algerian banking system

The development of the banking system increases with the total number of banks and financial institutions and with the number of full-service bank branches established in Algeria.

When the Currency and Credit Law took effect in 1990, the banking sector was mainly made up of five public commercial banks, the National Fund for Provident Savings (Caisse nationale d'épargne et de prévoyance, CNEP) and the Algerian Development Bank (Banque algérienne de développement, BAD), with a network of agencies that extended across the national territory.

In 1991, Al Baraka, a mixed bank created by the Saudi group of Della Al Baraka and the Algerian Bank of Agriculture and Rural Development (Banque algérienne de développement rural, BADR), was added to this public banking sector. From 1995 on, the banking sector saw the creation of numerous financial institutions, which was in keeping with the logic of supporting the banking sector and represented an answer to sometimes sectoral concerns.

Indeed, support for financing in the housing sector led to:

- the transformation of CNEP into CNEP-Banque ;
- the creation of the National Housing Fund (Caisse Nationale du Logement, CNL) ;
- the creation of the Mortgage Refinancing Corporation (Société de Refinancement Hypothécaire, SRH) ;



- the establishment of the Real Estate Credit Guarantee Fund (Caisse de Garantie des Crédits Immobiliers, CGCI) ;

- and the Real Estate Development Guarantee Fund (Fonds de Garantie de la Promotion Immobilière, FGPI).

In addition to the restructuring of the Algerian Development Bank (BAD), support for the equipment sector (basic infrastructures) led to the creation of the Government Contract Guarantee Fund (Caisse de Garantie des Marchés Publics, CGMP), in 1998, and that of the National Equipment and Development Fund (Caisse Nationale d'Équipement et de Développement, CNED), in 2005.

Running parallel to these public financial institutions, since 1995 we have witnessed the development of a great number of private banks and financial institutions, some with the support of non-resident (foreign) capital providers.

It is also worth noting that in April 1990, the Currency and Credit Law allowed for the creation of national and international private equity banks and financial institutions, alone or in partnership.

The policy of economic openness advocated and sanctioned by several legal texts, including the Currency and Credit Law, has motivated numerous internationally renowned banks to consider establishing a presence on the Algerian territory in one form or another (partnership or branch).

During the first phase in 1991 representative offices were opened under the management of executives dispatched by their parent companies with the idea of being in a better position to follow the evolution of the Algerian economy. Citibank, Crédit Lyonnais, which later became Calyon, BNP-Paribas and Société Générale were among the financial institutions who established a presence then. However, the tensions that marked the following decade on the political front led these institutions to momentarily put their banking projects on hold.

A definite renewal of interest on the part of these foreign banks would nonetheless surface at the beginning of 1997, when national promoters were authorized to create banks. Thus, Union Bank, the first national private financial institution, was authorized in 1995, in a commercial banking capacity.



Now, the Algerian banking sector comprises twenty-seven (27) banks and financial institutions in both the private and public sectors.

- Publicly-funded banks and financial institutions:

BEA

BNA

CPA

BADR

BDL

CNEP

BAD

SOFINANCE

SRH

CNMA

ESSALEM LEASING

- Private capital banks and financial institutions:

Domestic private sector:

- Banque Générale de la Méditerranée (Bank)

- Compagnie Algérienne de Banque (Bank)

International private sector:

- Bank Al Baraka d'Algérie, 50 % owned by the Saudi group Dallah Al Baraka and 50% owned by the Banque publique BADR ;

- Citi Bank Algeria, Branch of Citibank New York ;

- Arab Banking Corporation Algeria, a subsidiary 70% owned by the ABC group of Bahreïn, 10% owned by the SFI (BIRD), 10% by the Arab Investment Society (Société Arabe d'Investissement, Jeddah) and 10% by domestic investors;

Société Générale Algérie, a wholly-owned subsidiary of Société Générale (France)



- Natexis Al Amana Algérie, a subsidiary of Groupe Natexis France (Paris) ;
- El-Rayan Bank, a bank 90% owned by investors from Qatar, including the National Bank of Qatar ;
- Arab Bank Algeria Plc, a branch of the Arab Bank of Amman (Jordan);
- Banque Nationale de Paris (Paribas), a wholly-owned subsidiary of the French group BNP Paribas;
- Trust Bank, a mix of domestic and international private capital;
- Arab Leasing Algeria, an institution specialized in leasing, a subsidiary of Arab Bank Corporation Algeria;
- The Housing Trade and Finance (Jordanian capital bank);
- Gulf Bank Algeria (bank) controlled by the Gulf Bank, which belongs to the Kuwaiti Group KIPCO ;
- Cetelem (financial institution in the process of being accredited, a subsidiary of the BNP Paribas group);
- Maghreb Leasing (Tunisian capital financial institution with independent investors);
- Francabank (Lebanese capital bank in the process of being accredited).

As of now, there are only four domestic credit institutions authorized to conduct banking activities remaining and that number is likely to diminish in 2006 as a result of the new minimum capital requirements which are set at 2.5 billion dinars for banks and five hundred million (500,000,000) dinars for financial institutions.

36. The diversification of the banking system

First, from an operational standpoint, one can see that Algeria has both full-service institutions, such as the large network banks (all public banks and some private banks, such as BNP Paribas and Société Générale Algérie) and institutions specialized in a certain type of product and thus a certain type of customer (leasing institutions, Mortgage Refinancing Corporation (Société de Refinancement Hypothécaire), etc.).

From an economic standpoint, the Algerian banking system comprises both large-scale institutions as well as medium-sized and very small institutions. It is also comprised of institutions whose activities are



strictly limited to banking operations and those that offer a wide and varied range of financial services.

From a legal standpoint, the Algerian banking system is characterized by the uniformity of the institutions all endowed with joint stock company status, with the exception of CNMA, a mutual benefit corporation.

As for the nature of capital providers, there are many different types of situations. In certain institutions, the capital is wholly owned by a limited number of shareholders, clearly identified physical or legal persons.

In other cases however, shareholding is scattered, but still centers around a solid core considered the shareholder of reference.

There is currently a certain number of institutions within the banking system who comprise banks, as well as industrial and commercial enterprises among their most significant shareholders...

Two types of establishments are provided for in the banking law: banks and financial institutions.

As for the organization of the profession, the banking law requires that all institutions join the professional corporations created under the auspices of the Central Bank, namely the Association of Banks and Financial Institutions (Association des banques et établissements financiers, ABEF).

15.2.1.1 The modernization of the Algerian banking system

Long heralded as a primary element of the banking reform, this modernization has somewhat started to materialize, albeit very timidly, in 2005, with the introduction of the interbanking access card based on the EMV international standard and its popularization throughout the banking network and Algeria's postal system.

The year 2006 will see the effective start in January of the electronic payment system for mass payment (checks, transfers, direct debit advices, bills of exchange, statements and promissory notes) and the large amount payment system in real time managed by the Central Bank.

Running parallel to these two major moves towards the modernization of the banking system begun in 2002, the banks have also proceeded with the modernization of their information and management systems to be ready for the 2006 deadline.



Beginning in 2006, payment periods for checks and other instruments, which represented the major weakness of the Algerian banking system, will be managed according to international standards in this area, which is three (3) days. As for large amounts, the operation will take place in real time.

15.3 Requirements for the formation and establishment of banks and financial institutions

The establishment of banks, financial institutions and branches of foreign banks in Algeria is governed by the Ordinance pertaining to Currency and Credit, as well as the rules enacted by the Currency and Credit Council.

In fact, the establishment of financial institutions in Algeria is subject to two major conditions universally recognized:

- the minimum capital required for these institutions
- the respectability, good moral character and professionalism of the founding members and the executive managers of these institutions.

Banks and financial institutions incorporated under Algerian law must be established in the form of a joint stock company (JSC).

There is no ceiling as to the participation of non-residents in the capital of financial institutions. The latter may be wholly owned by non-residents or in association between residents and non-residents on the basis of a freely negotiated agreement between partners.

The minimum capital stock required of banks and financial institutions is set at:

- 2.5 billion AD for banks (about 23 million \$US at the current exchange rate) ;
- five hundred million (500,000,000) AD for financial institutions (4.5 million \$US).

Banks and financial institutions headquartered abroad are required to provide their branches with an amount of capital that is at least equal to the minimum capital requirements for banks and financial institutions incorporated under Algerian law belonging to the same category.

The minimum capital stock thus set must be fully paid up in cash upon subscription.

Moreover it is worth noting that in light of the safety regulation in effect, the minimum capital should be considered in connection with the development prospects of the bank or financial institution's activities. For informational purposes, it should be pointed out that the risk coverage ratio of the owner's equity must not be under 8% (Cooke ratio). Moreover, the level of foreign commitments by the banks must be within a ceiling equal to four times the owner's equity.

The start of activities for a bank or a financial institution is conditional to the acquisition of:

- firstly, the authorization of establishment issued by the Currency and Credit Council,
- and secondly, an accreditation by the Governor of the Bank of Algeria.

The establishment of branches of foreign financial institutions is subject to the same procedure as financial institutions incorporated under Algerian law.

The authorization application for the establishment of a bank or financial institution, as well as the establishment of a branch of a foreign bank or financial institution, is based on a file comprising the following elements pertaining to:

- the quality and respectability of the shareholders and their contingent guarantors;
- the list of the principal managers;
- the financial and technical means considered;
- the internal organization;
- the business plan.

A 1992 rule defines the conditions that the founders, managers and representatives of banks and financial institutions must meet. Those conditions principally are:

- to satisfy the legal conditions provided for in the Ordinance on Currency and Credit and in the Commercial Code;
- to declare one's ability to fulfill one's duties so that the institution and its clients, particularly depositors, see their interests protected and do not suffer losses.



The decision regarding the authorization application is communicated to the applicant two (02) months at the latest after a complete file has been submitted.

The rejection of the authorization application can be appealed.

The bank or financial institution, as well as the branch of a foreign bank or financial institution, which has obtained the authorization is required to apply for accreditation from the Governor of the Bank of Algeria within a maximum period of twelve (12) months.

Before obtaining the accreditation, they are prohibited from conducting any banking operation.

The accreditation is granted by a decision from the Governor of the Bank of Algeria if the applicant meets all the formation or establishment requirements

Thus, the Ordinance pertaining to Currency and Credit and its legislative instruments sanction:

- the freedom for resident and non-resident promoters, acting alone or within the framework of a partnership, to establish banks and financial institutions,
- the freedom to establish branches of foreign financial institutions,
- as well as equality of treatment between Algerians and foreigners.

As a matter of fact, the law grants equality of treatment to residents and non-residents, regardless of their nationality.

As Algeria is currently negotiating its accession to the World Trade Organization (WTO), it is worth noting, as part of a comparative analysis with the 140 or so members of the WTO, that:

- the establishment system of banks in Algeria remains flexible and transparent ;
- safety regulations being essentially universal, as they were inspired by the Basel Committee, banking practices in Algeria are in line with the international standards in effect, particularly with regard to the definition of owner's equity, reserve rules, safety ratios and reporting;
- the specificity (high sensitivity) of banking activities linked to moral hazard and systemic risk justify the requirements imposed on the



founders and managers of the banks, requirements which conform to the recommendations of the Basel Committee;

- contrary to the practice observed in many countries belonging to the WTO, banking activities in Algeria are not subject to any of the restrictions contained in the provisions of the General Agreement on Trade in Services (GATS).

15.4 The financial market

An Algerian securities market was created by a Legislative Decree of 1993, amended and completed by Act n° 03-04 of February 17, 2003 pertaining to the Securities Exchange.

The Algiers Stock Exchange whose operational entity is the Securities Management Corporation (Société de gestion des valeurs mobilières, SGBV) was launched in 1999. The regulatory authority is the Stock Exchange Organization and Surveillance Commission (Commission d'Organisation et de Surveillance des Opérations de Bourse, COSOB), which has been operational since 1996.

The modernization and dematerialization of securities have led market regulators to promote the creation of a central depository of securities managed by a joint stock company called "Algeria Clearing," which was created in 2002 and became active in 2004 and whose shareholders are banks.

In addition to the legal provisions contained in the securities law, COSOB adopted substantial regulation to control the stock exchange and all its components (public offerings, the status of intermediaries in stock market transactions, the status of collective securities investment organizations — SICAV and FCP — the status of issuers, mandatory and periodical financial obligations, the central depository, securities maintenance accounts, etc.).

Since its start in 1999, the Algiers Stock Exchange has welcomed three public companies:

- ERIAD-Sétif: a group active in the agribusiness industry (mainly milling);
- SAIDAL-Alger: a group active in the pharmaceutical industry;
- EGT AURASSI: a group active in the hotel and food service industry.



Quotations are given weekly. In the exchange's current operational state, only the three securities mentioned above are quoted and thus transacted on the exchange.

As for interest bearing instruments (bonds), SONATRACH's bonded debt, issued in 1999, is the only securities transacted on the exchange.

It should be noted that the bond market has stirred special interest among major economic players (SONELGAZ, Air Algérie, Algérie Télécoms, etc.) with regard to bonded debt and that bond issues have been regularly recorded on the over-the-counter market since 2003. .

Market authorities are currently taking steps to favor the listing of these interest bearing instruments on the exchange.

The stock exchange is as open to non-residents as it is to residents. For foreign investors, the Bank of Algeria announced a rule (n° 2000-04 pertaining to the movement of capital related to the portfolio investments of non-residents), which allows them to freely purchase listed securities.

Article 4 of that rule guarantees the transfer of income (dividends and interests) produced by the portfolio investments of non-residents.

15.5 Foreign exchange regulation

Contextual elements:

Algeria lived under a restrictive foreign exchange system in the past. Since the State started withdrawing from the economic sector in 1990 with the enactment of the Currency and Credit Law in particular, the ensuing liberalization of external trade has resulted in increased flexibility, which is why foreign exchange regulation no longer represents – with the exception of certain aspects linked to the management of the financial account of the balance of payments – an obstacle for investors and business operators.

From 1994 on, the convertibility of the dinar for current account transactions led to the implementation of the commercial convertibility of the local currency, stemming from the liberalization of import payments. In 1994 this commercial convertibility led the Bank of Algeria to fix the exchange rate according to the supply and demand for the dinar on the foreign exchange market.



In 1996, fixing was replaced by an interbank market in which the Bank of Algeria intervened to satisfy or authorize foreign currency requests exclusively earmarked for payments or transfers made as current transactions (importations of goods and services, work and investment income, etc.) within the framework of the convertibility of the dinar.

During a second phase, the convertibility of the dinar for current account transactions was extended to health care, training and travel. For all expenditures pertaining to these sectors, residents of Algerian nationality are authorized to withdraw the necessary foreign currencies and transfer them abroad in exchange for payment of the equivalent amount in dinars within the annual limit allowed and upon presentation of supporting documents.

The adoption by Algeria in 1997 of Article VIII of the IMF's Articles of Agreement made the convertibility of the dinar for current account transactions irreversible. Indeed, IMF member countries who agree with this provision pledge not to resort to restrictions on payments and transfers in connection with international current account transactions.

Under the current system, this convertibility pertains only to the current balance of payments. The convertibility of the financial account (formerly the capital account), namely the liberalization of capital movements, is still not completely open, except for capital flowing into Algeria (direct foreign investment or portfolio investments of non-residents). However, the legal and regulatory provisions currently in effect (the Currency and Credit Ordinance and Rule n° 2002-01 of the Bank of Algeria) already allow resident economic operators to solicit the transfer of funds to finance activities abroad in complement with activities involving the production of goods and services in Algeria, provided that an authorization from the Currency and Credit Council has been secured and with the obligation of repatriating surplus income and/or earnings.

Thus, with the general convertibility of the dinar, the guarantee that income and gains from the possible sale of foreign investments will be transferred, as well as exchange rate stability, help promote a favorable environment for foreign investment.

The micro-management approach to foreign exchange controls



The system under which foreign exchange controls are currently exercised stems from a micro-management approach to transactions with the outside world.

Each operation involving the inflow or outflow of currencies is scrutinized individually. The idea being that in order to combat fraud, it is necessary to prevent operators, whether Algerian or foreign, to transfer or acquire currencies without declaring them and thus without getting an authorization.

This approach delays the processing of transactions with the outside world. Nonetheless, the authorities in charge of foreign exchange controls are leaning more and more towards relaxing the system by delegating the processing of these transactions to accredited intermediaries, in this case commercial banks who can carry out the transactions at their branches without having to solicit the permission of the Bank of Algeria. Verification thus takes place after the fact.

The principle of the free movement of capital in a commercial context

The governing principle is that of the freedom of movement of capital to fund an economic activity, as well as to repatriate the fruits of investments. However, this freedom is subject to strict controls. Its implementation by the foreign exchange control services is no longer “bureaucratic” however, as the Bank of Algeria adopted new measures in 2005 to facilitate the transfer of dividends, income and gains from the sale of foreign investments, as well as foreign directors’ fees and percentage of profits. Transfer applications are no longer investigated by the Bank of Algeria since the right to process these applications was delegated to accredited commercial banks.

Foreign currency accounts

For any movement of capital not denominated in dinars, it is necessary to open a foreign currency account, as this type of account represents the only support for cross-border money flows.

This principle of giving residents as well as non-residents the freedom to open a foreign currency account with accredited intermediary banks is maintained.

Article 22 of Rule n° 95-07 of December 23, 1997 pertaining to foreign exchange control specifies that “any physical or legal person, resident or non-resident, is authorized to open a foreign currency account, sight or



term, with accredited intermediaries, either banks or financial institutions.”

Multiple foreign currency accounts

Rule 90-02 of Bank of Algeria regarding the conditions pertaining to the opening and operation of foreign currency accounts by legal persons provides for the possibility of opening multiple foreign currency accounts by a legal person. An account may also be opened for each currency.

However, an account opened in a specific currency may receive payments or transfers of any amount denominated in another currency.

Operation of foreign currency accounts

If any Algerian resident is authorized to acquire or hold in Algeria instruments of payment denominated in a freely convertible foreign currency, these instruments of payment must be acquired, negotiated and deposited with Algerian banks.

Foreign currency accounts opened by private firms incorporated under Algerian law are credited with sums representing transfers from abroad or from other foreign currency accounts, from a payment of any other instrument of payment denominated in a foreign currency or the income generated by the exportation of goods or services performed by the holder.

Use of foreign currency accounts

Within the limit of the available balance, the holder of a foreign currency account may order any withdrawal to:

- make any payment in Algeria;
- acquire in a foreign currency, in Algeria or abroad, any equipment, supplies, tools, products and material used in support of the company’s object or their activity;
- pay any service acquired abroad, any salary of foreign personnel, fees, duties, licenses or patents;
- make any transfer or payment from abroad other than those mentioned here, under cover of an authorization of the Bank of Algeria.

These accounts may operate only in connection with the holder’s activities.

Foreign exchange transactions



Any spot or forward foreign exchange transactions may be conducted through accredited intermediaries.

Spot exchange:

Foreign exchange orders are given by residents to the banks which execute them. The order is considered to have been executed when the client is informed by the bank.

The execution price is the official exchange rate quoted by the Bank of Algeria when the order was executed.

The operation ends with the debiting or the crediting of the dinars account and the corresponding delivery of bought or sold currencies.

Forward exchange:

The exchange rate is set and delivery takes place at maturity (maturity date). Foreign exchange orders are given by residents to their bank which executes them.

Forward exchange transactions may be optional (foreign exchange options) or irrevocable (foreign exchange forward contracts).

A foreign exchange option is a right to buy a set amount of currency with a strike price and a maturity date. It is a CALL when it gives the right to buy foreign currencies against dinars at maturity and a PUT when it is the other way around.

Import system

Under the current regulation, banking domiciliation operations must be processed according to the following principles:

General principle

Any contract for the importation of goods and services payable by currency transfer must be subject to domiciliation by an accredited intermediary.

The domiciliation of imports consists in:

- for the importer: choosing, before the transaction, an accredited intermediary bank where the importer pledges to conduct all banking operations and formalities provided for by the external trade and foreign exchange regulation.



- for the banker: taking care or having someone take care of the operations and formalities provided for in the regulation on behalf of the importer.

In terms of commitments, the banking domiciliation of an import must be considered a “simple administrative formality” which serves as technical support for foreign exchange and external trade controls conducted by the banking system and the national customs authorities.

Since the transaction is being settled by debiting an account and thus by written order of the client, the bank remains responsible for the regular discharge of the importation file.

External trade is accessible to the following physical and legal persons:

- banks, administrations, public and private producers normally registered with the Commerce Register, merchants, wholesalers registered with the Commerce Register, concession holders and wholesalers accredited by the Currency and Credit Council.

The possibility of domiciliating the importation of small equipment and other merchandise imported for personal use is granted respectively to health care professionals and legally constituted agricultural cooperatives.

The acceptance of the domiciliation file by the accredited intermediary depends on the examination of:

- the financial coverage and the guarantees of solvency provided by the client;
- his capacity to conduct the operation under the best conditions and in conformity with the rules and customs of international trade;
- the legality of the operation with regard to foreign exchange and external trade regulations.

Elements or information contained in the commercial contract

Form:

- A valid contract.
- Pro forma invoice.
- Firm purchase order or letter.
- Definite confirmation of purchase.



- An exchange of correspondence that includes all the necessary signs to clearly demonstrate that a contract has effectively been concluded.

Components:

- Identities of the co-contracting partners.
- The country of origin and source country of the merchandise.
- Nature of the merchandise or of the services performed.
- Quantities.
- Unit prices.
- Global value.
- Currency of invoice and currency of payment.
- Separation between the transferable part and the part in dinars.
- Incidental expenses.
- Term of delivery.
- Fixed payment date.
- Clauses pertaining to possible disputes.

Payment of imports

In principle, imports are paid in Algerian dinars for the equivalent of their value in the foreign currency in which they are denominated. Payments are made by the bank of domiciliation.

In these cases, imports must be covered by appropriate credits and benefit from export credit facilities upon leaving the country of the supplier. The financing is arranged and structured by the Algerian bank of domiciliation.

By exception, imports may be settled by amounts withdrawn from foreign currency accounts. In that case they are not subject to the requirements mentioned above with regard to the financing.

Accredited intermediary banks execute any transfer earmarked for abroad ordered by the operator, provided that they receive the documents certifying shipment of the merchandise and the definitive invoices related to the transaction. The importer must supply the bank with customs document « D-3 » of clearance for home use, duly filled by the



forwarding agent (and obtained upon presentation of a file that includes the bill of lading among other things). In the case of equipment contributed in kind prior to the establishment of a corporation, the bank also requires the subsequent presentation of the report of the commissioner in charge of assessing contributions.

As for the import of services, the transfer is done on the basis of invoices certified by the resident importer, accompanied by service certifications, as well as the contract.

Export system

The domiciliation requirements for non-hydrocarbon exports are governed by Rule n° 93-13 of August 14, 1993 of the Bank of Algeria.

The export of merchandise where all sales are final or on consignment, as well as the export of services abroad, are subject to mandatory prior domiciliation.

The procedure consists in the exporter, before proceeding with his export, choosing a bank with the capacity to act as an accredited intermediary with whom the exporter pledges to conduct the banking operations and formalities provided for in the regulation.

When carrying out an export operation, the accredited intermediary bank has the contracts for the export of goods and services registered at one of its branches.

Moreover, the exporter has a domiciliation file opened by submitting the original and two duplicates of the commercial contract, or any other document intended for that purpose, to an accredited intermediary bank. After the usual verification formalities, a copy bearing the number of the domiciliation file and the stamp of the bank is handed back to the exporter.

The exporter is required to repatriate the proceeds of his exports on the due date for payment and, unless authorized by the Bank of Algeria, payment of exports must not be set beyond 120 days after shipment of the merchandise.

16 The Tax System in Algeria

16.1 The taxation of physical persons

16.1.1 Persons liable for tax

From a tax standpoint, physical persons are those persons engaged in a professional or commercial activity, as well as members of partnerships, civil partnerships and undeclared partnerships who are unlimitedly and solidarily liable for corporate debts.

Firstly, the persons liable for tax are physical persons whose tax domicile is in Algeria, and secondly, non-resident physical persons.

16.1.2 Residents and non-resident Algerians

Residents in Algeria are, in principle and in the absence of treaties, liable for tax with respect to their global income. Secondly, physical persons not residing in Algeria are liable for tax on their income from Algerian sources.

Also liable for this tax are non-resident persons who earn a category of earnings or income whose taxation is attributed to Algeria by virtue of a bilateral tax treaty.

16.1.2.1 Domestic rules

In order to determine the fiscal residence, the tax code offers three alternative criteria. Therefore, persons who own, rent (lease of at least one year) or are life tenants of a residence in Algeria, or failing that, persons who spend most of their time in Algeria or make it the main center of their activities, or failing that, persons who exercise a professional activity there, are tax residents of Algeria.

16.1.2.2 Treaty rules

The tax treaties signed by Algeria have their own criteria for determining fiscal residence which apply when a physical person is a resident of the two signatory states according to the laws in effect in both states

For the most part, these treaties have adopted the successive criteria of the OECD model convention, which are location of the home, the place where the subject has the closest personal and economic links, the usual place of residence and, as a last resort, the nationality of the individual.



Determining the place of residence makes it possible to define the place of taxation for certain categories of revenues. We will examine the details of those treaties later (see item 16.3).

16.1.3 Definition of Global income tax (Impôt sur le revenu global, IRG)

With regard to the income of physical persons, the law provides for an annual tax called “global income tax” calculated on the basis of several net income categories, such as agricultural income or property income.

16.1.4 Tax regime

The net income of each category is determined distinctly, following rules peculiar to each, before being added to obtain global income. The latter is taxed according to a progressive scale.

In principle, those revenues are determined and taxed according to the same rules, whether they are revenues received by Algerian fiscal residents or by non-residents, save for an applicable tax treaty (see item 16.3).

As explained later, the only difference lies in the tax assessment base. Non residents are only taxed on their revenues from Algerian sources (see item 16.1.2).

They may be taxed twice on their income from Algerian sources, however, as a result of the application of the global revenue rule by state of residence. In that case, Algerian domestic law does not resolve the situation and it becomes necessary to refer to the tax treaty signed between Algeria and the state of residence of the foreigner in question (see item 16.3).

In the absence of tax treaties, certain revenues from foreign sources may incur double taxation.

16.1.4.1 Taxation of salaries

These are the stipends, indemnities, emoluments, salaries, pensions and life annuities.

Moreover, compensation allocated to minority partners of LLCs, compensation to persons working at home, on an individual basis and on behalf of third parties, non-monthly production bonuses and gratuities



and remunerations derived from any occasional activity performed on an individual basis are considered salaries.

Determination of taxable income

Taxable income consists of pensions, life annuities and primary compensations paid to the beneficiaries, as well as the benefits in kind which may be granted to them (food, housing, heating, lighting ...).

Deductions made by the employer for the creation of a pension or a retirement fund, social security dues of salaried employees, family benefits, temporary benefits and life annuities paid as workers' compensation, benefits allocated as travel or mission expenses, territorial allowances, salaries and other remunerations paid as part of programs destined to promote youth employment, severance pay and unemployment allowances and benefits or allowances paid by virtue of laws and decrees pertaining to aid and insurance are excluded from taxable income, among others.

Tax system for Algerian salaried workers

Apart from remunerations, benefits, non-monthly bonuses and gratuities covered by the 15% withholding tax, earned income is taxable on the basis of a final withholding tax deducted by the employer in accordance with the following monthly-adjusted progressive tax on global income rate schedule:

Fraction of monthly taxable income	Rate (%)
Less than 5000 AD	0
From 5001 to 15000 AD	10
From 15001 to 30000 AD	20
From 30001 to 90000 AD	30
From 90001 to 270000 AD	35
Over 270000 AD	40

The amount of tax to be paid is determined after application of the abatements provided for in the law depending on the matrimonial status of the salaried worker.

For single taxpayers the abatement is 10%, provided it is not less than 300 AD or over 1500 AD per month however. In the case of married



taxpayers, the abatement is 30%, provided it is not less than 400 AD or above 1500 AD per month.

Tax system for expatriate salaried workers

They can only be taxed on salaries received in connection with their activities in Algeria.

The salaries received by non residents are in principle taxed according to the same rules as revenues of the same type received by residents. However, foreign salaried workers of foreign firms active in certain sectors, who perform technical and supervisory duties and who have a work permit, are subject to a monthly deduction at source on global income tax at the rate of 20 % without abatement, when they earn a minimum gross monthly salary of 80,000 AD.

This withholding tax applies to activities performed in 37 designated sectors listed in the Ministerial Order of July 4, 1993.

The tax treaties signed by Algeria specify the place of taxation for salaries received by non residents engaged in an activity in Algeria, in order to avoid cases of double taxation such as mentioned earlier (see item 16.3.3.2.2)

16.1.4.2 Taxation of income from movable capital

Two types of income fall into this category: the income from shares, membership shares and equivalents on the one hand, and the revenues from debt securities, deposits and guarantee bonds on the other.

Income from shares and membership shares

These are the revenues distributed by joint stock companies, limited liability companies, partnerships and undeclared partnerships subject to corporate tax.

Dividends, revenue from mutual funds, loans and advances to partners, compensations, undeclared advantages and distributions, directors' fees and unappropriated earnings that have not been allocated to the firm's partnership fund within a three-year time limit are defined as distributed income.

Upon payment to physical persons, these revenues are subject to a 15% withholding tax.



In the case of earnings distributed to non-resident physical persons however, the situation will be different if an applicable tax treaty exists (see item 16.3.3.2.4).

Revenues from debt securities, deposits and guarantee bonds

Those belonging to this category are among others, interests and other income from mortgage claims, preferred or unsecured, from bonds, cash guarantees, money deposits and current accounts.

They are taxed as soon as they are paid, debited or credited to an account. Taxation is carried out by a withholding tax of 10%, which increases to 50% in the case of bearer securities.

In the case of interests paid to non-resident physical persons, the situation may be different if an applicable tax treaty exists (see item 16.3.3.2.5).

16.1.4.3 Taxation of capital gains

There are two types of tax systems. A special system applies to capital gains generated by the transfer of immovable properties and a general system for capital gains stemming from the transfer of capital assets.

Capital gains on the transfer of buildings for monetary consideration

These are the capital gains actually realized by persons who transfer, outside the framework of their professional activities, all or part of buildings and undeveloped land, as well as the property rights associated with those assets.

Taxable capital gain consists of the difference between the transfer price from which related charges and taxes, as well as the price of acquisition or creation, increased by 8% per complete year, are subtracted in order to take into account certain costs and inflation.

When the transfer price is deemed insufficient, the tax authorities may reassess it on the basis of the real market value.

The taxpayer benefits from certain basic abatements, which differ according to the date of purchase of the asset. For instance, capital gains from a transfer taking place more than 15 years after purchase are totally exempted, while capital gains from a transfer taking place between 6 to 10 years after purchase benefit from a 60% abatement, and those stemming from a transfer taking place between 2 to 4 years after purchase benefit from a 30% abatement.



The taxpayer is required to submit a special declaration within thirty days following the sale. The tax authorities calculate the taxable amounts subject to individual taxation within ten days after this declaration.

The Finance Act of 2007 sets the rate applicable to capital gains generated by the transfer of buildings at 7%, while the transfer of undeveloped immovable property remains subject to a final 10% tax.

Capital gains from the transfer of capital assets

This concerns capital gains from the transfer of capital assets assigned to the activity and capital gains stemming from the transfer of securities and membership shares. Purchases of stock or shares which give the buyer ownership of at least 10% of the firm's capital are considered capital assets.

These are taxed as non-commercial earnings, but are subject to specific treatment before being integrated with other non-commercial earnings in order to calculate global income.

Capital gains stemming from the transfer of property belonging to capital assets are taxed differently according to whether it's a short-term or a long-term asset. They are considered long-term when they result from the transfer of property acquired more than three years earlier and they are considered short-term when the sale took place less than three years after the acquisition.

When the transfer is done within the framework of an industrial, commercial, a skilled trade, agricultural or professional activity, the amount of the taxable gain to attach to taxable earnings is determined on the basis of what type of capital gain it is. If it is a short-term gain, 70% of the amount can be attached to taxable earnings, whereas if it's a long-term gain, 35% of the amount can be attached to taxable earnings.

With regard to capital gains stemming from the transfer of membership shares or stocks done in Algeria, they are in principle taxed on the territory. The authorities tax non-residents who have realized capital gains in Algeria equally, through a withholding tax of 24%, applicable to income paid by debtors established in Algeria to non-resident beneficiaries.

However, the majority of tax treaties contain provisions stipulating that capital gains shall only be taxed in the state of residence of the seller.



When an applicable tax treaty exists, non-residents having realized taxable capital gains may, in principle, invoke the treaty.

16.1.4.4 Other revenue categories

This study is not comprehensive.

Industrial and commercial profits (ICP)

Industrial and commercial profits are the profits generated through the exercise of a commercial or an industrial profession, a skilled trade or mining activities.

When it comes to determining taxable income, the law refers to the rules decreed with regard to taxes on corporate income.

The tax system varies according to sales figures.

The single flat tax, established by the Finance Act of 2007, applies to activities whose sales do not exceed 3,000,000 AD. This tax includes the global income tax (IRG), the VAT and the tax on professional activities (TAP). The rate of this tax is set at 6 % for activities involving the sale of merchandise and at 12% for the delivery of services.

The actual income taxation regime applies to firms whose annual sales exceed 3,000,000 AD, to partnerships, to wholesalers and other enterprises excluded from the flat tax regime. Those enterprises are required to keep regular accounts and to file a return stating their net income by April 1st of each year.

Physical persons subject to the actual income taxation regime are liable for payment of the tax on professional activities (see item 16.2.1.1.2) and are required to pay the VAT, meaning they are required to collect it and pay it to the tax authorities (see item 16.2.1.2).

Non-commercial earnings

The income targeted is the income from liberal professions and from offices held by persons who do not have the status of merchant, as well as from all other activities that are not linked to another category of income or revenues.

They also include author royalties paid to writers and composers and the income earned by inventors from manufacturing licenses or patent licenses and from the licensing or transferring of trademarks.



Also included are the income of partnership members, civil partnership members and those of controlling directors of limited liability companies, the capital gains stemming from the transfer of assets assigned to the activity or of securities and compensation received in exchange for the transfer of a customer base.

Only one taxation regime applies, that of the net income statement. This results in the obligation to keep regular accounts.

The taxpayers subject to this are also liable for the payment of the tax on professional activity and of the VAT.

Non-commercial income paid by Algerian residents to beneficiaries who do not reside in Algeria is subject to a final withholding tax of 24% however.

Property revenues

Targeted revenues are those derived from the rental of buildings, unequipped commercial and industrial premises, as well as those derived from the rental of undeveloped land of any kind, including agricultural land.

A final 10% tax is applied to revenues derived from the rental of non-commercial residential buildings. The rate is lowered to 5% when the tenants are students.

Revenues derived from the rental of space for commercial or professional use are subject to a 15% rate.

Those persons who earn property revenues are required to file a special return by February 1st of each year with the tax inspection authorities of the district where the building is located.

16.2 Main taxes to be paid by legal persons

Legal persons present in Algeria may be taxed differently according to whether they are residents or non residents. Indeed the Algerian tax law contains some specific rules pertaining to non resident corporations.

Moreover, the tax treaties signed by Algeria depart from domestic rules by providing for specific taxation rules for certain revenues (see item 16.3.3).



16.2.1 Resident legal persons

16.2.1.1 Direct taxes

Corporate income tax (Impôt sur les bénéfices des sociétés, IBS)

Profits earned by firms with legal personality shall be subject to an annual tax on corporate profits (IBS).

Partnerships, undeclared partnerships, professional civil partnerships not constituted as joint stock companies are not in principle, subject to this tax, but may choose this form of taxation.

Other entities, such as mutual funds (Organismes de placement collectif en valeurs mobilières, OPCVM) cannot choose this system of taxation.

The profits in question are the profits or revenues realized in Algeria.

From a domestic law standpoint, the establishment must be located in Algeria, namely possess material facilities, its own autonomy and display a certain degree of permanence. In the absence of this type of establishment, the activity must be conducted through representatives, that is genuine agents working on behalf of the enterprise. In the absence of an establishment or representatives, the activity must translate into a complete cycle of commercial operations.

Conventional law provides for other criteria and gives special importance to the notion of permanent establishment (see item 16.3.3.2.1).

- Taxable income

It corresponds to the income from all operations, regardless of their nature, carried out by the enterprises, including the transfer of some assets, either during, or at the end of the period of operation.

Taxable income is determined on the basis of accounting income before taxes, corrected in order to take the tax effect into account.

a) Taxable revenues

The revenues consist of the price of sold merchandise, work done and services provided by the firm. They relate to accounts receivable.

They also include revenues from financial instruments, such as interests from debt-claims and revenues from securities (revenues from stocks, membership shares, bonds ...).



This does not concern payments on credit granted to customers, as they are included in sales. On the other hand, interests on bank deposits and cash guarantees are included.

Also taxed are exceptional revenues, such as appreciation surpluses and capital gains from transfers. The latter are taxed differently according to whether the assets were held for a short or a long time.

When the taxpayer pledges to reinvest the amount of realized capital gains plus the cost price of the transferred assets in fixed assets within three years from the end of the fiscal year during which the gains were realized, the capital gains are not included in the taxable income of the said fiscal year.

Received subsidies are also taxable. There are three types of subsidies granted by the State or the public sector.

Equipment subsidies are not part of the accounting income for the fiscal year during which they were received when they were used in the creation or acquisition of depreciable assets. They must be linked to taxable income up to the amount of depreciation carried out on the cost price of those assets.

Operational subsidies include compensatory indemnities for insufficient prices and subsidies earmarked for operating expenses. They are considered taxable revenues under ordinary law.

Balancing subsidies granted on the basis of the firm's performance are included in the taxable income for the fiscal year.

b) Deductible charges

Costs and charges are only deductible to the extent that they are linked to normal corporate operations, and that they are effective, justified and included in the expenses of the fiscal year during which they were incurred and translated into a reduction of net assets.

They are as follows:

- Purchases and consumption of material and commodities (Inventory): Purchases must be recorded in the books at the price of purchase (buying price plus related expenses minus discounts).
- Service charges: Certain conditions must be met regarding deductions however. Thus, compensations paid to non-salaried third parties must



be declared on corporate income tax return forms, as well as rent for premises directly assigned to operations. In addition, maintenance and repair expenses must help keep the fixed assets and facilities of the firm in good condition, not upgrade them. When the service contract involves a non-resident service provider, a deduction at source must be made on the amount of the contract by the firm.

- Personnel charges: In order to be deductible, personnel charges must correspond to an actual job and must not be exaggerated as far as the importance of the service performed. Fringe benefits and social security dues associated with the compensations are allowed as deductions against income.
- Taxes: The taxes paid by the enterprise are deductible, with the exception of the corporate income tax (IBS) itself. Fines and penalties and interests on arrears are not allowed as deductions against taxable income.
- Financial charges: They are deductible in principle. In the case of interests paid to a non-resident corporation, a deduction at source of 10% is provided for (domestic law and treaty law, see item 16.3.3.2.5).
- Miscellaneous expenses: Insurance premiums are deductible when they are paid in order to protect against the risks to which the assets are exposed, donations to scientific institutions or philanthropic organizations, which are deductible up to 1 % of earnings.
- Depreciations: Depreciations really carried out within the limits of authorized depreciations are deductible, that is depreciations using the straight-line method and, for certain exceptions, the degressive, the progressive or the accelerated straight-line method (leasing activities). A deduction limit of 800,000 AD on the acquisition cost applies to the depreciation of passenger vehicles acquired by the enterprise, except when the said vehicle represents the main tool used in carrying out the firm's activities.
- Reserves: In order to be deductible, reserves must correspond to losses or charges clearly specified, that have become probable and not just potential, as a result of an event originating during the fiscal year. The reserve must also appear in the accounting and be recorded on the statement of reserves of the corporate income tax forms.

- **Calculation of the tax**

a) Applicable rates

The corporate tax rate provided for under general law is set at 25%.

A reduced rate of 12.5% is provided for certain types of earnings.

These are the earnings reinvested in certain fixed assets appearing on a list set by regulation during the fiscal year of realization, or earnings that the firm pledged to reinvest during the fiscal year following their realization.

In order to benefit from the reduced rate, the firms must keep regular accounts. Moreover, they must distinctly mention in the annual income statement, the income liable to be taxed at the reduced rate and attach a list of realized investments with details regarding their nature, the date they were included in assets and their cost price.

The assets taxed at the reduced rate must remain as part of the firm's asset base for at least five years, as failure to do so will result in the amount taxed at the reduced rate being taxed at the full rate, after deducting the amount of the reduced rate it was subject to. Additional retroactive taxes are increased by 5 %.

When the enterprise fails to respect the pledge it made, the complementary retroactive taxes are increased by a penalty of 25 %.

b) Tax withheld at source

There is a certain number of rates for corporate income rates withheld at source, which are set as follows:

10 % for revenues from debt securities, deposits and guarantee bonds. The amount withheld at source represents a tax credit which is applied against the definitive taxation.

20 % for amounts collected by firms as part of management contracts for which taxation is done through withholding at source. The withholding is final.

- **Assessment and payment of taxes**

a) Obligations of corporations



Firstly, firms liable for corporate income tax (IBS) are required to fulfill accounting obligations, which consist in keeping accounting records in accordance with the laws and regulations in effect and notably with regard to the National Accounting Plan (Plan Comptable National, PCN), as well as in submitting all accounting documents in response to any request by the tax authorities and in keeping the estimates, records, documents or data over which the right to discovery by the tax authorities may apply for a period of at least ten years.

Secondly, liability for tax is imposed on the firms. Thus, taxpayers must submit a declaration of existence to the tax authorities having jurisdiction over the territory in which they operate within thirty days after beginning their activities.

At the moment of transferring or winding up the company, owed taxes will be immediately assessed on the basis of the income that has not yet been taxed.

The transformation of a joint stock company or a limited liability company into a partnership is considered a winding-up of business. The taxpayer is required to notify the tax inspector within ten days.

b) Tax return and payment

Taxes on corporate profits are set up in the name of legal persons where their headquarters or their main establishment is located.

The annual income statement must be submitted before April 1st of each year. If the firm has suffered losses, the amount of the deficit must be declared under the same conditions.

The deficit of a fiscal year is deductible from the profits of subsequent fiscal years up to and including the fifth fiscal year. The freedom to offset losses against profits is given to firms during this five-year period, however the firms must post their oldest losses first.

The payment of taxes by firms established under Algerian law consists of three installment payments of 30% of the taxes associated with the income of the last fiscal year. The tax balance is recovered by tax roll.

In the case of newly established corporations, each installment payment is equal to 30% of the tax calculated on the basis of an estimated 5% yield on called-up capital.

Tax on professional activities (TAP)



The TAP represents a major source of revenues for local communities to whom it is entirely allocated.

The TAP is a tax owed by taxpayers liable for the global income tax (IRG) in the industrial and commercial earnings, as well as non-commercial earnings, categories, based on total sales or gross income minus taxes.

In the case of corporations liable for corporate income tax (IBS), the TAP is thus owed on the basis of sales in Algeria.

Sales refers to the amount of proceeds from all operations (whether it's a legal or material delivery) involving sales, services, or other components of the activity the firm engages in.

In the case of public works and building units and enterprises, sales consist in partial or total receipts recorded during the fiscal period. An adjustment of duties owed on overall works must be done upon practical completion of the works at the latest, with the exception of accounts receivables from the administrative authorities.

Operations between units of a same enterprise are excluded from the scope of application of the TAP.

Its scope of application and its rules vary from that of other taxes and duties.

- **Taxable base**

It consists of sales for the fiscal period, minus the value-added tax. The tax base may incur reductions to achieve special goals however.

Moreover, certain operations are excluded from the taxable base.

a) Reductions of 30%

They apply, with regard to firms liable for corporate income tax (IBS), to:

- the amount of wholesale sales operations;
- the amount of retail sales operations pertaining to products whose retail sales price includes more than 50% in indirect taxes

b) Reductions of 50%

They apply, with regard to firms liable for corporate income tax (IBS), to:

- wholesale sales operations pertaining to products whose retail sales price includes more than 50% in indirect taxes, whether the sales are done by producers or wholesale merchants, or under the same price and volume conditions with corporations, institutions or administrations;
- retail sales of drugs with the dual condition that margins not exceed 10% to 30% and that the drugs be categorized as strategic goods as defined by Executive Decree n° 96- 31 of January 15, 1996;
- operations between firms of a same group with the exclusion of the other reductions.

c) elements excluded from the taxable base

With regard to firms liable for the corporate income tax (IBS), the following are not included in the TAP's taxable base:

- the amount of retail sales operations pertaining to strategic goods targeted by the aforementioned Executive Decree, when the retail margin does not exceed 10 %
- the amount of sales operations pertaining to the sale of mass-consumption products, supported by State funds or benefiting from compensation,
- the amount of sales operations; brokerage operations; or delivery operations pertaining to goods, supplies or merchandise earmarked for exportation;
- sales not exceeding 80,000 AD in the case of taxpayers whose primary activity is to sell merchandise, commodities, supplies and foods for take-out or on-site consumption, or 50,000 AD, in the case of service providers.



Calculation of the tax

The tax rate is set at 2%

Assessment and payment of taxes

The amount of tax is declared monthly on the amount of sales recorded during the month, whereas the tax is paid upon presentation of the declaration in each of the communes where the taxpayer possesses facilities or units.

Payment must be made by the 20th of each month.

Meanwhile, every year firms are required to submit a declaration tracing the amount of sales subject to taxation along with the annual return (IBS and IRG).

This declaration must namely specify the amount of taxable sales, the amount of exempt sales and the amount of sales benefiting from a reduction.

With regard to operations conducted as wholesale operations, the declaration must be supported by a statement which includes, for each client, all elements necessary to identify the said client (name, given name, corporate name, address, registration number with the Commerce Register, amount of the purchases, etc...)

This statement must be filed along with the annual return. It should be mentioned that this statement is not mandatory; it only affects the granting of the reduction.

Dividends

Dividends paid to legal persons incorporated under Algerian law

In accordance with the provisions of the direct tax code, dividends distributed to shareholders of resident legal persons which have incurred corporate income tax are not included as part of the base used to assess taxes due on the corporate earnings of the corporate shareholder receiving the dividends, provided that those earnings stem from regularly declared earnings.

Dividends paid to non-resident legal persons



Dividends distributed to non-resident corporate shareholders are subject to a 15% withholding tax collected by the distributing corporation, under the same conditions as resident physical persons.

If an applicable tax treaty exists, the withholding tax rate may vary (see item 16.3.3.2.4).

Dividends paid to physical persons

In accordance with the provisions of the Direct Tax Code (Code des Impôts directs, CID), dividends distributed to shareholders who are resident or non-resident physical persons, as well as directors' fees and shares of profits paid to directors are subject to a 15% withholding tax. The distributing corporation must collect this withholding tax.

Consumption tax

In addition to the value-added tax, there are two other taxes to which the rules pertaining to the tax assessment basis, liquidation, recovery and VAT disputes extend. These are the domestic consumption tax and the tax on oil products.

The first one applies to different consumer products such as tobacco, coffee, certain fruits and certain alcoholic beverages. They are listed in the turnover tax code. The amount of tax varies according to the product. It gives rise to the obligation of submitting a monthly declaration within the same time period as with the VAT.

The second applies to oil products or equivalents, imported or obtained in Algeria. The amount of tax differs according to the products listed in the turnover tax code. Exported oil products are exempted. It gives rise to the obligation of submitting a monthly declaration within the same time period as with the VAT.

As for the value-added tax (VAT), instituted in Algeria in 1992, it applies to any activity pertaining to sales operations, construction works, the performance of services and importation, regardless of the legal status of the persons involved in conducting these operations and without consideration of their situation with regard to the provisions contained in the legislation as far as other taxes.

Territoriality of the VAT

In the case of sales, a transaction is deemed to have taken place in Algeria when it is carried out in accordance with delivery terms and conditions of the merchandise in Algeria;

In the case of other operations, a transaction is deemed to have taken place in Algeria, when the service performed, the transferred right, the rented object or the studies done are used or exploited in Algeria.

Taxable operations

a) Operations subject to mandatory taxes:

They are namely: Sales and deliveries made by producers and distributors, construction works, sales of properties and businesses, sales by wholesalers, deliveries of goods to themselves by taxable persons, rental operations, performance of services, works involving research and studies, as well as operations conducted within the framework of the exercise of a liberal profession and operations conducted by banks and insurance companies.

b) Operations subject to optional taxes:

These are the operations outside the scope of application of the VAT in principle, but which may be liable for it, at the option of the taxpayer.

This pertains to operations carried out by persons who are not liable to pay the VAT to the extent that they bill upon exportation, to oil companies, to other persons liable for tax or to firms that benefit from the duty free purchasing system.

c) Exempted operations:

The exemptions provided for certain operations falling within the scope of application of the VAT meet economic, social or cultural considerations, or result from reciprocity measures with another country.

For transactions made within the country, exemptions apply, among others, to sales of pharmaceutical products, to the sale of certain categories of utility or passenger vehicles, to the goods, material, products and works acquired or realized for the benefit of oil companies, to the insurance contracts of persons and to banking operations extending credit to households and earmarked for the acquisition or the construction of individual housing units.



For transactions taking place as part of import operations, the exemptions pertain to goods whose sale within the country is exempt from the VAT, to imported goods falling within the province of one of the systems suspending customs duties, and to goods admitted duty free.

For transactions taking place as part of export operations, the exemptions pertain to sales and manufacturing operations pertaining to exported merchandise, to sales and manufacturing operations pertaining to domestic merchandise delivered to legally constituted bonded warehouses.

Excluded from this exemption are export sales carried out by antique dealers on behalf of others or on their own behalf with regard to antiques, old books, furniture, memorabilia as well as sales pertaining to works of art created by artists who have been deceased for more than twenty years.

Also excluded from the exemption are sales pertaining to jewelry, plates and other precious metal works unless the law stipulates otherwise.

Calculation of the tax

Three tax rates are provided for: one set at 17 % (normal rate), the other at 7 % (reduced rate) and the last at 0% for certain products such as pharmaceuticals.

The reduced rate applies to certain goods, products and materials, as well as a certain number of operations specifically provided for by Article 23 of the turnover tax code.

Thus, for instance, the Finance Act of 2006, wishing to steer consumption towards available, less-polluting energy sources, namely natural and propane gas, reduced the VAT rate on equipment earmarked for LPG/fuel.

For transactions carried out domestically, these rates are applied to the price of merchandise, works or services, including all costs, duties and taxes, with the exception of the VAT itself.

Special rules are set for determining the tax assessment basis for operations pertaining to oil products, construction works, deliveries of goods to oneself, as well as for operations conducted by concession holders, forwarding agents, dependent firms and merchants involved in the sale of property and businesses.



For imported goods, the rate applies to the customs value, plus duties and taxes other than the VAT.

Assessment and payment of taxes

a) Obligations of the persons liable for the tax

The persons liable for the VAT are required to fulfill various obligations.

They must, within 30 days after the start of operations, submit to the tax authorities with jurisdictional authority a declaration of existence supported by a copy of the Articles of incorporations (for corporations) and of the trade register. An identical declaration must be made for branches or agencies subsequently opened.

The VAT must appear clearly on their sales invoices. These documents must be prepared in accordance with the regulatory provisions established for this purpose.

Their accounting must respect the provisions of the Commercial Code and the National Accounting Plan (Plan comptable national, PCN).

In the case of a suspension of activities, a declaration must be made to the tax authorities with jurisdictional authority within 10 days after the activities have been suspended.

b) VAT deductions on purchases

The persons liable for the VAT may deduct the taxes charged on their purchases and acquisitions from the collected VAT, billed to his clients.

The principle of VAT deduction is framed by substantive, formal and temporal conditions.

From a substantive standpoint, purchased or acquired goods must contribute to operations actually subject to the VAT and not be excluded from the right of deduction.

Pertaining to this, it is worth mentioning operations falling outside the scope of application of the VAT, exempted operations and operations specifically excluded. They pertain namely to goods, services, materials, properties and premises not tied to the exploitation of an activity liable for the VAT, passenger and transport vehicles which do not represent the main operational tool of the enterprise, donations and gifts, merchants of goods and equivalents and agents and brokers.



With regard to the form, the deductible VAT must appear clearly on the duly recorded purchase or acquisition invoice. As to the VAT charged to goods other than fixed assets, the deduction must be made the month following the month when the sales invoice was prepared.

For persons liable for the VAT who do not pay it on the totality of their business (partially liable), the deductible VAT is limited to a fraction of the amount of VAT charged on the purchase of goods and services. This fraction is equal to paid VAT accompanied by a general deduction percentage called pro-rata.

The persons liable for the VAT must pay back the VAT deducted from the collected VAT when the purchased goods disappear, are used for operations not subject to VAT, or when the purchase invoice containing the deducted VAT is considered as permanently unpaid.

Since the Finance Act of 2006, no refund of deducted VAT is required for financial leasing corporations in connection with the transfer of goods when the lessee exercises the purchase option.

c) Payment

The persons liable for the VAT are required to send, within the first 20 days of each month, a declaration of VAT due (or deducted at source) and to pay, if need be, their tax liabilities. The form provided for this also serves as the declaration for other taxes.

Specific regimes

a) VAT refund

The VAT charged to purchase operations carried out by persons liable for the VAT can generally be deducted from the invoiced VAT. Under certain circumstances, the persons liable for tax cannot exercise their right of deduction through a tax credit due to the absence of collected VAT. There is a system in place, however, that enables them to recoup the VAT paid to suppliers, service providers or sub-contractors through a refund.

The refund of the tax must nonetheless result from export operations, or from works, services or the delivery of products for which duty-free purchases are authorized, as well as from a suspension of activity or a deduction at source for a continuous period of 3 months and resulting

from the difference between the reduced applicable sales rate and the normal rate charged to purchase invoices.

For operations of more than 100,000 AD, the Finance Act of 2006 requires, as a condition for the refund of the deductible VAT, that the operations at the origin of the deduction at source be settled by a method of payment other than cash.

b) Duty free purchases

The system of duty free purchases represents the second option for persons liable for the VAT but who are unable to deduct their VAT on purchases, to the extent that it enables them to buy goods, material and services without having to pay the related VAT.

This system pertains to:

- goods and services acquired by the suppliers of oil companies;
- purchases of raw materials, components or packaging used in the production, conditioning or the commercial presentation of exempt products or those earmarked for an exempted sector;
- the purchases or imports of products destined, either to be exported or re-exported in the same state, or to be incorporated in the manufacturing, conditioning or packaging of products earmarked for exportation, as well as the services directly tied to export operations;
- capital goods, other than passenger vehicles, acquired by young investment promoters.
- the goods and services acquired within the framework of a transaction concluded between a co-contracting partner benefiting from a VAT exemption and a foreign enterprise which does not have permanent professional installations in Algeria under the terms of the tax legislation in effect, regardless of the provisions of international tax treaties.

c) ANDI's VAT-free regime

Taxpayers carrying out investment operations may benefit, namely by decision of ANDI, from a VAT exemption. This regime allows the purchase of goods and services going directly into the implementation of an investment without having to pay the VAT, provided that the investment is earmarked for operations liable to the VAT.

16.2.1.2 Registration fees applicable to legal persons

Registration may be defined as a formality carried out by a civil servant in charge of registration, according to variable terms and conditions listed by law.

This formality may apply, either to deeds, or to transfers not resulting from a deed, which thus makes it possible to collect a tax, which is the registration fee.

Registration fees on transfers

The registration code defines the sale as a contract by which the seller pledges to transfer the ownership of a thing or any other property right to the acquirer, who must pay the price for it.

Sale of property

Property is generally considered as the main element of patrimony. It essentially pertains to built properties and undeveloped land.

The sale of property gives rise to the obligation of registering with the registry inspection and publishing in the land registry. It requires the payment of a registration fee of 5 % and a land registration tax at the rate of 1%.

Moreover, the sale must be recorded by official deed (notarized deed) and the payment, on sight and for one fifth of the price, must be placed in the hands of a notary.

The registration fee pertains, not only to the bills of sale, but also to any other deed, which even without seeming like a sale, involves nonetheless the transfer of property in exchange for money.

The basis of tax assessment consists of the price as stated in the deed, to which all increasing charges, as well as the indemnities, are added to the seller's benefit. However, the tax authorities may calculate the tax on the basis of the market value of the good, if, during verification, it appears to exceed the declared value.

Sale of movable property

Sales of movable property may be conducted through public sales or by private agreement. If they are recorded by deed, they must be registered and a 2.5% fee must be paid.

The transfer of undivided shares of property

The transfer of undivided shares of property through an auction sale (sale of undivided shares of property leading to their division) is subject to an ad valorem duty of 1.5 % for movable property and 3 % for real estate. The rate for real estate is 1.5 % when the property is acquired by one of the co-owners in indivision.

With regard to transfers of usufruct (right of use and enjoyment of a good) and of the bare property (property of a good whose usufruct is collected by another party), their value will take the increased price of the charges of the bare property or the usufruct into account.

16.2.2 Sale of businesses and customer base

Transfers of businesses and customer base for consideration are subject to a registration fee of 5 %. This fee is collected on the price of the sale, of goodwill, of the transfer of lease rights and of movable assets and other assets used to operate the business.

However, new merchandise is only subject to a fee of 2.5%.

16.2.3 Registration fees on property exchanges

It is a contract by which the contractors reciprocally pledge to transfer the property of an asset other than money to one another. An exchange fee of 2.5 % on the value of one of the properties is collected, when the properties are of equal value.

When the properties are of unequal values, the capital realized by one of the contractors is subject to a monetary property transfer tax of 5 %.

Exchanges of immovable property against movable property or of movable property against immovable property are considered a true sale from a taxation standpoint.

In the exchange of an immovable property against a movable property, it is the immovable property that is considered sold, with the movable property representing the price paid. If the value of the immovable property is superior, it is the value of the immovable property which will serve as the basis for the settlement of a tax on the transfer of property for consideration.

In the case of the exchange of a movable property against another movable property, assets of similar nature are subject to the same tariff.



Only a fee on the value of the stronger lot alone is collected. If the tariff is different, the highest tariff will be applied.

16.2.4 Registration fees on Articles on incorporation

16.2.4.1 Articles of incorporation

The creation of a corporation implies the assignment of assets distinct from those of the partners to the legal person.

a) Unconditional contributions

In exchange for his contribution the contributor receives simple membership shares (interest components or share components) exposed to all the risks of the enterprise. The tax legislation stipulates that the deeds of incorporation of corporations shall be subject to a 0.5 % tax on the total amount of contributions of movable or immovable property made on an unconditional basis and that the tax shall not be lower than 10,000 AD.

b) Contributions for consideration

They are analyzed as a genuine sale agreed to by the contributor to the corporation and lead, as a result, to the payment of a transfer fee determined according to the nature of the assets being transferred, as in the case of a sale. This fee is collected on the basis of the price, to which charges are added, or on the market value of the assets, if it is higher.

c) Mixed contributions

They are, in part, unconditional contributions, and for the rest, contributions for consideration. The parties must declare in the deed the assets transferred for consideration. If this declaration pertains to movable property and immovable property, the tariff associated with immovable property alone is applicable, provided that the movable property is not assessed item per item in the contract.

16.2.4.2 Deeds during the existence of the corporation

During the existence of the corporation, certain changes are made the capital.

a) Capital increase

Capital increases are subject to a registration fee of 0.5 %.



For capital increases of variable capital corporations, an ad valorem duty is charged only on the fraction of the capital stock which, at the end of a corporate fiscal year, exceeds the previously taxed capital.

The capital duty is collected on the actual value of the new contributions.

Increases to a firm's capital achieved through the capitalization of earnings, reserves or provisions of any kind which have not been taxed on corporate earnings is subject to a registration fee of 1 %.

b) Capital decrease

Capital decreases are reductions of a firm's capital which are effective with respect to corporate creditors.

From a fiscal standpoint, a distinction is made between the reduction as a result of a loss, which is registered subject to the fixed fee for unspecified deeds (5,000 AD), provided that no associated refund be made to the benefit of the partners, and the reduction made by way of distribution of membership shares, which opens the way to a partition tax of 2 % on the shares assigned to each partner.

c) Change of legal form

When the transformation of the form of the corporation does not result in the birth of a new corporation, the deed recording it is subject to the fixed rate for unspecified deeds of 500 AD. In the opposite case, the fees provided for in connection with the creation of corporations are payable (see item 16.2.1.3.3.1).

d) Continuance of the firm's existence

The continuance of a firm is the extension of its existence. This operation is subject to a different tax regime depending on whether it takes place before or after the expiration of the corporation.

If the continuance precedes the expiration of the corporation, the deed is subject to a fee of 0.5 % collected on corporate assets.

In cases where the continuance takes place after the expiration of the corporation, which leads to the creation of a new corporation, it is subject to the ordinary capital duty applicable to net corporate funds, as well as a fee on transfers for consideration, applicable to the amount of liabilities.

e) Merger of the corporation



For all types of mergers, there is a contribution for consideration, stemming from the fact that the surviving corporation takes on the liabilities of the corporations that are dissolved.

The 0.5 % capital duty is settled on the basis of the actual value of the contributions less the actual liabilities taken on, and the fee on transfers for consideration is collected in application of the rules provided for in cases of mixed contributions.

It is worth noting with regard to joint stock companies (JSC), that the application of the 0.5 % rate cannot result in the collection of a fee less than 10,000 AD, nor more than 300,000 AD.

16.2.5 Dissolution of the corporation

a) Deeds pertaining to the dissolution of the corporation

These deeds are subject to mandatory registration. They result in the payment of a fixed fee of 3,000 AD, when they do not pertain to any transfer of assets between partners or other persons.

b) Transfer of corporate shares after the dissolution

Transfers of corporate shares taking place after the dissolution, but before the liquidation, are subject to the same rules as those in effect before the dissolution. However, when the liquidation is completed, transfers of corporate shares are subject to ordinary transfer fees, at the rate stipulated for each of the said assets.

c) Transfer of corporate shares leading to the dissolution

Ordinary transfer fees are also due when the transfer of corporate shares results in the disappearance of the corporation. Such is the case in the acquisition, by one of the partners, of the shares of all the other partners or the transfer of all corporate shares to a third party.

16.2.6 Registration fees on the transfer of corporate shares and bonds for consideration

16.2.6.1 Transfer of corporate shares

In addition to the taxation of potential capital gains (see section on capital gains, p ???), deeds pertaining to the transfer of shares and membership shares are subject to a fee of 2.5%. The collection of that fee is subject to the existence of a deed recording the transfer.



The fee is based as in the case of ordinary movable property, namely on the transfer price, to which charges are added, or on the market value of the transferred securities, if it is higher.

From a fiscal standpoint, the assets in kind represented by the transferred securities are considered to be the object of certain transfers of corporate shares. They pertain to:

- transfers of shares carried out during the period of non-negotiability of these securities;
- transfers of membership shares when they take place within three years after the contributions to the firm have been made.

These transfers are subject to the tax regime provided for in connection with the sale of assets whose contribution was compensated by the transferred securities.

16.2.6.2 Transfer of bonds

The deeds pertaining to the transfer of negotiable bonds are subject to a 5 % fee.

As with the transfer of corporate shares, this fee is based on the price, to which charges are added, or on the actual value, if it is higher.

Tax advantages

These are the tax advantages provided for in Ordinance n° 2001-03 of August 20, 2001 pertaining to the development of investment in Algeria amended and completed by Ordinance n° 06-08 of July 15, 2006.

It sets the regime applicable to domestic and foreign investments implemented as part of economic activities pertaining to the production of goods and services, as well as to investments implemented within the framework of the granting of concessions and/or licenses.

The Ordinance provides for two regimes in connection with the granting of tax advantages and other incentives, that is a general regime and a special regime.

In order to benefit from these advantages, the investments must be declared beforehand to the National Agency for the Development of Investments (Agence nationale de développement de l'investissement, ANDI) and be the subject of a specific request for advantages.

Advantages granted within the framework of the general regime

Since 2006, these advantages are automatically granted to all investments not included in the scope of application of a “black” list published by decree.

They are granted in connection with the implementation of the investment and its exploitation.

The advantages granted in connection with the implementation of the investment are as follows:

- Exemption of customs duties for imported equipment directly used to implement the investment;
- VAT exemption for the goods and services directly used to implement the investment;
- Exemption of fees collected in connection with transfers for consideration for all real estate acquisitions made within the framework of the investment;

The advantages granted in connection with the exploitation of the investment are exemptions to the IBS and the TAP for three years after confirmation of the start of exploitation.

Advantages granted within the framework of the special regime

Investments implemented in the zones targeted for development (defined by the National Investment Council)

The following advantages are granted in connection with the implementation of the investment:

- Exemption of the property transfer tax in return for all property acquisitions made as part of the investment;
- Application of a fixed fee at the reduced rate of two per thousand (2‰) for the registration of the Articles of incorporation and the capital increases of the corporation benefiting from the advantages;
- Partial or total assumption of expenditures made in connection with the infrastructure works necessary to implement the investment;
- VAT exemption for goods and services going directly into the implementation of the investment , imported or acquired locally, when

those goods and services are destined to be used to conduct operations subject to the VAT;

- Exemption of customs duties on imported equipment going directly into the implementation of the investment.

The following advantages are granted in connection with the exploitation of the investment:

- Exemption, for an effective 10-year period of activity, of corporate income tax (IBS) and professional activity tax (TAP) ;
- Exemption, for a period of ten years beginning on the date of acquisition, of the property tax on real estate properties acquired within the framework of the investment;
- Additional advantages likely to improve and/or facilitate the investment, such as loss carry-overs and depreciation extensions.

Investments bearing special importance for the national economy

In the case of investments bearing special importance for the national economy (a regulatory text is expected to define this type of investment), the investor is encouraged to seek an agreement with ANDI in order to benefit from certain advantages within the framework of the special regime. The aforementioned agreement usually follows negotiations between ANDI and the investor who must demonstrate the special importance of his project with a study of the technical and economic impacts.

With regard to the investment phase, the texts provide for a general list of advantages, namely including customs duties, VAT and registration fee exemptions for a maximum period of 5 years.

As for the exploitation phase, IBS and TAP exemptions, among other advantages, can be considered for a period not exceeding 10 years.

16.2.7 Non-resident legal persons

In the absence of an applicable tax treaty, domestic law stipulates that non-resident foreign corporations in Algeria be all taxed on revenues from Algerian sources, but according to a different tax regime, depending on the type of activity the corporation engages in.



Indeed, the deduction at source regime covering all non-resident foreign corporation conducting operations was abolished in the case of building construction companies in 1999. It is now applied only to service providers. Construction works, as well as EPC contracts, have become taxable according to the real income regime. When a treaty applies, some adjustments are made to these tax regimes.

16.2.7.1 The regime of service providers

The withholding at source regime

Subject to the application of a tax treaty, non-resident foreign corporations performing service delivery contracts, such as engineering studies, supervision, project management or management of industrial property rights are subject to a withholding tax of 24%, which covers the IBS, the tax on professional activities and the VAT, when the services are delivered or used in Algeria.

The tax base to calculate the 24% withholding tax is the gross amount of billed services.

Those corporations are required to register with the tax authorities within a month following the signing of the service delivery contract and to submit to certain tax declaration obligations. Namely they must declare the salaries received by the employees for work performed in Algeria and pay taxes on those salaries.

Until 2006 corporations providing these services from abroad or through an intermediate on the Algerian territory for a period not exceeding 183 days were not subject to this type of tax declaration obligation. The Finance Act of 2007 has abolished this exemption.

The real income regime option

In principle service providers subject to a 24% withholding tax may choose to be taxed on real income. The tax authorities must be notified of the decision to opt for that regime within 15 days following the signing of the contract.

Choosing that option requires that the corporation keep accounting records in accordance with the National Accounting Plan. The option also requires monthly declarations of realized sales and the payment of corresponding taxes and duties, as well as the filing of annual corporate income tax return forms.



Sale of equipment

When the service delivery contract also provides for the supply of material and equipment, the tax code offers the possibility of subtracting the amount of that supply from the taxable base for assessing the withholding tax. This sale is deemed to be a simple importation subject to taxes and duties on imports.

Separate invoices from abroad must be issued for this equipment.

Delivery of services and tax treaties

In principle, when a tax treaty between Algeria and the country of residence of the service provider exists, the delivery of services should be taxable according to the provisions of that treaty. Thus, depending on whether the performance of services by the corporation is characterized as a permanent establishment or not, the delivery of services may either be taxed in Algeria or only in the country of residence.

However, according to the current interpretation by the tax authorities, the delivery of services physically performed in Algeria are taxable in Algeria, whether these services represent a permanent establishment according to the tax treaty or not.

According to that same interpretation, services physically performed outside of Algeria by the headquarters of the corporation are not taxable in Algeria, but only in the location of the said headquarters.

The construction regime

The real income taxation regime

Non-resident foreign corporations performing a construction contract or an EPC contract are deemed to possess a taxable entity in Algeria subject to the regime that applies to domestic corporations without having to create a legal entity requiring registration to the Commerce Registry.

In other words, these corporations are subject to ordinary tax arrangements and are taxed on their actual income.

In the absence of a tax treaty, the following Algerian taxes are due on the corporation's entire sales recorded as part of the contract:

- 2% of TAP on payments received from the client by virtue of the contract, except for reductions specifically provided for by the tax code,



- a 25% IBS (corporate tax rate) rate on earnings realized as part of the contract.

These taxes are paid in monthly installments of 0.5% of cashed sales during the month under consideration. The tax due balance is paid on the last day for filing the establishment's annual income tax return form at the latest.

- 7 or 17% VAT on the purchase of goods and services necessary to perform the contract.

This VAT may be deducted from the VAT billed to, and collected from, the client later on, save for projects exempted from the VAT.

Tax declaration obligations

Establishments must be registered with the Algerian tax authorities the month following the signing of the contract, keep accounting records based on actual income and submit monthly and annual tax declarations under the same conditions as domestic corporations.

EPC contracts and tax treaties

Tax treaties signed by Algeria all stipulate that a construction site or an assembly site may represent a permanent establishment when it exceeds a certain length of time provided for in the tax treaty (between three and six months).

When the foreign corporation is deemed to have a permanent establishment in Algeria, the earnings of the said corporation attributed to the permanent establishment are taxed in Algeria.

According to the interpretation of the tax authorities, certain components of the contract may not be attributed to the permanent establishment in Algeria.

Such is the case for the supply of equipment and for services physically provided outside of Algeria. However, in order not to be attributable to the establishment, those contract components must be billed separately from the other components by the corporation's headquarters abroad.

In those cases they shall only be liable for tax abroad, not in Algeria.

Specific circumstances linked to the existence of a group

The signing of a group contract



It is rather frequent for Algerian national agencies and other clients to require that the non-resident foreign firm partner with a local firm to execute the contract.

A group incorporated under Algerian law may thus be created, somewhat complicating the tax treatment of the contract.

We have already studied the primary characteristics of groups in item 4.2 and have seen that from a taxation standpoint, groups are transparent entities. A group cannot generate sales by itself and must not declare the profits stemming from the execution of the contract in its name.

It is the members of the group that are deemed to be generating the profits. Profits are divided between group members who are taxed accordingly.

Generally speaking, a group contract spreads the amount of the contract among members of the group. This may also be specified in the performance contract with the client. It is on the basis of this distribution that the non-resident foreign firm will be taxed.

Invoicing and earnings distribution problems

With regard to invoicing, if, it is the group's responsibility to bill the client, the reality is that the group merely assembles invoices issued by members of the group on one invoice to be presented to the client in its name.

The amount of the invoice is collected by the group and then transferred to the accounts of each member according to their respective share.

As we have said, sales and earnings are attributable to the members of the group taken separately. Thus it is important that the costs and charges of the project be borne out in the same manner by each of them (based on their share of the work) and not by the group itself.

Thus, each member will collect the payments it is entitled to in connection with the contract and will assume direct responsibility for expenditures related to the execution of its share of the contract. This will enable members to keep their own accounting records and to also use, when a tax treaty exists, the rules attributing earnings to stable establishments (see item 16.2.2.1/item 16.2.2.2.3).

With regard to supplies, they can be exported directly by the headquarters of the foreign firm for the client, who will act as the importer. This has



several advantages, namely that of avoiding double payment of the VAT and of hiding a possible margin realized on the sale of equipment abroad.

Double taxation tax treaties

Since the fiscal reform of the 1990s, which pointed the country in the direction of a market economy, Algeria has been committed to developing its network of tax treaties.

Indeed, the domestic tax legislation did not make it possible to lure foreign investment, as it failed to propose solutions to double international taxation, in most cases, and to offer legal stability to potential investors as a result.

International tax treaties thus replaced the domestic fiscal legislation by bringing practical solutions to these problems of double taxation.

General presentation

International tax treaties thus gained in popularity and have now been concluded by several countries who wish to make investors likely to establish a presence on their territories feel more secure.

This increase in the comfort level of investors is based on the guarantees offered to investors that their profits or revenues earned locally will not be subjected to double taxation.

The risk of double taxation is linked to the fact that, from a tax standpoint, the foreign investor is usually bound to two different countries, one being his country of residence and the other being the country where his profits or revenues originate. These two countries, by applying their respective territorial rules, each tax these profits or revenues.

The goal of the treaties is thus to prevent or neutralize this double taxation.

They eliminate the risk of double taxation by establishing harmonized tax residence criteria and in designating a place of taxation, a place of residence or collection for each type of revenue. This harmonizing of fiscal rules protects investors and enables them to know the tax system they are subject to.

When tax treaties do not eliminate this double taxation, they neutralize it through application rules or exemptions of the tax overcharge resulting from double taxation.

Tax treaties give an even greater feeling of comfort to foreign investors based on the fact that as international treaties they are, once they have taken effect, of greater legal value than domestic legislation. This principle is established by the Algerian Constitution, which in Article 132 stipulates that *“the treaties ratified by the President of the Republic, under terms provided for in the Constitution, are legally superior to the law.”*

The coming into effect of treaties, subordinated to the procedures peculiar to the countries, is an important notion to understand, to the extent that it determines the exact date from which the provisions contained in the treaty begin to apply. Thus, the coming into effect is subordinated to the ratification by the two contracting parties. Thus a treaty signed by the two parties is not necessarily applicable.

Tax treaties are also a way for countries to combat tax evasion and international tax fraud through increased communication between them.

16.2.8 List of treaties signed by Algeria

Algeria’s network of treaties has experienced much growth recently as part of its investment development program.

By analyzing this network more closely, one sees that the majority of treaties that were signed draw as much from the OECD model as they do from certain provisions of the UN model.

Country	Date of signature	N° and date of ratification	Reference to the JORA	Observations
South Africa	28.04.1998	2000-95 du 07/05/2000	N° 26-2000	In effect
Austria	17.06.2003	2005-194 du 28/05/2005	N°38-2005	In effect
Belgium	15.12.1991	2002-432 du 09/12/2002	N°82-2002	In effect
Bulgaria	25.10.1998	2004-435 du 29/12/2004	N°01-2005	In effect

Bahrain	11.06.2000	2003-276 du 14/08/2003	N° 50-2003	In effect
Canada	22.02.1999	2000-364 du 16/11/2000	N°68-2000	In effect
South Korea	24.11.2001			
Ethiopia	26.05.2002			
Spain	07.10.2002	2005-234 du 23/06/2005	N°45-2005	In effect
United Arab Emi-rates	24.04.2001			
Egypt	17.02.2001	2003-141 du 25/03/2003	N°23-2003	In effect
France	17.10.1999	2002-121 du 07/04/2002	N°24-2002	In effect
India	25.01.2001 28.04.1995	97-342 du 13/09/1997	N°61-1997	In effect
Italy	03.02.1991	91-213 du 20/07/1991	N°35-1991	In effect
Romania	28.08.1994	95-186 du 15/07/1995	N°37/1995	In effect
Turkey	02.08.1994	94-305 du 02/10/1994	N°05/1994	In effect
Tunisia	09.02.1985	85-161 du 11/06/1985	N°26/1985	In effect
Libya	19.06.1988	89-180 du 26/09/1989	N°41/1990	In effect
Morocco	25.01.1990	90-299 du 13/10/1990	N°44/1990	In effect
UMA	23.07.1990	90-424 du 22/12/1990	N°06/1991	Replaces bilateral con- ventions
Jordan	16.09.1997	2000-427 du 17/12/2000	N°79-2000	
Lebnon	26.03.2002			
Mali	31.01.1999			
Niger	26.05.1998			
Poland	31.01.2000			

Portugal	10.03.1997	2005-105 du 31/03/2005	N°24-2005	In effect
Oman (Sultanat)	09.04.2000	2003-64 du 08/02/2003	N°10-2003	In effect
Qatar	05.08.1998			
Syria	14.09.1997	2001-78 du 29/03/2001	N°19-2001	In effect
Ukraine	14.12.2002	2004-131 du 19/04/2004	N°27-2004	In effect
Vietnam	06.12.1999			
Yemen	29.01.2002	2005-78 du 26/02/2005	N°16-2005	

16.2.8.1 Presentation and analysis of the OECD model convention

There is an OECD model convention on double taxation. Nearly all the tax treaties signed by Algeria are based on this model, with some adjustments due to Algeria's specific taxation however.

Scope of application

It covers persons and taxes.

With regard to persons, physical or legal, the convention applies to persons residing in at least one of the two countries. This notion is important, in the sense that it determines the persons to whom the convention applies.

As for taxes, the OECD model treaty stipulates that the convention shall apply to the various taxes on income and capital. In Algeria's case, the global income tax (IRG), the corporate income tax (IBS), the tax on professional activities (TAP), oil revenue taxes, mining revenue taxes, taxes on capital, and estates taxes are included.

Taxation of revenues

We will deal with the most important revenues.

The taxation of corporate profits



The relevant provisions are those contained in Articles 5, 7, 8 and 9 of the OECD model convention.

Thus, the profits of a firm from a contracting state are only taxable in that state, unless the firm carries out its activities in the other contracting state through the intermediary of a permanent establishment located there and to the extent that the profits are attributable to that permanent establishment.

The notion of permanent establishment is important, as the power to tax is only granted to a state to the extent that it demonstrates the existence of a permanent establishment on its territory and that the profits are calculated on the basis of the revenues attributable to that establishment alone.

The existence of a permanent establishment generally revolves around three criteria:

1. the firm possesses a facility;
2. it has a degree of fixity;
3. it conducts, all or part, of an activity there.

A specific rule is provided for however for construction sites and assembly sites. The OECD model convention considers that such sites are permanent establishments when they are in operation for more than 12 months. Most tax treaties signed by Algeria provide for a much shorter period (3 or 6 months).

As for the delivery of services performed in Algeria, the OECD model convention and nearly all tax treaties signed by Algeria contain no provisions pertaining to the matter. As a result, Algerian tax authorities tax deliveries in Algeria even when there is no permanent establishment according to the three criteria listed above. Please refer to the sections on non-resident legal persons.

Upon determining taxable income in Algeria, the OECD model convention gives the establishment the possibility of including all expenditures incurred by the permanent establishment, even those made abroad. This provision is difficult for the Algerian tax authorities to apply.



Another provision pertaining to affiliated companies gives a State the possibility of making readjustments with regard to affiliated companies, in order to hold transfer prices down.

The taxation of salaries

The OECD model convention stipulates that the salaries, stipends and similar forms of compensation received by salaried workers as part of their employment shall only be taxed in the state where they reside.

However, if the activities related to the employment are carried out in the other contracting state, compensation for the said employment shall be taxable in that other state.

They may be only taxable in the state of residence however if the salaried worker meets three cumulative criteria. Thus salaried workers shall be taxed in the state where they reside if they have spent more than 183 days there during the year under consideration, if the compensation they receive is paid by an employer residing in their state of residence and not by a permanent establishment owned by the employer in the state where the activities related to their employment are carried out.

The taxation of royalties

The OECD model convention stipulates that taxation shall only take place in the state of residence of the owner of the intangible asset for which royalties are paid.

Some tax treaties, such as the treaty between Algeria and France, provide for a withholding tax at the following rates:

- 5 % for the use, or transfer of the use, of copyright,
- 12 % for all other cases, when the country of source is Algeria

The taxation of dividends

With regard to dividends, the OECD model convention stipulates that they shall be taxed in the state of residence of the beneficiary. They may be subject to a withholding tax in the state where the dividends are paid however.

The OECD model convention provides for a general rate of 15%. However, this rate is lowered to 5%, however, when the beneficiary of record is a corporation which directly or indirectly owns 25% of the



capital stock of the corporation paying out the dividends. This percentage varies according to the various tax treaties signed by Algeria.

The taxation of interests

With regard to interests, the shared taxation rule also applies. Interests are taxable in the state of residence of the beneficiary and may be subject to a withholding tax in the state where payment is made.

The OECD model convention provides for a 15% rate, but some tax treaties, such as the treaty between Algeria and France, provide for different rates depending on the state from which the interest payments originate. The rate is 12% when interests originate from Algeria.

The abolition of double taxation

The OECD model convention provides for two methods for the elimination of double taxation: the exemption method and the tax credit method.

The exemption method provides for the country of residence exempting income already taxed in Algeria from taxation, whereas the tax credit method provides for the country of residence granting a tax credit on the amount of tax it collects which is equal to income taxes paid in Algeria.

16.3 Supervision and litigation

16.3.1 Control procedures and the guarantees of taxable persons

Tax supervision may come in different forms depending on the extent of the supervisory operations, the amount of taxes and duties to audit and the underlying structures. Supervisory operations may be conducted repeatedly, periodically or episodically. They may also be general or pertain only to a specific tax or duty.

16.3.1.1 Controlling declarations

Definition

The tax authorities control the declarations, as well as the deeds used to establish any tax, fee, duty and royalty.



The control of declarations includes the control of declarations for duties paid in cash, the control of annual returns and control on the basis of documents.

The first type of control ensures that all taxes and duties that the taxpayer is liable for have been declared and that the sales figures are consistent, the second type of control consists in ensuring that annual returns are prepared in accordance with the provisions of the legislation in effect and are accompanied by all required documents, while the third type consists in a critical examination of the elements contained in the declaration compared with the information in the hands of the tax authorities.

Control procedures

The control takes place in the establishment and enterprises concerned during opening hours.

The control may require explanations and justifications presented in writing. The inspector may also ask to examine the accounting documents pertaining to the indications, operations and data being audited. When asked to do so, the enterprises concerned must provide the tax authorities with the books and documents in their possession.

This examination may lead, if necessary, to an audit of concerned taxpayers, or to a request for a verbal explanation. The taxpayer has at least thirty (30) days to provide his answer.

Correction of the declarations

The inspector may correct the declarations on the basis of the new data obtained during the controls. The inspector must notify the taxpayer in writing however, providing him with explicit explanations detailing the justifications for each corrected item, as well as references to the corresponding Articles of the tax code. At the same time, the inspector asks the taxpayer in question to notify the authorities of his acceptance or his remarks within thirty (30) days. Failure to answer within that period will lead the inspector to set the tax base, subject to the taxpayer's right of complaint, after establishing the tax roll adjustment.

A control on the basis of documents is just an examination of the declarations and the elements in the hands of the tax authorities and is clearly different from accounting audits which follow special procedures.

16.3.1.2 Accounting audits

Accounting audits consist of all operations aiming to verify the authenticity of tax declarations and their collation with accounting entries on the one hand, and verification of the reliability and probative value of the accounting entries on the other.

This is a strict and rigorous procedure during which the taxpayer benefits from several legal provisions representing his guarantees with regard to tax controls.

Audit notification dispatch

An accounting audit may not be undertaken without the dispatch or hand delivery, with acknowledgment of receipt, to the taxpayer of an audit notification accompanied by the charter of the rights and obligations of audited taxpayers.

The audit notification must include the names, given names and ranks of the auditors, the time and date of the first inspection, the period under audit, the fees, taxes, duties and royalties concerned, and the documents to be examined.

Granting time for preparation

A minimum of 10 days of preparation from the date of receipt of the audit notification must be granted to the taxpayer, namely to enable him to gather his accounting records.

However, the auditors may, as soon as the audit notification has been received by the taxpayer, undertake a finding of facts pertaining to the physical elements of the operation (inventory of stocks, long-term assets and cash items) or to the existence and state of the accounting documents.

A report must be made at the end of the fact-finding operation by the auditor with the taxpayer or his representative.

Assistance of counsel

When receiving the audit notification, the taxpayer is notified of his right to be assisted by counsel of his choosing during the audit procedure, as failure to provide such information will result in the nullification of the audit.



Place of audit

The examination of the accounting documents is conducted on the audited taxpayer's premises.

However, in emergency situations duly verified by the tax authorities, the taxpayer may request that the audit be conducted in the office of the tax authorities.

Time limit of accounting audits

Field audits of declarations and accounting documents may not exceed a period of one year, as failure to abide by this time limit will result in the nullification of the audit.

Provision prohibiting the renewal of accounting audits

When the accounting audit of a determined period, regarding a tax or duty or a group of taxes or duties, is completed, the tax authorities may not undertake another audit of the same accounting entries regarding the same taxes and duties for the same period unless the taxpayer used corrupt practices or provided incomplete or false information.

Notification of adjustments

Taxpayers must be notified of the results of the accounting audit through a notification of adjustments, even in the absence of adjustments or in cases where the accounting is rejected.

This notification must be addressed to the taxpayer by registered mail with acknowledgment of receipt or be hand delivered to the taxpayer with acknowledgment of receipt and must be detailed and duly justified so as to enable the taxpayer to retrace the rationale for taxation and make comments or make his acceptance known.

The adjustment notification must mention that the taxpayer is entitled to the assistance of a counsel of his choosing to discuss the adjustment proposals or to respond to them, as failure to provide such notification will result in the nullification of the procedure.

a) The right to respond

The taxpayer has 40 days to make his comments or express his acceptance. Before the expiration of this deadline, the taxpayer may request verbal explanations pertaining to the content of the notification.



Upon expiration of the deadline, he may also request that the tax authorities provide him with additional explanations.

b) Provision prohibiting the authorities from questioning the results of the audit

When the taxpayer accepts the taxes set on the basis of the figures appearing in the notification, the notification becomes definitive and cannot be questioned by the tax authorities.

If the taxpayer comments on the notification, his comments are either taken into consideration, thus leading to the amendment of the adjustment project, or are rejected, in which case, the taxpayer must be notified by a response from the authorities.

The absence of a response within the set deadline is the equivalent of a tacit response.

16.3.1.3 Litigation

There are two types of appeal.

The non-contentious procedure is open to taxpayers who are in a state of poverty or destitution making it impossible to pay off their debts to the Treasury. This procedure gives taxpayers the possibility of requesting a remission or a reduction of taxes, tax increases or tax penalties.

The contentious procedure consists of different types. We will examine more closely the procedures open to taxpayers covered by the Directorate of Large-scale Enterprises (Direction des Grandes Entreprises, DGE) and will provide some details pertaining to the procedures available to other taxpayers.

56. The prior administrative appeal

First, it pertains to claims seeking reparation for errors committed in connection with the assessment of the tax base or the calculation of taxes.

These are the claims of taxpayers who believe they have been wrongly taxed (petition for tax relief) or overtaxed (petition for tax reductions) or who claim to have made unwarranted payments or deductions at source when those payments are made in connection with taxes not established by way of assessment (petition for tax refunds).

Secondly, it pertains to petitions to benefit from a right granted by a legal or regulatory provision. They pertain to taxes normally established or collected which are likely to be reconsidered as a result of special circumstances or events provided for in legal or regulatory texts.

16.3.1.4 Jurisdiction of the director of the DGE

The Director of the DGE has jurisdiction to receive the claims pertaining to the taxes and duties under the supervision of its personnel and to render judgment in cases where the total adjustment amount does not exceed 10 million dinars.

The Director has six months to render a decision of relief, partial admission or rejection. Upon expiration of this deadline, rejection is said to be implied.

When the claim pertains to a case where the total adjustment amount exceeds 10 million dinars, the Director of the DGE must obtain the assent of the General Directorate of Taxes (Direction Générale des Impôts). In such cases the deadline to render a decision is 8 months.

Note: taxpayers not under the jurisdiction of the DGE should address their claims to the tax directors of the wilayas.

Investigation of the claim

The form

The claim represents the first step of contentious procedures pertaining to tax issues. The taxpayer may only petition the central commission or the judge after a claim has been rejected.

The claim addressed to the DGE:

- must be written on a separate sheet of paper
- must be individual (except in the case of members of a partnership who may present a collective claim regarding the taxation of the partnership)
- must mention the disputed taxes or duties, justify the amount paid or withheld, and present the means and conclusions of the claimant
- must be signed by the claimant

The deadline

The claim must be presented by December 31st of the second year following the events which gave rise to it at the latest as failure to do so will result in the claim being declared inadmissible.

Thus the claim is admissible until December 31st of the second year following that for which the taxes were paid. As for the application of the withholding tax, the claim is admissible until December 31st of the second year following that during which the taxes were withheld.

The date to keep in mind to calculate the deadline is the date of receipt of the claim by the direction or the date of the postmark.

Choosing a residence in Algeria

Any claimant residing abroad must choose a residence in Algeria, so as that any notification regarding his claim may be communicated to him.

Statutory payment deferment

The taxpayer who disputes the merit or the amount of the taxes imposed on him may defer payment on 80% of taxes due until the decision of the director is rendered.

The deferment of payment only applies to prior claims.

Conditions for granting a payment deferment

First the claim must be presented in accordance with the aforementioned deadline and formal requirements.

The taxpayer must prove payment of 20% of taxes due by attaching a receipt of payment.

Finally the taxpayer must specifically take advantage of the provisions of Article 74 of the CPF giving taxpayers the right to request a payment deferment by specifying the amount or the basis for the reduction he deems to be entitled to.

Effect of the payment deferment

It suspends all coercive measures against the claimant. It also suspends the period of limitation pertaining to actions for recovery by the tax authorities.



It does not suspend the accrual of late payment penalties. The penalties may be subject to free reductions however.

The effect of payment deferments stops only when the director renders his decision, even when it is rendered after the deadline.

If the decision of the tax authorities does not entirely satisfy the taxpayer, he can choose between petitioning the courts or petitioning the competent appellate commission. For taxpayers under the supervision of the DGE, that would be the Central Commission.

Appealing before the Central Commission

The commission is open to taxpayers after a total or partial rejection decision by the director of the DGE regarding a prior claim, but before petitioning a judge.

Jurisdiction of the Central Commission

The Central Appellate Commission is the highest institution in the land with regard to contentious procedures. It has jurisdiction over disputes involving taxpayers under the supervision of the DGE and pertaining to direct taxes and the VAT.

It is expected to render opinions on petitions either presented in the hope of obtaining reparation for errors in connection with the tax base or the calculation of taxes, or in the hope of benefiting from a right emanating from a legal or regulatory provision.

Note: with regard to taxpayers not under the supervision of the DGE, the competent commission is, depending on the size of the disputed adjustment, the Daïra Commission, the Wilaya Commission or the Central Commission.

The first only has jurisdiction when the amount of the direct taxes and adjusted VAT is less than 500,000 dinars. The second only has jurisdiction when the said amount is more than 500,000 dinars and less than or equal to 2,000,000 dinars or if a decision of the daïra commission is being appealed. The Central Commission has jurisdiction for all direct taxes and VAT adjustments in excess of 2,000,000 dinars and, generally speaking, for all cases where the adjustment exceeds 10,000,000 dinars.



Deadline for petitioning

The commission must be petitioned within two months from the date of notification of the DGE director's decision, or upon expiration of a 6-month deadline if the director remains silent.

Effect of the Central Commission's opinion

The opinions of the Commission are binding for the tax authorities.

Depending on the case, the director of the DGE must provide notice of the decision to grant relief or reject the petition, which must in accordance with the opinion of the appellate commission, within 30 days from the date of receipt of the commission's opinion.

If the opinion of the commission does not entirely satisfy the taxpayer, he or she may petition the tax court judge, as the last resort.

Judicial proceedings

Tax litigation belongs to the part of administrative litigation that adjudicators have jurisdiction over.

Judicial proceedings relating to taxation pertain to legal and/or monetary issues, thus are proceedings seeking tax relief, reduction or restitution.

The proceedings start with a petition brought before the lower court and, if need be, continue before the State Council, which acts as an appellate court enjoying full jurisdiction. Judgments rendered in cases pertaining to indirect taxes are without appeal and can only be the subject of an appeal in cassation.

Proceedings before the administrative court

Petitioning the court

Taxpayers may initiate proceedings before a court if they are not satisfied by the decision rendered by the DGE on prior claims or after the commissions' opinion, or in cases of implied rejection by the DGE.

In such cases, the claim must be filed within 4 months after the implied rejection or after notification by the DGE of its decision, whether or not the decision was rendered after the commission made its opinion known.

The court may be petitioned by the tax authorities as well.



Procedure for initiating legal action

Legal actions pertaining to taxation begin with the registration of an application to initiate proceedings with the registry of the administrative court.

The application must meet formal requirements: namely it must contain a specific list of means and be written on stamped paper and be signed by the applicant.

The application may only pertain to taxes mentioned in the prior claim addressed to the DGE. The taxpayer may introduce any new conclusion within this limit however.

Proceedings before the State Council

Judgments rendered by the administrative courts with regard to taxation may be appealed to the State Council.

The action must be filed with the registry of the State Council in the form of a written application signed by an authorized attorney.

The time-limit for appealing is set at one month from the date of the notification of judgment by the administrative court.

16.4 Taxation of corporate groups

The following are subject to common enterprise treatment if only because of the capital ties uniting them.

Capital participations may result from the conversion of operations or of whole departments of existing companies into subsidiaries. In this case, the existing firm holds a majority of the subsidiaries' capital stock, or even all of their capital stock, when the subsidiaries are set up as private limited companies under sole ownership. The subsidiaries may create sub-subsidiaries under their own control. This structure represents a pyramid in which the original firm is called a parent company or holding company. The reason for this denomination is that the goal of the original firm is to manage its financial interests in the group. As the majority partner of its subsidiaries, the parent company holds decisional power during their general meetings, as well as that of the sub-subsidiaries through the subsidiaries under its control.



16.4.1 Definition of corporate groups

Although the concept of corporate group has more to do with taxation than with legal matters, the Commercial Code grants significant legal effects to relations between parent companies and their subsidiaries.

16.4.1.1 Legal definition of corporate group

The Commercial Code does not formally recognize the concept of the corporate group. It pays more attention to the concepts of subsidiaries and controlled companies.

Because the law is silent on this matter, the group does not have the status of legal personality. The companies making up the corporate group have their own legal personality and are legally independent.

Thus the parent company is not liable for obligations incurred by its subsidiary and may not offer to use the debt owed to its subsidiary by a creditor to whom the parent company is indebted to as compensation for its own debt.

This principle is somewhat mitigated in cases of collective action however. Indeed, legal or de facto managers of a company being reorganized or wound up by court order may be liable for the company's liabilities as a result of actions to make good a deficiency in assets or to extend liabilities. In this case, a parent company may be considered as a legal or de facto manager of its subsidiary.

Moreover, when a subsidiary is in fact bogus, it opens the way to collective action against the parent company which acted under the cover of the said subsidiary. Creditors may then invoke the doctrine of the apparent existence of an act to demand payment of the subsidiary's debt by the parent company when it is established that the parent company and the subsidiary were not two companies, but in fact a single company.

The Commercial Code defines a subsidiary as a company in which another firm owns more than 50% of the capital. When the share of capital owned ranges between 10 and 50%, we are talking about a stake.

A company is deemed to control another company when it directly or indirectly holds a share of capital which give it a majority of voting rights during the said company's general meetings, when it is the sole holder of a majority of voting rights in that company pursuant to a shareholders' agreement, or when it has de facto control, by virtue of the voting rights



in its possession, over the decisions made at the controlled company's general meetings. In such cases, the controlling company is called a holding company.

16.4.1.2 Definition of a corporate group from a taxation standpoint

From a taxation standpoint, a corporate group represents any economic entity made up of two or more legally independent joint stock companies, in which one company, called "parent company," keeps the other companies, called "member companies," under its control by directly holding 90% or more of the capital stock and whose capital may not be held either totally or partially by the member companies, or held in a proportion exceeding 90% by a third party eligible to be a parent company.

Thus, several requirements have to be met.

First, the companies must be established as joint stock companies. Companies organized differently (LLCs, General partnerships, PLSCOs, etc...) are thus excluded from the corporate group regime.

Secondly, the capital stock of the member company must be directly held in a proportion of at least 90% by the parent company, whose capital stock may not be directly held in a proportion exceeding 90% by a third party eligible to be a parent company.

Finally, the capital stock of the parent company may not be directly or indirectly held, totally or partially, by the member companies.

Certain companies are specifically excluded from the corporate group regime.

Thus, SONATRACH, as well as any corporation whose primary object is linked to the exploitation, transportation, transformation or marketing of hydrocarbons and derived products, is not eligible to use the corporate group taxation regime.

Also, public holdings and state-owned economic enterprises whose capital is held by the said holding may not form corporate groups.

Moreover, corporations that were not profitable over the last two fiscal years are not eligible for the corporate group regime either. Carried-over



deficits and non-operating results (excluding appreciation surpluses) are not taken into consideration however.

16.4.1.3 The regime applicable to corporate groups

16.4.1.4 The legal regime

When a company acquires a stake representing more than 50% of the capital of another company, or controls the company, these facts must be mentioned in the report submitted to the annual general meeting pertaining to the operations conducted during the fiscal year. Information about the activities and the performance of the subsidiaries and the companies they control must be included in the said report.

When they control companies or exert a dominant influence on them, companies must publish consolidated accounts and a report on the group's management every year. These accounts assemble the balance sheets and income statements of the companies under their control.

Consolidation of the group's accounts is achieved through full consolidation, proportional consolidation or the equity method depending on the level of dependency of the firms under control.

Full consolidation consists in completely integrating the balance sheets and income statements of the consolidated firms with the holding company's equity stake account to prepare a single consolidated balance sheet and income statement for the group. This method applies to those firms over which the holding company exerts exclusive control.

In this case, the claims and debt, the revenues and expenditures, as well as the profits on intra-group stock transactions and the dividends paid to the holding company by the subsidiaries are eliminated from the group's consolidated accounts.

Proportional consolidation consists in partially integrating, up to the percentage of shares held by the parent company, the balance sheets and income statements of the consolidated firms with the holding company's equity stake account, to prepare a single consolidated balance sheet and income statement for the group. This method applies to firms whose control is shared by a limited number of shareholders.

The equity method consists in replacing the book value of the equity stakes of the holding company with its share of owner's equity, including the income of the firms integrated for the fiscal year. This method applies



to those firms over which the consolidating company exerts significant influence through an ownership stake that is at least equal to one fifth the voting rights.

The Commercial Code stipulated that a joint-stock company is forbidden to hold shares of another company, if the said company owns a portion of its capital exceeding 10%.

16.4.1.5 The tax regime

The tax regime of corporate groups is a preferential regime which includes consolidation of the taxable earnings of all member companies and offers the possibility of benefiting from certain tax advantages.

Consolidation of earnings

The consolidate balance sheet regime consists of preparing a single balance sheet for all corporations belonging to the group and in keeping accounts which represent the overall activities and situation of the corporations making up the group.

The earnings consolidation regime is only granted when the parent company opts for the regime and all member corporations give their consent. It is irrevocable for a period of four years.

Legally limited spending deductions are allowed for all companies, meaning that each company belonging to the group is entitled to claim deductions up to the authorized limit.

A company which has reached the authorized deduction limit may not benefit from the unused deductions of other corporations from the same group however.

With regard to corporate groups established through the transformation of fiscally dependent entities into fiscally independent entities, deductions are only granted up to 50% of authorized limits.

Granted tax advantages

With regard to corporate income tax (IBS)

Dividends received by corporations in connection with their participation in the capital of the other companies of the group, as well as the capital gains realized as part of asset transactions between members of a same group are exempted from corporate income tax (IBS).



Moreover, earnings stemming from the acquisition of stocks or membership shares and other securities which give the owner a 90% stake in the capital of other corporations of the same group are taxed at the reduced IBS rate of 15%.

In order to benefit from the reduced rate, the acquisitions must give the acquirer 90% ownership of capital, the firm must acquire the shares during the fiscal year or pledge to acquire them before the end of the next fiscal year and the shares thus acquired must be held by the firm for a minimum of 5 years.

With regard to the tax on professional activities (TAP)

Intra-group transactions are exempted from the tax on professional activities (TAP).

With regard to the VAT

Intra-group transactions are exempted from the VAT.

With regard to registration fees

Deeds pertaining to the transformation of firms eligible to the corporate group transaction regime in preparation for the integration of the said group, and deeds certifying asset transfers between corporations belonging to the group, are exempted from registration fees.

In both cases however, the firms are required to go through the registration process.

Declaration obligations of corporate groups

The annual return

The firms that opted for the group taxation regime are required to submit their annual declaration and corporate income tax (IBS) return forms to the DGE management services. The parent company must prepare a consolidated balance sheet (corporate income tax return form and declaration) and submit it to DGE management services.

Subsidiaries controlled by a parent company must also submit their tax declarations to the same services with the mention “subsidiary member of a group” on their declaration.



Declaration of tax installments by corporate groups

In the first fiscal year covered by this option (the fiscal year of establishment or that of the integration of new firms to the group), each firm, whether it is the parent company or a subsidiary, calculates and makes its own tax installment payments for a period of twelve (12) months, as if it were being taxed separately. These installments are credited against the corporate income tax (IBS) owed by the parent company, calculated on the group's overall performance (consolidated income).

In the following fiscal years, the parent company, which is the only one liable for corporate income tax, will be required to calculate and make tax installment payments on the basis of the group's overall performance.

16.4.2 Financial flexibility granted to corporate groups

Cash operations between corporations of the same group are frequent. The automatic centralization of the company's cash management has the advantage of channeling the credit or debit balances of secondary accounts, or just the credit balances, or all accounting entries of the secondary accounts of member companies, into a single central account. The central account can be that of the parent or of one of the group's subsidiaries.

This technique makes it possible to bypass the banks to obtain loans and cash advances. It does not infringe on the principle of letting lending institutions enjoy a monopoly in this field. Indeed, Article 79 of Ordinance n° 2003-11 of August 26, 2003 pertaining to Currency and Credit, departs from the principle that only a bank or a financial institution may extend credit in the sense given in Article 68 of the law.

Article 79 allows any enterprise to « conduct cash operations with firms having direct or indirect capital ties with it that give one of the firms effective control over the others. »

Moreover, the prohibition forbidding joint stock company directors and the managers and partners of limited liability companies from contracting loans from the company, or from having the company guarantee their commitments to their parties, is lifted when legal persons are involved; a subsidiary may thus extend cash advances or guarantees to its parent company even when the latter sits on the subsidiary's board of directors, or in the case of LLPs, is the firm's partner or manager.

These agreements may be subject to a prior authorization procedure.

Financial aid granted by the managers of one firm to another firm may be deemed contrary to the interest of the former by some of its partners, who are often minority partners.

17 The customs system

17.1 The customs regulation

The liberalization of external trade in Algeria began in the early 1990s.

Today, most products can be freely imported. Restrictive prohibitions provided for by the Algerian regulation essentially relate to the maintenance of public order, public health and the protection of the environment.

Regarding tariffs, the level of protection has considerably diminished. This trend was confirmed when the Association Agreement with the European Union (EU) came into effect in September 2005.

The Finance Act of 2001, which instituted the temporary additional duty (droit additionnel provisoire, DAP), pertained to 500 products. Four years later, in 2005, only 380 products were still covered by the DAP.

It is worth noting here, that the DAP offset the impact on government finance caused by the reduction of customs duties and the abolition of the administrative value and the special additional tax (taxe spécifique additionnelle, TSA). Since 2001, the DAP rate has continued to diminish at the rate of 12% per year.

From January 1st 2002, customs tariffs have changed radically. Three types of customs duties are now in effect, with respective rates of 5%, 15% and 30%.

The administered value system, which previously pertained to 800 products, was abolished and replaced by a DAP whose rate was 60% and applied to 400 products. This DAP was then abolished by the Finance Act of 2006.

The customs tariff is based on the principle of most favored nation status. The agreements concluded with Morocco and Tunisia, which included an exemption from customs duties, were never applied.



With regard to the customs system per se and final importation, the formalities are as follows:

- the customs declaration must be detailed and the supporting documents must be included;
- the detailed declaration is signed either by the declarant (owner of the merchandise), or by a customs broker commissioned to do so by the owner of the merchandise;
- the customs declaration acts as a support for the customs formalities and the control of external trade, as well as the regulation of foreign exchange; it also serves as the basis for the collection of payable duties and taxes and makes it possible to collect statistical data.

The supporting documents

Conformity to the regulatory terms and conditions for access to external trade:

- a copy of the Commerce Register and tax registration card;
- for resale in the same condition, the capital stock of the legal person must be equal or above 20 million (20, 000, 000) dinars and must be completely paid up.

The data pertaining to the transaction are:

- the final invoices or firm contracts;
- the documents pertaining to transportation, insurance and other charges;
- the note detailing the customs value.

Foreign exchange control

- banking domiciliation visa of the final invoice or the firm contract in the case of capital transfers;
- indication of the chosen method of payment (cash, credit line, actual currencies, without payment).

Control of external trade

- prior authorization to import;
- technical, compliance, metrology control certificate or visa.



The authorizations and visas are referenced in the current customs tariff.

The customs clearance of the equipment is subject to the importer's ability to submit the said documents.

It would be advisable to refer to the various customs systems in effect.

The warehouse systems

A distinction should be made between three types of warehouses:

- the public warehouse,
- the private warehouse,
- and the industrial warehouse.

It is in these three types of warehouses that the equipment under customs surveillance is stored.

The accreditation files must be in conformity with the regulatory standards (layout, equipment, security). The general bids are backed by financial guarantees or mortgages (transit bonds) upon presentation of the usual supporting documents.

Purpose of the warehouses:

1. Stockage;
2. Transfer to public warehouses;
3. Reduction of locked-up capital;
4. Abolition of storage charges;
5. Possibility of developing subcontracting activities;
6. Warehousing of supply stocks

The temporary admission system

This applies to equipment tied to the production and execution of works carried out as part of performance contracts.

It facilitates international trade and commercial prospecting. It also makes it possible to use and rent material for work, production and transportation.

The implementation of this system is conditional to a prior authorization by the customs service. It is the customs service that sets the duties and



taxes suspension rate. The length of the temporary admission system depends on the length of the contract.

Merchandise earmarked for consumption and merchandise whose exact nature cannot be identified by the customs service are not eligible for the temporary admission system.

Temporary admission for active improvement

The reason for this formula's existence is to enable the importation of the inputs that the enterprise needs in order to carry out the production it intends to re-export once the transformation has been completed.

The customs administration grants the temporary admission authorization and sets the time limit of the adopted system which must coincide with the time necessary to perform the operation.

It is also necessary to note that the operations eligible under this system are punctual, not systematic.

Customs value

Determining the country of origin of a merchandise is indispensable for:

- calculating the amount of applicable rights,
- knowing the procedures pertaining to the control of external trade,
- establishing external trade statistics,
- applying, if need be, special regulations.

17.2 The Euro-Mediterranean agreement establishing an association between the European Community and Algeria:

The expected evolution of the Association Agreement signed in Valence on April 22, 2002 between on one side, the Popular Democratic Republic of Algeria, and the European Community and its member countries on the other.

This agreement was ratified by Algeria on April 27, 2005, after its adoption by the Algerian Parliament on April 26, 2005.

WHAT ARE THE PROVISIONS OF THE AGREEMENT?

Tariff preferences



They pertain to both customs duties and taxes having equivalent effect (DAP), according to the projected concession scheme and the nature of the imported merchandise.

The industrial products that will be admitted completely exempt from customs duties and taxes having equivalent effect are included in a nomenclature of 2076 tariff lines pertaining to raw materials and other inputs earmarked for operations.

The system of quotas

The tariff rate quota is a system limiting merchandise that can benefit from commercial preferences. It makes it possible to limit quantities that will be admitted with a total or partial reduction of customs duties and taxes having equivalent effect.

Once the quota is reached, imports are not turned back, but clear customs under the terms and conditions of ordinary law, namely with the payment of customs duties.

Preferences will be granted in accordance to the principle of “first come, first served” which consists in allowing customs clearance under preferred conditions until the terms fixed by the quota are reached. Imports arriving after the quota has been reached are allowed in with the payment of duties and taxes.

The rules of origin

Only Algerian or EU merchandise may benefit from the preferential tariffs provided for in the agreement. In this regard, the certificate of circulation EUR. 1 constitutes proof of origin.

In order to be considered as being of Algerian or EU origin, the merchandise must fulfill conditions and criteria set by Protocol n° 6 of the Association Agreement.

HOW TO BENEFIT FROM THESE PROVISIONS?

Except for the application of the provisions of Article 44 of the Agreement, which pertain to the adequate and effective protection of intellectual, industrial and commercial property rights, community merchandise imported directly (direct transportation) from the EU, from September 1, 2005, must be declared, whether the merchandise is subject to quotas or not.



Merchandises not subject to quotas

They must be declared under the clearance for home use system with a declaration code bearing number 1025.

The origin of the merchandise must be from the EU (codes of 25 countries or EU code = 599).

A EUR. 1 certificate indicating the EU origin must be attached.

The source must also be from the EU (direct transportation rule). In the case of transit by Tunisia or Morocco, proof must be made that the merchandise has always remained under customs surveillance (Protocol 6; Art. 14).

Merchandise subject to quotas

Besides the terms mentioned above, the advantages provided for will only be granted on the basis of the availability of quotas. It is the quota management system that has the responsibility of centralizing the data and distributing daily available quantities according to time-stamping (in other words, according to the order in which the declarations are recorded each day).

With regard to exports, in order to be able to benefit from preferential access to the EU market provided for in the Agreement (Article 8, as well as Protocols 1, 3 and 5), Algerian merchandise exported towards the European Union must be accompanied by a EUR 1 certificate of origin.

Exporting firms have the possibility of contacting chambers of commerce and industry in order to obtain EUR 1 certificates as well as all the related documents.

The EUR 1 certificate of circulation is issued by the customs services in cases where the merchandise subject to a certificate is considered as a product originating from Algeria. This certificate is stamped by the customs bureau in charge of export operations management, as soon as the exportation has been carried out or has been insured.

THE VARIOUS CUSTOMS CHANNELS

We are only interested in the green channel here, which makes quick customs clearance possible. Nearly all the goods, products and equipment covered by the Association Agreement are designed to benefit from this system. However, it will be necessary to wait for instructions originating

from the General Customs Directorate addressed to the relevant authorities and determining the list of products, as well as their tariffs.

In fact, all imported products, goods and equipment, given their importance for the implementation of the Growth Support Complementary Plan (2005-2009), should benefit from the facilities provided by the green channels.

18 Social systems

18.1 The main characteristics of labor law

Beginning in 1988, the Algerian legislation underwent a complete overhaul in the areas touching on the social and economic life of the country, particularly with regard to labor law.

The changes made were in line with the opening of the Algerian market to the global economy and to potential domestic and foreign investors. Thus, employment relationships were redefined compared to what they had been in the old legal texts, which gave a great deal of power to institutions and organizations representing workers, such as the former Socialist enterprise management (Gestion socialiste des entreprises, GSE) in the public sector, or the provisions pertaining to work discipline and the power of unions, in the private sector. Employment relationships in the private sector were in fact the topic of special legislation (Ordinance n° 75-31 of April 29, 1975).

Under the old texts, it was difficult to fire a worker for disciplinary, or even economic, reasons, without raising the ire of the union. A type of unionism called “managerial unionism,” in the sense of the old socialist ideas, was quite popular at a certain time. More often than not, workers were reinstated by the relevant social authorities.

This legislation thus underwent major transformations and several texts have been adopted, giving more latitude and flexibility to employers.

Act n° 90-11 of April 21, 1990 pertaining to employment relationships

It is the fundamental law for all employment relationships. Just like the previous legal texts, it refers to the notion of employment relation rather than that of employment contract. This law was modified several times in order to make it better adapted to the new context and the needs of the job market.

Moreover, there are collective bargaining agreements specifying the rules and procedures in the major economic sectors.

Several other regulatory texts later made certain provisions of the aforementioned law effective or regulated this or that aspect of the corporate life of enterprises.

Collective bargaining

A collective bargaining agreement is a written agreement regarding the terms and conditions of employment and work as a whole for one or more professional categories. It may be concluded for a definite or indefinite period of time. The law requires from employing organizations that they ensure sufficient publicity to collective bargaining agreements.

Internal rules

In firms employing 20 workers or more, the law requires the drafting of internal rules that must be submitted to the organs of representation, when they exist, or to workers' representatives if they do not, for discussion.

Internal rules are a document by which the employer sets mandatory rules pertaining to the technical organization of work, hygiene, safety and discipline. The employer establishes the definition for professional errors, the degrees of corresponding sanctions and the procedures for their implementation.

Internal rules must then be filed with the labor authorities with territorial jurisdiction, for approval, within a time limit of 8 days.

Exercising the right to unionize and unions

The right to unionize is recognized to workers as well as employers, who can form unions to defend their moral and material interests. The law only requires that these organizations be totally distinct from any association that is political in nature. In addition to the usual requirements pertaining to the enjoyment of civil and civic rights and to majority, only people of Algerian origin or who acquired Algerian nationality at least 10 years earlier, are authorized to found a union.

Organs of representation

Representation is ensured within the employing organization:

- When there are several workplaces, at the level of any single workplace where there are 20 workers or more, by personnel delegates and at the employing organization's headquarters, by a representative committee made up of elected personnel delegates.
- If there is only one workplace, the personnel delegate enjoys the privileges granted to the representative committee.

In principle, the representative committee receives all the information, which is communicated by the employer once every quarter, regarding the activities of the enterprise, but mostly on those aspects pertaining to employment, health and workplace safety. The committee takes the appropriate measures to ensure that the employer respects these rules. It voices its opinion on annual plans, work organization, restructuring projects, the redeployment and reduction of the work force and the management of charities. When the firm has more than 150 workers, the representative committee designates one or more delegates to represent the workers within the board of directors or the supervisory board, if it exists.

Labor inspectors play:

- a role of adviser and information provider, advising the parties involved in employment relationships and play a conciliatory role, in an attempt to prevent conflicts and settle collective work disputes;
- a role of controller, by ensuring the respect of the provisions of the laws, rules, collective bargaining agreements, etc.;
- a role of sanction enforcer, by observing and recording violations.

The settlement and prevention of collective bargaining agreements and the right to strike are also covered by specific texts.

The settlement and prevention of collective bargaining agreements, as defined by Act n° 90-02 of February 6, 1990, put into place a consultation process between employers and workers' representatives to avoid conflicts, and a resolution process to settle those conflicts when they occur. A mediation process, which consists in designating by common agreement a mediator for resolving disputes, is provided for, as well as an arbitration procedure to be chosen by the parties.

The right to strike is recognized and regulated by the same text as above. Strikes only occur when the amicable settlement efforts mentioned above



have failed and after pre-notification of at least 8 days after its notification to the employer and to the labor authorities with territorial jurisdiction.

This right to strike is subject to limitations imposed by the necessities of social life, which are minimal services, requisitions and prohibitions targeting some activities and jobs.

The books and registers that all employers are required to keep are:

- the register of observations and formal notices from the labor authorities,
- the payroll journal,
- the paid leave register,
- the personnel register,
- the register of foreign workers,
- the register of technical verifications of industrial facilities and equipment,
- the hygiene, workplace safety and medicine register,
- the workplace accidents register.

Terms and conditions pertaining to hiring

There is a total freedom to hire:

- either directly, by the employer himself,
- or through the National Employment Agency (Agence nationale de l'emploi, ANEM), or the Local Employment Agency (Agence locale de l'emploi, ALEM), which are public agencies.

There are no private recruiting agencies.

Generally speaking, access to work is guaranteed by law and no discrimination between workers with regard to employment, compensation or working conditions based on age, gender, social or marital status, family ties, religion or political beliefs, membership to a union, is permitted.

All forms of contract are acceptable, spoken or written, without any concern for formalities. In the absence of written details, the work



contract is deemed to be indefinite in length with everything that that implies.

There are a certain number of texts organizing specific systems (particular status) for certain categories of workers, such as corporate managers, the navigating personnel, in the case of air and sea transportation, the personnel of merchant ships and fishing boats, home workers, journalists, artists and actors, commercial representatives, elite and performance athletes and house servants.

Corporate executives are subject to the provisions of Executive Decree n° 90-290 of September 29, 1990. The work contract of the manager/executive is concluded with the administrative body of the joint stock company, namely the board of directors or the supervisory board. The contract defines the rights and powers granted by the board to the manager/executive. It pertains to the principal salaried manager and the executive officers assisting him. The rights and obligations of corporate executives, including their compensation, are not subject to collective bargaining.

The legislation applies to Algerian and foreign salaried employees.

Algerian salaried employees

The hiring is done freely and the work contract may be of definite or indefinite length, in those cases provided for in the legislation.

Contract of indefinite length

In the absence of written details, the work contract is always deemed to be of indefinite length. It can be proven by any means.

The same contract of indefinite length may be concluded on a part-time basis, but never for less than half the legal workweek:

- when the volume of work does not make it possible to retain the services of a full-time worker,
- when the active worker asks to work part-time for family or personal reasons.

Contract of definite length

It may be concluded for part-time or full-time work:

- when it pertains to performing non-renewable duties or services,



- to replace a permanent salaried employee who is temporarily absent,
- to perform intermittent, periodic works,
- when there is a surplus of work or when seasonal reasons justify it.
- when it pertains to activities or jobs of limited length or which are temporary by nature.

In all cases, the work contract must set the length and justify it. The labor inspector verifies that these provisions are being respected.

Under age and handicapped people

The hiring age may not be less than sixteen years old, except in the case of apprenticeship contracts. The written authorization of the legal guardian is an essential condition in this case.

Work that is dangerous, unhealthy and harmful to a person's health or moral is prohibited to minors.

A certain number of positions are in principle reserved to handicapped people. But that provision does not much have effect in practice.

Trial period

The newly hired worker is usually subjected to a trial period which varies according to his qualifications. The trial period may last up to 6 months for low-skilled workers and up to 12 months for jobs requiring higher skills.

The trial period is determined in the collective bargaining agreements for each category of worker.

In practice, the trial period is one month for the worker without qualifications and from 3 to 6 months for executives. The trial period is taken into account in the calculation of seniority, when the worker is confirmed in his job.

During the trial period, the contract may be terminated by either party, without prior notice or compensation.

Legal workweek and the national guaranteed minimum wage

The legal workweek is set at 40 hours in normal working conditions. It is spread over 5 working days, from Saturday to Wednesday inclusive.



The weekly rest period is set on Thursday and Friday, except for the banking sector, which remains open on Thursday and closed on Saturday, as well as administrative services requiring direct contact with the public.

The establishment and partitioning of the work schedule within the week are established in the collective bargaining agreements.

The length of the effective work day must never go beyond 12 hours.

When work schedules are established under the continuous work session system, a rest period must be granted. It may not go beyond one hour, of which thirty minutes are considered as working time. In practice, the workday is often continuous. Wednesdays end a little earlier.

This length of time may be reduced for people performing tasks that are particularly arduous and dangerous, just as it can be increased for certain positions involving periods of inactivity.

In agricultural operations, the legal number of work hours is set at 1,800 hours a year, distributed according to the requirements of the activities.

It is possible to resort to overtime, but it must be done in order to meet an absolute need and be exceptional in nature.

Overtime may not exceed 20 % of the legal workday and the total period of work may not exceed the maximum set by law, namely 12 hours a day.

In the cases mentioned below only, this maximum may be exceeded, after mandatory consultation with workers' representatives and labor inspectors:

- to prevent imminent accidents or repair damages caused by accidents,
- to complete works whose interruption could, due to the nature of the works, cause damages.

Overtime work gives rise to pay increases which cannot be less than 50 % above the normal hourly rate.

Night work between 9 o'clock P.M. and 5 o'clock A.M. is considered as such.

It is prohibited:

- to workers of both genders who are less than 19 years of age,
- to female personnel.



However, some exemptions may be granted by the labor inspector, when the nature and the special characteristics of the position make it necessary.

Shift work is authorized and largely used in practice. It gives rise to an indemnity.

The national guaranteed minimum wage

Compensation for work may be a salary and/or a revenue proportional to performance. It is set by a common agreement between the salaried employee and the employer, based on the professional qualifications determined by the collective bargaining agreements applicable to the employer.

The national guaranteed minimum wage for a 40-hour workweek, which is 173.3 hours of work per month, is 10,000 AD per month.

Legal rests and leave

Weekly rest period

Set on Fridays in principle, except when economic imperatives do not allow it, there are public and paid holidays which are set by laws and usually correspond to religious holidays and holidays tied to the country's political history, such as the date of the launching of the war for national liberation (November 1st), and that of Independence (July 5), etc.

When respecting the weekly day of rest is incompatible with the nature of the activity, employers affected by this situation are authorized by law to grant weekly rest days on a rotational basis.

A compensatory rest of equal length is granted in the case of work on a legal holiday.

The worker is also entitled to overtime pay.

In retail structures and establishments, the weekly day of rest is determined by an order from the wali, according to the procurement needs of consumers.

Annual paid leave

Workers are entitled to an annual leave paid for by his employer. Workers may choose not to take it. This right to a leave is based on an



annual period of work extending from July 1st of the year preceding the leave to June 30 of the year of the leave.

If a new worker is hired, the starting point is the date of hiring.

Any period of more than 15 working days during the first month of employment of the worker is considered equal to one month of work for the purpose of calculating the leave.

In the Northern region of the country

The leave is two days and a half per month of work and its length may not exceed thirty calendar days per year of work.

Any period equal to 24 working days or 4 weeks of work is equivalent to one month of work.

This period is equal to 180 working hours for seasonal workers.

In the Southern regions of Algeria

An additional leave, which cannot be less than 10 days per year of work is added.

Collective bargaining agreements set the terms and conditions for granting this leave.

The length of the leave may be increased for workers engaged in work that is especially laborious from a physical and stress-related standpoint.

The employment relationship may not be suspended nor terminated during the annual leave.

The annual leave compensation is equal to one twelfth of the total compensation collected by the worker during the year of reference or the year preceding the leave.

The annual leave compensation is paid by a specific fund for workers in professions that are not usually filled by the same employer on a continuous basis. In such cases, employing organizations must become members of the fund and pay dues.

Absences

Outside of the cases specifically designated in the law or in the regulations, absences are not compensated. Absences without loss of compensation are tied to union or personnel representation, according to



time limits set by legal provisions or provisions contained in the collective bargaining agreement, as well as to professional or union training authorized by the employer and to academic or professional exams.

The following family events entitle workers to a compensated absence of 3 working days:

- wedding of the worker,
- birth of the worker's child on the basis of subsequent proof,
- wedding of one of the worker's descendants,
- death of a parent, grandparent, descendant and first-degree relative of the worker or his spouse, and death of the worker's spouse, on the basis of subsequent proof,
- circumcision of a child of the worker,
- pilgrimage to a Holy site, one time during the professional career of the worker.

During the periods before and after the delivery of a child, female workers benefit from a maternity leave in conformity with the law in effect. The period of leave is 14 consecutive weeks. It is taken between 6 weeks at the earliest, and one week at the latest, before the expected date of delivery. It is 100 % paid by the social security Fund.

Workers may also benefit from facilities, under conditions set by the employer's internal rules.

Training and promotion while employed

Each employer usually employing 20 salaried workers or more is required to take measures contributing to the training and improvement of workers, according to a program subject to the opinion of the representative committee. The worker is required to take part in these training courses.

The worker designated by the employer is required to contribute actively to the training and improvement efforts.

Subject to the employer's agreement, the worker who registers for training or improvement courses may benefit from an adapted work

schedule or a special leave during which his position is maintained for him.

The employer is also required to take measures favoring the apprenticeship of young workers between the ages of 15 and 25 years old. The employer is exempted from the payment of fringe benefits throughout the length of the apprenticeship contract. The apprenticeship takes place within the framework of a written contract detailing all the terms and conditions. The apprentice benefits from a student stipend paid by the State, for between 6 and 12 months, and by the employer beyond that.

The apprenticeship is conducted by a training organization

Amendment, suspension and termination of the employment relationship

Amendments of the work contract occur when the law, the regulation, the collective bargaining agreements introduce rules that are more favorable to the workers than those stipulated in the contract itself. A common desire by the parties to the contract may also lead to an amendment.

This rule is interpreted very strictly by Algerian jurisprudence. Indeed, Algerian jurisprudence does not distinguish between a substantial modification and a non-substantial modification of the work contract.

The absence of the salaried worker's agreement results in the prevention of any amendment to the contract, as minor as it may be.

The suspension of the employment relationship occurs legally as a result of:

- the agreement of the parties; the employee is laid off,
- sick leaves,
- the mandatory performance of national duties (military service),
- the exercise of an elected public office,
- the imprisonment of the worker, as long as a final conviction has not been rendered,
- a disciplinary decision suspending the performance of duties,
- the exercise of the right to strike,
- a leave of absence without pay.

The worker is reinstated to his position or to a position with a compensation similar to that of the position he had before the suspension.

The termination of the employment relationship occurs as a result of:

- the voiding or the legal abrogation of the work contract,
- the end of the work contract of definite length,
- the resignation, which is a right recognized to the worker to quit his position, after a period of notification usually equal to that of his trial period,
- a total disability to work,
- the termination of the legal activity of the employer,
- retirement,
- death,
- firings for economic or disciplinary reasons.

When justified for economic reasons, the employer may reduce the work force. This reduction is done by a collective lay-off which translates into simultaneous individual firings, decided after collective bargaining. It results in the employer being prohibited from hiring workers with the same qualifications to work in the same workplaces.

The reduction of the work force can only occur once all measures to preserve the jobs, such as reducing the number of work hours, resorting to part-time work, pensioning, transferring to other activities, have been exhausted. In the case of transfers, the worker who refuses the proposed transfer still benefits from an indemnity associated with manpower reductions.

Lay-offs are conducted on the basis of seniority, experience and qualifications for each position.

A plan protecting salaried workers liable to lose their job for economic reasons has been implemented.

This plan requires that any employer, who employs more than 9 salaried workers and who wishes to readjust his work force, use all the means mentioned above. The salaried worker benefits from social protection measures ranging from early pension to employment insurance. The employment insurance and early retirement systems are funded by dues

paid by employers and salaried workers of all sectors. The salaried worker benefiting from an early retirement is not entitled to any indemnity other than the payment of paid leaves.

Firings for disciplinary reasons occur in the case of major errors committed by workers. Internal rules and collective bargaining agreements list the errors considered major.

The firing must be carried out in conformity with the procedures set by the law and the internal rules, particularly with regard to:

- the notification of the decision to fire the worker, which must be in writing,
- a hearing for the worker, who can be assisted by another salaried employee of the enterprise.
- Procedures for settling individual work conflicts are of two types and may be set in the collective bargaining agreements:
 - the internal procedure: the worker submits the dispute to his direct hierarchical superior, who must answer him within 8 days; as failure to do so will result in the worker being allowed to petition the authority in charge of personnel management or the employer directly. Personnel management or the employer must answer the worker within 15 days, in writing, and justify his total or partial refusal as the case may be.
 - the litigious procedure: should the internal procedure fail, the dispute must, except in the case of a bankruptcy, of legal settlement, or if the defendant resides outside of the territory of the labor inspection authority with jurisdiction, be subject to:
 - an attempt at conciliation before the Bureau of Conciliation, which is made up of two representatives of the workers and two representatives of the employers,
 - should the attempt at conciliation fail, the Bureau of Conciliation petitioned by the plaintiff, through the labor inspector, draws up a failed conciliation report,
 - the interested party then petitions a court with jurisdiction in social matters and presided by a professional judge assisted by assessors chosen from amongst workers and employers,

- the court then issues a ruling, with no possibility of appeal, except with regard to jurisdiction.

Jurisprudence tends to favor the salaried worker and it is not rare to see a judge order the reinstatement of the worker with payment of salaries, accompanied by damages and interests, and that in spite of the relaxation of the legal provisions in this area. The judges pay special attention to the respect of procedures.

Serious wrongdoings, with respect to the law on labor relations, liable to lead to the immediate firing without notice or indemnity are:

- punishable wrongdoings committed while working,
- refusal to follow instructions tied to one's professional obligations without just cause,
- the disclosure of secrets tied to professional activities,
- participation to a concerted collective work stoppage in violation of legal provisions,
- acts of violence,
- refusal to perform a notified requisition order in compliance with legal provisions,
- alcohol or drug consumption in the workplace.

It is important to point out that Algerian jurisprudence, at the highest level, considers that the only cases of serious wrongdoings to be considered by the employer (and leading to the firing of the salaried worker as a result) are precisely the 7 cases of legal wrongdoings listed above, with the exclusion of all other major wrongdoings defined in internal rules.

The other cases of serious wrongdoings defined by the firm's internal rules thus become inoperative and may not lead to firing.

A work certificate with the hiring and termination dates, as well as the positions filled by the worker and the time periods corresponding with each position, must be issued to the worker.

The worker who is laid off without having committed serious wrongdoing is entitled to a period of notice equal in length to the trial period corresponding to his professional category.

During that period, the worker is entitled to two hours a day which are paid and taken concurrently so that he may look for work.

The employer can free himself of this obligation regarding the period notice by paying the salaried worker an amount equal to the total compensation of the period of notice. This period of notice exists even in cases where the firm's activities have ceased.

Finally, it must be pointed out that in cases of modifications to the legal status of the employer, employment relationships in effect on the day of the modifications remain the same. Such is the case for mergers and acquisitions of corporations.

18.2 Social security, retirement and unemployment

The social security system in Algeria is governed by a great number of legal texts. This system is compulsory in nature and gives social security funds special powers and privileges with regard to ordinary law.

Subjection and affiliation to social security

Any employer, whether they are physical or legal persons (including individuals employing people on their own behalf, as well as non-salaried workers exercising on their own behalf) are required to submit an affiliation application with the Social Security Agency of the wilaya with territorial jurisdiction, within ten days after beginning operations.

In addition to the forms printed by the social security funds, this affiliation application must be accompanied by certain documents such as the Articles of incorporation of the firm, the trade register, the registration with the tax authorities, etc.

The employer is also required to submit an affiliation application for any salaried worker, within ten days following his hiring, to the Social Security Agency of the district where the workplace is located.

The file must contain the following documents:

- an application for an affiliation declaration for the socially insured (printed),
- a birth certificate issued by the commune where the insured was born,
- a file of the family civil status, if the insured is married.



If the worker fails to affiliate within the required deadlines, the employer may face sanctions and the salaried worker could be affiliated automatically at his request or that of his legal representatives. The employer faces sanctions for failing to submit a declaration of subjection as well as for failing to declare a salaried worker.

Within thirty days following the end of the calendar year, the employer is required to submit to the Social Security Agency a nominal declaration of the salaries and the salaried workers showing the compensations collected from the first day to the last day of the year, as well as due contributions.

In the case of failure to submit the declaration mentioned above, the Social Security Agency may set, on a temporary basis, the amount of the said contributions, on the basis of the contributions paid during the previous month, quarter or year, calculated presumptively according to any element of assessment available. The amount of the contribution temporarily fixed is then increased by 5 %; in addition to this, a 10% penalty on due contributions must be paid. Failure of a salaried worker to affiliate may lead to the employer being condemned to pay a fine ranging between 10,000 to 20,000 AD per non-affiliated salaried worker and a prison sentence ranging between 2 to 6 months.

Any person of any nationality exercising a salaried activity or a similar activity in Algeria is mandatorily affiliated to social security.

Retirement

There is a single retirement system based on the standardization of rules relative to the appraisal of the rights, advantages and financing. The retirement pension constitutes a monetary right, personal and life-long. The retirement consists in a direct pension awarded to the worker, a pension for the surviving spouse, the orphan or the parent or grandparent.

In order to benefit from a retirement pension, the worker must:

- be at least 60 years old for men, and 55 years old, for women,
- have worked for at least 15 years.

However, the worker may enjoy retirement benefits immediately before the age mentioned above, when:

- the worker has at least 32 years of actual work, without any age requirement (100 %),

- the worker is at least 50 and has 20 years of actual work, at the worker's request (proportional).

There are exemptions to the age condition tied to the harmfulness of the position occupied, to total and definite work disability, to being a former moudjahid, to being a son or daughter of chahid (martyr of the national war of liberation), etc.

When the worker reaches retirement age without having fulfilled the requirements with regard to work and contributions, he may benefit from a validation of up to 5 extra years of insurance, provided that his employer funds the repurchase with twelve monthly contributions for each year that was bought back and a lump sum contribution equal to 3 times the monthly salary subject to contribution for each repurchased year.

The amount of the pension annuity is set at 2.5 % of the monthly salary of the last five years multiplied by the number of years of contribution (for example 32 years x 2.5 % = 80 % of average pensionable earnings). Except for former moudjahidines, in which case it can be 100 % without being less than 75 % of the national guaranteed minimum wage and superior to 15 times the same salary.

Organization of unemployment insurance

Faced with the risk of jobs being lost as a result of the restructuring of the Algerian economy, notably with the privatization of public sector enterprises, the legislator has taken measures to organize and ensure the protection of salaried workers.

Unemployment insurance is meant for salaried workers of the economic sector who lose their jobs involuntarily, for economic reasons. It does not concern salaried workers who have reached the legal retirement age, nor those who are entitled to an early retirement, nor even those who lose their jobs temporarily or partially for less than half of the legal workweek.

The management of the unemployment insurance system is entrusted to a National Autonomous Fund (Caisse autonome nationale, CNAC). Expenditures for unemployment insurance benefits are funded by salaried workers and employers.

The funding of the unemployment insurance system is partly ensured by salaried workers (0.5 %) and partly by employers (1.75 %). Employers



of all economic sectors, including the State, pay the fraction of the social security contribution assigned to the funding of the unemployment insurance system on behalf of salaried workers.

The terms, conditions and frequency of the payments are those provided for in the legislation with regard to the collection of social security contributions.

The employer who has experienced a termination of activity or a reduction of the work force duly approved by the labor inspector must submit a detailed list of the salaried workers who will benefit from the unemployment insurance system to the National Unemployment Insurance Fund (Caisse nationale d'assurance chômage). This list must be submitted to the labor inspection authorities for a prior visa and to the local employment agency for registration on the list of job seekers.

For all salaried workers with seniority equal to or above 3 years, the employer must pay an eligibility establishment contribution (contribution d'ouverture des droits, COD) calculated at the rate of 80 % of one month of salary per year of seniority, with a limit of 12 months of salary.

The terms and conditions of payment are negotiated with the unemployment insurance organization, but, in all cases, the employer must pay 2 months of salary per salaried worker involved, as an advance on the payment schedule, which may not exceed 24 months, from the date of signature of the agreement.

The salaried worker being admitted to the unemployment insurance system is entitled to all the social security benefits due to salaried workers.

Assessment basis, payment, control and litigation

The assessment basis of contributions

The assessment basis of social security contributions is made up of all salary components or revenues proportional to work performance, with the exception of:

- family related benefits (schooling benefits, single salary indemnity),
- indemnities linked to expenses (meal allowances, vehicle allowance ...),

- exceptional allowances and indemnities (lay-off pay, retirement pay ...),
- indemnities linked to special housing and remote conditions (mobile home housing, shift work ...),
- the salary subject to contributions may never be, under any circumstance, inferior to the national guaranteed minimum wage,
- for pensions or annuities equal or inferior to the national guaranteed minimum wage, the people concerned are exempt from payment of those contributions.

The rate of the social security contribution is 35 %, broken down as follows: 26 % to be paid by the employer and 9 % to be paid by the worker.

Segments	Share of the employer %	Share of the salaried worker %	%Total
Social insurance	12,5 %	1,5 %	14 %
Work injuries / illnesses	1,25 %	-	1,25 %
Retirement	10,5 %	6,75 %	17,25 %
Unemployment insurance	1 %	0,5 %	1,5 %
Early retirement	0,25 %	0,25 %	0,5 %
Share of the social welfare work fund	0,5 %	-	0,5 %
Total	26 %	9 %	35 %

Payment

The payment of social contributions is the employer's responsibility. The employer is required to collect the share owed by the worker each time a payment is made as compensation. The worker may not oppose it. Social security contributions are subject to a single payment by the employer to the social security organization with jurisdiction over the territory where the employer is active:

- within thirty days following the end of each calendar quarter, if the employer employs less than ten workers,

- within the first thirty days following each month's deadline, if the employer employs more than nine workers.

Failure to pay the social security contributions will result in a 5% increase applied to the amount of due contributions.

Verification

Any employer may be subject to verification performed by duly sworn agents of the social security agencies accredited by the Minister in Charge of Social Security. The agents are sworn in by a tribunal. Employers and workers are required to submit all the documents and information needed by the agents to perform the verification. The agents are bound by professional secrecy.

Litigation

Social security litigation is governed by the provisions of Act n° 83-15 of July 2, 1983, which has been amended several times.

That act distinguishes between three types of litigation:

- medical litigation, which pertains to disputes relative to the health situation of the insureds and their beneficiaries,
- technical litigation, which pertains to all medical activities with regard to social security.

General litigation:

- failure to affiliate, as it is compulsory,
- failure to declare the affiliation of one or more salaried workers to the fund with jurisdiction,
- failure to pay contributions that may lead to criminal proceedings,
- failure to pay contributions within the periods and deadlines provided for in the law and which leads to increases and late-payment penalties,
- dispute pertaining to the amount of the declared salary used as the assessment basis for calculating the contribution,
- failure to declare a work accident or a professional illness.

The principle established by the law requires that all disputes pertaining to general litigation be presented to review commissions before the

judiciary authorities with jurisdiction (the tribunal in charge of social matters in this case) are petitioned.

Review commission of the wilaya

This commission rules without appeal with regard to requests for remission of penalties and increases. The petition must meet the following conditions, as failure to do so will result in inadmissibility:

- within the two months that follow the disputed notification, if the notification pertains to social security benefits,
- within one month for anything that pertains to disputes having to do with affiliation, the collection of contributions, increases and late-payment penalties.

Referral to the commission is done;

- either by registered mail with acknowledgment of receipt,
- or by application to the Secretariat of the Commission in exchange for a receipt.

National Prior Review Commission

The National Prior Review Commission may be petitioned as part of an appeal of all the rulings issued by the Wilaya Commission with regard to all disputes other than those pertaining to late-payment penalties and increases.

The terms and forms for referral to the National Commission are similar to those of the Wilaya Commission.

It must rule within thirty days from the day of referral to the commission.

The reports of these commissions are transmitted to the relevant authorities within the next fifteen days.

If the dispute persists and all previously mentioned possible review proceedings have been exhausted, the matter is then put to the tribunal with jurisdiction over social matters.

The matter must be referred to the tribunal within the month following notification of the decision to the employer or within three months following a review petition left unanswered.



These procedures notwithstanding, the Social Security Agency remains a preferred creditor and acts against the duly notified employer:

- either through the tax roll,
- or by using forcible measures,
- or by other procedures, such as garnishment, foreclosure, etc.

Collection through the tax roll is launched by the director of the Social Security Agency who signs the amount claimed. That document is certified and made enforceable by the wali before being transmitted to the direct tax collector, who carries out the order as if he were collecting taxes.

The procedure involving forcible measures is also initiated by the director of the Social Security Agency, before being certified and signed by the president of the tribunal with jurisdiction over social matters. Notice of the measures is given by the sworn verification agent. It is enforced like a court judgment.

The independent consultant and the work contract

There are no provisions applying specifically to independent consultants in the law governing employment relationships. The independent consultant is an expert in a well-defined area who performs services outside the work contract. The consultant may be a physical person or a legal person.

If we are in the presence of a consultant with Algerian nationality, he is compensated as such, and the organization using his services will deduct a lump sum as a tax on global income.

If we are in the presence of a non-resident foreign consultant, a 24% withholding tax at source will be made by the employing organization.

If the consultant is a resident, he will be treated as an Algerian consultant. He is subject to the same rights and obligations depending on the manner in which he exercises his profession, subject to having obtained a residence permit and a settlement permit.

18.3 The status of the expatriate

Labor law

In the private economic sector



The employer may hire foreign workers if there are no skilled Algerian workers of the same level.

In principle, only foreign workers at the level of technician can be hired. However, workers from countries that have concluded treaties with Algeria and those enjoying the status of political refugee can work in Algeria. However, there are exceptions linked to the nature of the activities.

In order to work and reside in Algeria, the foreign worker must obtain a permit or a temporary work authorization and a resident card upon presentation of a work permit. The length of the work permit is two years with the possibility of renewal. Application for resident cards must be sent to the police station with territorial jurisdiction and must be accompanied with copies of the passport, the work contract, the accommodation certificate, as well as photos and revenue stamps. The length of the resident card will be that of the work contract.

When the contract is terminated, the employer is required to inform the competent national employment authorities within 48 hours. The employer is also required to make a list of the names of his foreign employees in the first quarter of each year.

In the public service sector

National and local public services may hire foreign employees on a contractual basis. These employees are essentially high level teachers and instructors. The initial contract is for a maximum of 2 years and may be renewed several times for a maximum of one year at a time. The personnel thus hired is subject to the supervision of Algerian authorities in the exercise of their functions and may not take part in political activities. They benefit from the same rights and are subject to the same obligations as their Algerian colleagues.

Taxes

According to Algerian tax laws, the fiscal domicile of the following persons is in Algeria:

- foreign nationals who possess housing in Algeria for a period of at least one year,
- persons who receive earnings or revenues whose taxation is assigned to Algeria by an international treaty pertaining to double taxation.

For salaried workers, in the case of:

- a foreign enterprise that does not have a permanent professional establishment in Algeria, but which employs foreign salaried workers, the firm must, when paying taxable salaries and indemnities, make a deduction at source. The deduction is set at 20 %, in the case of technical and executive staff exercising in certain sectors (such as hydrocarbons, iron and steel mills, pharmaceuticals and medical devices, and tourism), if they have gross minimum monthly revenues of 80,000 AD.
- a company incorporated under Algerian law or a foreign enterprise with permanent facilities in Algeria. The enterprise also makes a deduction at source on the salary of salaried workers, based on the schedule in effect for local salaried workers.

Repatriation of salaries

The foreign worker who wishes to have the right to have his salary transferred must hold a work permit or have a temporary work authorization and a duly executed work contract accompanied, as the case may be, by a visa of the General Directorate of the Civil Service and/or the Ministry in Charge of Labor.

The same possibility is also offered to workers who are not subject to the obligation to have a work permit and who hold a declaration receipt.

Principle

The salary, divided into a transferable part and a part payable in Algerian dinars, is freely negotiated and established by a contract between the employer and the foreign worker.

The foreign worker must:

- be hired by an administration or an economic agent incorporated under Algerian law,
- fill-in a transfer application (model supplied by the paying domiciliation bank),
- supply a true copy of the original work contract,
- supply a true copy of the original work permit,

- supply a special pay slip every month with regard to the transfer of the salary, issued by the employer in a single original copy.

Exceptions

The exceptions concern:

- The foreign workers governed by a treaty concluded between Algeria and their government or an international body. They are subject to the special rules set by the treaty.
- The foreign salaried workers employed by foreign firms operating in Algeria within the framework of the performance of work or services contracts. They are subject to the terms and conditions of the contract.
- The foreign workers who do not have the status of salaried worker, who are hired for a short time and who are compensated by contract or by fee. They are subject to the transfer conditions set by the contract.
- The foreign workers employed as contingent workers and doing transfers for other activities.
- The foreign workers who are shareholders of firms incorporated under Algerian law which produce goods or perform services.

Social security

Outside of treaties, expatriate salaried workers are subject to Algerian legislation and their employers make deductions at source as they would for Algerian salaried workers.

Treaties have been signed with certain countries such as Belgium, Tunisia, Romania and France. These treaties enable seconded workers to remain affiliated to the social security fund that was covering them, for a period of time strictly defined by the treaties.

In the case of France, expatriate workers remain affiliated to the social security fund that was covering them before they were seconded, for up to 3 years. Social security dues of the French workers are channeled to the French fund.

A certificate is issued by the original fund to justify the non-payment to Algeria's social security fund.

19 The Algerian justice system

The Algerian justice system is a pyramidal system structured as follows: the Tribunal, the Court and the Supreme Court. Organic Law n° 98-01 of May 30, 1998 created a State Council destined to replace the courts and the Supreme Court with regard to jurisdiction over administrative matters. Furthermore, Organic Law n° 98-03 of June 3, 1998 created a Tribunal of Conflicts with the power to rule on jurisdictional conflicts between institutions of the judicial branch and institutions of the administrative branch.

19.1 The judicial organization

19.1.1 The tribunals

There are 210 of them. They are the jurisdiction of first instance. They are made up of various sections: civil section, commercial section, social section, etc. .

They hear all the civil, commercial and social actions over which they have territorial jurisdiction. They issue rulings subject to appeal before the Court.

Tribunals sit in the chief place of the courts.

They have jurisdiction over the following:

- seizure of real property;
- order settlements and auction sales;
- seizure and judicial sale of boats and aircrafts;
- enforcement orders;
- disputes pertaining to work-related injuries, bankruptcies, legal settlements, and petitions to sell businesses pledged as collateral.

Algerian law grants Algerian nationals jurisdictional privileges in that all foreigners, even non-residents of Algeria, may be cited to appear before Algerian courts to execute the obligations contracted by them in Algeria with an Algerian. They may be prosecuted before Algerian courts for obligations they contracted abroad vis-à-vis Algerians. Conversely, an Algerian may be cited to appear before Algerian courts in connection with obligations contracted abroad with foreigners.

Proceedings before the tribunals



A case is brought before the tribunal by the filing with the registry of a subpoena bearing the date and signature of the plaintiff.

All subpoenas must include the name and address of the consignee, designation of the tribunal having jurisdiction, and a summary of the subject-matter and the arguments. When a corporation is involved, the subpoena must include the firm's name, its nature and the location of its headquarters.

The subpoena is delivered by the tribunal's clerk, sent by registered mail or through administrative channels. If the consignee has no known residence in Algeria, the subpoena is sent to his permanent address. If the consignee resides abroad, prosecutors must send a copy to the Ministry of Foreign Affairs.

With regard to tribunal hearings and judgments, the judges may sit every day, even on holidays.

The hearings are open to the public.

The tribunal has the power to order inquiries and the presentation of expert evidence. The tribunal may also order a visit of the premises and investigation of facts requiring confirmation by witnesses when the verification of such facts appears admissible and useful in furthering the investigation into the case.

Judgments by default may be challenged within 10 days following notification. The notification must clearly specify that the right to challenge the judgment ends upon expiration of that deadline. When the subpoena has been delivered to the consignee in person, the judgment of the tribunal is deemed to have been heard. As such, it cannot be challenged.

Administrative tribunals

They were created by Act n° 98-02 of May 30, 1998.

Their number and the scope of their jurisdiction have yet to be determined, but the rules of procedure before administrative tribunals are set by the CPC.

Administrative tribunals are organized into chambers, which are then subdivided into sections.

19.1.2 The courts

There are 48 courts.

It is before these courts that the judgments of the tribunals are appealed. Appeals must be filed within one month from the date of notification, either in person or at the place of residence (in cases where judgments are deemed to have been heard), of the tribunal's decision, or from the date of the deadline's expiration (in the case of judgments by default).

As a rule, the appeal is suspensive. The law may decide otherwise however.

The time-limit for appealing are increased by one month for residents of Tunisia and Morocco and by two (2) months for those who reside in other countries.

Proceedings before the courts

The appeal is launched by a writ of appeal signed by the party lodging the appeal.

Investigation of the case under appeal is conducted according to the same procedures as before the tribunal. The parties either appear in person or are represented by their attorneys.

The court deliberates at the end of the hearings, announcing when the judgment will be rendered.

All judgments rendered on statements, pleadings or arguments are deemed to have been heard, even if the attorneys made no oral arguments during the hearings.

Judgments that reject exceptions or pleas of inadmissibility and rule on the substance of the case are also deemed to have been heard when the party who made the plea for exception or inadmissibility abstained from presenting a defense on the substance.

All other judgments are rendered by default.

These judgments may be challenged within 10 days after notification. The notification must clearly specify that the right to challenge the judgment ends upon expiration of that deadline.

19.1.3 The Supreme Court

The Supreme Court is the body regulating the activities of the tribunals and the courts.

The Supreme Court has the power to rule on petitions for cassation against the decisions pronounced in last instance by the courts and tribunals.

Petitions for cassation can only be based on one of the following:

- a) lack of jurisdiction or excess of power;
- b) violation or omission of procedural requirements;
- c) lack of legal grounds;
- d) non-existent, deficient or conflicting reasonings;
- e) violation or wrong application of domestic law or foreign law;
- f) conflicting decisions emanating from different tribunals and pronounced in last instance.

The time limit for filing petitions for cassation is two months from the date of notification, either in person or at the place of residence, of the court's decision that is being challenged.

With regard to default decisions, the countdown to the deadline starts on the day when challenges are no longer admissible.

When one party resides abroad, the deadline for initiating proceedings is increased by one month, regardless of the nature of the case.

Supreme Court appeals do not suspend enforcement, except in cases pertaining to the status or legal capacity of persons and in cases of forgery.

Proceedings before the Supreme Court are essentially written. The parties must be represented by attorneys authorized to plead before the Supreme Court. The following three elements must be included, as failure to do so will result in nullification:

- name, given name, profession and address of the parties ;
- a copy of the judgment being challenge;
- a summary of the facts as well as the arguments, which make up the grounds for the appeal before the Supreme Court.

In the month after the petition has been filed, the plaintiff may present documents elaborating on his or her plea.

The decisions of the Supreme Court are duly justified. They contain references to the legislative texts applied in the judgment. When the Supreme Court rules in favor of the petitioner it cancels all or part of the decision under challenge and sends the case back to the same court, now made up of different judges, or to another court of the same order and rank as those whose decision is being reversed.

It is the responsibility of the court to whom the case is being sent back following cassation to comply with the decision regarding the point of law ruled on by the Supreme Court.

Notification of Supreme Court's decisions is done by the court's clerk and is sent by registered mail, with acknowledgment of receipt, to the parties to the proceedings, as well as to the attorneys. Notification of the decisions is also sent to the courts whose judgments were challenged.

OVERVIEW OF THE SYSTEM OF LEGAL REMEDIES

	<u>INTRODUCTION OF LEGAL ACTION</u>	<u>INQUIRY</u>	<u>END OF HEARINGS</u>	<u>VERDICT</u>
<u>SUPREME COURT</u>	Petition for cassation by signed application of the attorney <u>(within a 2-month period following notification of the court's decision)</u>	Inquiry into the case	Deliberations	Verdict reversing or upholding the court's decision
<u>COURT</u>	Appeal by the unsuccessful party in first instance proceedings <u>(within a 1-month period following notification of the tribunal's decision)</u>	Inquiry into the case	Deliberations	Verdict reversing or upholding the decision of the tribunal
<u>ORDINARY TRIBUNAL</u>	Filing of complaint with the tribunal registry to initiate legal action	Inquiry into the case	Deliberations	Judgment and notification of the tribunal's decision

19.1.4 The State Council

By virtue of Executive Decree n°98-262 of August 29, 1998 setting the terms and conditions for transferring all filed and/or pending cases from the Supreme Court's administrative chamber to the State Council, "all filed and/or pending cases of the administrative chamber of the Supreme Court, except those cases ready to be decided," are transferred to the State Council.

The aforementioned Organic Law 98- 01 makes the State Council the body regulating the activities of the administrative courts. The Council ensures the uniformity of administrative case-law throughout the country and upholds the law.

The State Council has the power to rule as the court of first and last instance with regard to:

- actions for cancellation against regulatory or individual decisions emanating from central administrative authorities, national public institutions and national professional organizations. Example: actions for cancellations can be brought before the State Council against the decisions of ANDI, as well as against the decisions rendered by sectorial regulatory authorities. The decisions of the Competitive Council must be excluded however, as they can only be challenged before the Court of Algiers having jurisdiction over commercial matters.
- proceedings pertaining to legal interpretation and to proceedings which aim to assess the legality of the acts at the root of the dispute, which fall under the jurisdiction of the State Council (the decisions of a minister, of a wali, or of an independent administrative authority for example)

During the appeal, the State Council hears about the decisions rendered by the lower courts (tribunals and courts).

The council is also the court of cassation with regard to the decisions rendered by administrative courts of last instance.

The proceedings before the State Council are conducted according to the provisions of the CPC applying to judicial rules of procedure.

Before the creation of the State Council, administrative disputes were heard by the administrative chamber of the court in the first instance, and



appeals were lodged with the administrative chamber of the Supreme Court.

The specifics of administrative procedures

The administrative tribunal (the administrative chamber of the court before the creation of all administrative tribunals) is petitioned by a written application signed by the plaintiff or an attorney registered with the National Bar Association and filed with the court's clerk. The application must be accompanied by the decision being challenged.

Administrative tribunals can only be petitioned by individuals seeking legal remedy against administrative decisions.

The appeal must be lodged within four months (4) after the date of notification or publication of the decision being challenged.

Conciliation proceedings begin within a maximum period of three (3) months after the court has been petitioned. If a compromise is reached as a result of conciliation proceedings, the Court issues a verdict confirming the agreement between the parties.

If conciliation fails, a report of non-conciliation is prepared and investigation into the case begins.

The courts' administrative chambers will disappear as soon as administrative tribunals are established. This means that the two court-level structure is maintained as far as administrative matters are concerned. The decisions rendered by the tribunals can only be appealed before the State Council. The appellant has two (2) months from the date of notification of the tribunal's decision to lodge an appeal before the State Council or petition for the cancellation of the tribunal's decision.

19.2 The jurisdiction of the courts and tribunals with regard to expeditious procedures

In the course of their execution, numerous contracts between Algerian and foreign corporations, namely equipment contracts and, more broadly speaking, ongoing execution contracts, create situations where Algerian courts are petitioned to consider emergency measures. Algerian law makes a distinction between emergency measures as such, and payment order procedures and proceedings for interim relief.

19.2.1 Emergency measures

Algerian courts have the power to order emergency measures when a petition is brought before the court with substantive jurisdiction. The petitioned judge issues an order acknowledging the emergency situation claimed by the petitioner. If the petition is rejected, the decision may be appealed provided that it was rendered by the president of the tribunal of first instance.

OVERVIEW OF THE SYSTEM OF LEGAL REMEDIES

	<u>INTRODUCTION OF LEGAL ACTIONS</u>	<u>INQUIRY</u>	<u>CASSATION</u>
<u>STATE COUNCIL</u>	1.Hears appeals against regulatory decisions of other central administrative authorities 2.Hears interpretation appeals concerning the legality of administrative actions.	Inquiry into the appeal	Reverses and cancels or upholds the decision of the administrative tribunal (the appeal must be lodged within 2 months from the date of notification of the tribunal's decision).
<u>ADMINISTRATIVE TRIBUNAL</u>	Proceedings start with the filing of a complaint with the tribunal's registry	Inquiry into the case and deliberations.	Judgment and notification of the tribunal's decision

19.2.2 Orders for payment

Any request for payment of a liquid, payable and overdue debt is admissible whenever the legal action is initiated to obtain an order for payment. The plaintiff must attach all documents proving the amount and existence of the debt to his petition. In cases where the judge finds in the plaintiff's favor, he authorizes the issue of a notification ordering payment (which means that the debt is justified). In the opposite case, the judge will reject any legal remedy for the plaintiff, save for his or her right to resort to ordinary law actions.

An order for payment is only possible when the debtor resides in Algeria. Notification of the payment order is sent to the debtor by registered mail with acknowledgment of receipt. The debtor must pay within 15 days, as failure to do so will expose him or her to all available legal means to



force payment, in addition to being assessed late penalty interest charges and fees. The debtor may use the time before the deadline to prepare a response to the payment order, but will be required to deposit an amount equal to the costs, as the court clerk will not issue a receipt otherwise. If there is no response, the debtor is asked to appear before the judge. If the debtor fails to appear, the judge automatically rules and the decision is deemed to have been heard by the debtor. If the debtor's response is submitted after the allowed time limit, the creditor simply has to send a copy of the original of the judge's order to demand payment. The effects of the order of payment are those of a judgment after trial.

When the decision can be appealed, the countdown to the deadline starts when the time limit (maximum of 45 days) for presenting a response expires, or from the moment that the decision to reject the debtor's response (maximum of 30 days) is delivered. When this deadline passes or if the payment order is without appeal, the court clerk will execute the decision in accordance with the enforcement formula upon request by the creditor (by letter).

Any Ordinance containing an order of payment which has not been appealed or which is not certified for execution within (6) months from its date of issue is deemed to have lapsed and has no legal effect.

19.2.3 Proceedings for interim relief

Whenever measures pertaining to sequestration or any protective measures are about to be ruled on, the case may be referred to the president of the court of first instance with substantive jurisdiction.

The judge may rule at any time, including on holidays.

Interim relief orders do not address substantive legal issues. The president of the interim relief court has the power to order all investigative measures needed to resolve the dispute. Interim relief orders are provisionally enforceable, with or without bail.

They can neither be opposed nor their execution prohibited.

The decision can be appealed within 15 days after notification of the Ordinance. The appeal is also judged in accordance with emergency procedures.

19.3 The people of the judicial system

The judicial system is made up of three of personnel: the judges, the officers of the court, the civil servants.

The judges: contrary to the jurisdictional duality between the orders (judiciary and administrative), the magistracy is united under the authority of the Superior Council of the Magistracy. It is made up solely of professionals forming two groups: sitting judges and prosecutors of the department of public prosecutions.

The status of the magistracy was the target of restructuring efforts in 2004 within the framework of the reforms aiming to reinforce the independence of judges, reforms which translated into the rehabilitation of the role of the Superior Council of the Magistracy, which now enjoys financial autonomy and has seen the number of elected members increased.

The court officers: the activities of the court officers are exercised in the form of a liberal profession under the direct authority of a professional corporation for each branch and the guardianship of the Minister of Justice. The category of court officer includes: lawyers, notaries, bailiffs, auctioneers, court experts, trustee administrators and translators-interpreters.

The Minister of Justice has initiated a restructuring program of all statuses, and mixed commissions have been established to ensure that the legal texts conform with the evolution of the context and the openness of the market.

The civil servants: considered as assistants to the judge, they fall into two categories:

1. The registry, which is made up of civil servants responsible for the management of the administrative services and the financial management of the jurisdictions.
2. The judicial police, a body mainly made up of civil servants of the national security, the police force and other appointed personnel, whose mission is to establish punishable violations, gather evidence, identify the culprits and bring them to the competent jurisdictions, in compliance with the law, and under the authority of the prosecutor of the Republic. Thanks to the latest reform of the Code of criminal procedure, the judicial police



have seen their powers considerably strengthened, all under the judicial control of the indicting chamber.

19.4 Customs Disputes

Chapter 15 of the Customs Code deals with customs disputes. There are several peculiarities stemming from the special character of the Customs law which differs from ordinary law in certain provisions.

Customs violations, as defined by Article 240 of the Customs Code, are any violation of the laws and rules that the customs authorities are in charge of enforcing. Punishable under the Customs Code, these violations need only present two aspects of a crime, instead of the three usually required by ordinary law, to be considered as such:

The material aspect;

The legal aspect;

The moral aspect is not taken into consideration, and even judges may not invoke it in accordance with Article 281 of the Customs Code.

Customs fines and seizures, which sometimes exhibited a dual criminal and compensatory nature until 1979, sometimes a strictly compensatory nature after that, are showing that dual nature again with the modifications of Act 98-10 of July 21, 1998 which abolished Article 249 of the Customs Code giving supremacy to compensatory action. Fines owed to customs authorities are collected by the authorities themselves and the confiscated merchandise is not stored in the court registry, but in the customs office closest to where the seizure was conducted.

Establishing offenses

The persons empowered to establish that customs violations have occurred and the powers of those agents.

By virtue of the provisions of Article 241 of the Customs Code, the following are empowered to establish and record customs violations:

Customs agents;

The officers and agents of the judicial police;

The tax agents;



The agents of the national coast guard service, the agents in charge of economic investigations, competition, prices, quality and the prevention of fraud.

The establishment of a customs violation entitles these agents to seize merchandise liable to be confiscated as a guarantee against penalties legally incurred, as well as any document accompanying the merchandise. In cases where violators are caught in the act, the agents may arrest the suspects and bring them immediately before the prosecutor of the Republic after the procedures have been completed.

Methods of establishing customs violations

Customs violations, once established, are recorded in seizure or inquiry reports depending on whether the violation was established as a result of a verification conducted in a customs office or an after-the-fact inquiry inside the home of the offenders. According to Article 255 of the Customs Code, the customs reports must include the following formalities, as failure to do so will result in them being voided:

- the conduct of the seizure and the storage of the seized merchandise and documents in the customs office or station nearest to the location of the seizure and where the reports must be written immediately;
- the appointment of the customs collector in charge of prosecution as the custodian of the seized goods;
- the report lists the information which is likely to identify the offenders, the merchandise and to establish that an offense has been committed
- the date, time and place of the seizure;
- the reason for the seizure;
- the declaration of seizure to the offender;
- the family names, given names, positions and residences of the persons conducting the seizures and the customs agents in charge of the prosecutions;
- the description of the seized merchandise and the nature of the seized documents;
- the summons made to the suspect to attend the writing of the report and the steps that followed that summons;
- the location where the report was written and the time when the session ended;
- the family names, given names and status of the custodian of the seized merchandise if possible. The forged documents are signed with the statement “ne varietur” by the agents who attach them to the report.



Moreover, violation reports resulting from investigations or inspections must, according to the terms of Article 48 of the Code of Customs, mention:

the family names and given names, status and residence of the enforcement officers, as well as the dates and locations of the investigations;

the nature of the observations and information collected, either by inspecting the documents or questioning individuals;

the seizure of documents with their descriptions;

the legal and regulatory provisions violated as well as the appropriate regulations on penalties;

the statement indicating that the persons in whose home the inspection and investigations were conducted were informed about the date and location where the report was written, that the report was read to them and that they were invited to sign it.

Scope of jurisdictions

Absolute jurisdiction

The jurisdictions that rule in criminal matters hear cases pertaining to customs violations and all customs matters raised by way of exception, as well as related customs violations, accessory to or tied to ordinary law offenses. This jurisdiction is granted by Article 272 of the Customs Code. Challenges pertaining to the payment of duties and taxes or their refund, and oppositions to seizures fall under the jurisdiction of the courts dealing with civil matters.

Territorial jurisdiction

In the case of proceedings resulting from violations established by seizure or inquiry reports, the tribunal of competent jurisdiction is the tribunal with jurisdiction over the customs office closest to where the violations were established. Challenges to orders are brought before the jurisdictions dealing with civil matters in the district of the customs office where the order originated (Article 274 of the Customs Code).

Customs violations

There are five categories of petty offenses and four categories of misdemeanors. The classification of these violations was made by



distinguishing between violations pertaining to merchandise that is prohibited or heavily taxed on one hand, and merchandise that is not, on the other. Secondly, a distinction was made between violations that compromise or evade duties and taxes and those that have no influence on the collection of duties and taxes for the treasury.

Misdemeanors

Any violation of the rules and regulations that the Customs Authorities are in charge of enforcing with regard to merchandise that is either prohibited or heavily taxed, uncovered in customs offices or stations during verification operations, represents a first-degree misdemeanor. This misdemeanor is punishable by the seizure of the fraudulent merchandises and the merchandise used to hide them, a fine equal to one time the value of the confiscated merchandise and a prison sentence of 2 to 6 months (Article 325 of the Customs Code).

Acts of contraband pertaining to merchandise that is either prohibited or heavily taxed, represent a second-degree misdemeanor. This misdemeanor is punishable by the seizure of the fraudulent merchandise and the merchandise used to hide them, a fine equal to two times the value of the confiscated merchandise and a prison sentence of 6 to 12 months (Article 326 of the Customs Code).

Any violation of the laws and regulations that the customs authorities are in charge of enforcing with regard to merchandise that is either prohibited or heavily taxed, committed by a gathering of three individuals or more, whether or not they are all in possession of fraudulent merchandise, represents a third-degree misdemeanor. This misdemeanor is punishable by the seizure of the fraudulent merchandise and the merchandise used to hide them, a fine equal to three times the value of the confiscated merchandise and a prison sentence of 12 to 14 months (Article 327 of the Customs Code).

Acts of contraband pertaining to merchandise that is either prohibited or heavily taxed committed with the use of firearms or animals, vehicles, aircrafts or boats of less than 100 net register tons or less than 500 gross register tons represent a fourth-degree misdemeanor. This misdemeanor is punishable by the seizure of the fraudulent merchandise and the means of transportation, a fine equal to four times the value of the confiscated merchandise and means of transportation and a prison sentence of 24 to 60 months (Article 328 of the Customs Code).



Petty Offenses

Any violation of the laws and regulations that the tax authorities are in charge of enforcing, which has no influence on the prohibitive measures nor on the collection of duties and taxes represents a first-degree offense. This petty offense is punishable by a fine of 5,000 AD (Article 319 of the Customs Code).

Any violation of the laws and regulations that the tax authorities are in charge of enforcing, which influences the collection of the duties and taxes, represents a second-degree offense. This petty offense is punishable by a fine equal to double the amount of the duties and taxes that were compromised or avoided (Article 320 of the Customs Code).

Any violation of the laws and regulations that the tax authorities are in charge of enforcing pertaining to prohibited or heavily taxed merchandise imported or exported by travelers or through postal packages, as well as violations of Article 22 of the Customs Code, represent a third-degree offense. This petty offense is punishable by the seizure of the fraudulent merchandise (Article 321 of the Customs Code).

Any violation of the laws and regulations that the tax authorities are in charge of enforcing, with regard to merchandise that is neither prohibited nor heavily taxed, committed with the use of false documents, represents a fourth-degree offense. This petty offense is punishable by the seizure of the fraudulent merchandise and a fine of 5,000 AD, without prejudice to the application of criminal penalties for forgery and the use of forged documents.

Acts of contraband with regard to merchandise that is neither prohibited nor heavily taxed. This is a fifth-degree offense punishable by the seizure of the fraudulent merchandise and a fine of 10,000 AD.

Main violations likely to be uncovered by the verification of merchandise

The fundamental principle in customs is the inspection of declarations detailing the merchandise, the documents supporting the declarations, and the physical verifications of declared merchandise by the agent to verify the truth of the information provided on the declaration form. The inspection essentially pertains to the customs value, the nature and origin of the merchandise. In addition to making it possible to calculate the payable taxes and duties, the verification of these three elements, called the tax factors, enables the application of prohibitive measures that could

impact the merchandise. The inspection may lead to the discovery and recording of violations. With regard to customs value, it must be declared in conformity with the provisions of Article 16 et seq. of the Customs Code. The price paid or to be paid to the supplier corresponds to the calculated invoice price. This value is sometimes challenged by the inspecting officer, who has the duty of trying to prove by any reasonable means the falsehood of the declared value in the most objective manner. Should the inspecting officer fail to do this, the declarant is entitled to maintain his position with regard to the declared value and to ask, if need be, for the arbitration of the hierarchical superiors of the control officer as part of an application for reconsideration. The declarant may also, just like the customs authorities by the way, petition the appellate commission, which is presided over by a judge and who will hand down a decision binding on both parties. As for tariffs, when the product is not classified by name in a group or sub-group, the classification rules of the harmonized system make it much easier to have a justifiable classification. In extreme cases, the declarant also has the option of going before the aforementioned appellate commission for an appeal.

Prosecutions and Punishment of Customs Violations

Under the terms of Article 265 of the Customs Code, “persons prosecuted for customs violations are referred to the tribunal of competent jurisdiction to be punished in accordance with the provisions of the current code” (Article 265 § 1).

Nonetheless, the same Article allows offenders who wish to do so, to seek a compromise which would end the prosecution in the event of an agreement with the customs authorities.

During the court proceedings, the customs authorities and the offender have the same rights. The trial is adversarial. Judgments can be appealed. Nevertheless the authorities enjoy certain privileges specifically stipulated in the Customs Code:

The judges are prohibited from:

excusing the offender with regard to intention;

granting the release of merchandise seized as a result of a customs violation without collateral for their value and merchandise prohibited from clearing customs without prior authorization issued by the relevant authorities;



seizing any duties and taxes proceeds in the hands of the customs collector (Article 296 of the Customs Code).

Moreover, the customs authorities do not make any payment by virtue of judgments challenged by an appeal (Article 294 of the Customs Code) and the administrative measures issued by virtue of Article 262 of the Customs Code are enforceable by any means, except by imprisonment. Their execution is not suspended by the exercise of the taxpayer's right to appeal (Article 293 of the Customs Code).

The Right to Negotiate a Settlement

The customs authorities may negotiate with people prosecuted for customs violations if they apply for it. It is obvious that in order to ask for a settlement the defendants must first acknowledge the service and admit that a violation has been committed.

The request for negotiation is presented on printed customs forms, as in the case of contentious proceedings, in which the offender acknowledges the violation. He deposits a certain amount set by the customs collector. The offender fills out a specially printed paper taken from a portable notebook for travelers accepting to abide by the final decision of the competent authorities. In the other cases, the offender formulates a request on a blank piece of paper on which he acknowledges the violation for which he is being prosecuted and makes a monetary offer to settle the dispute. This request must be addressed to the authorities with jurisdiction depending on the amount of duties and taxes that were not paid or that the offender attempted to avoid paying, which are called insufficient or evaded duties.

Settlements are not legally possible in the case of violations pertaining to merchandise that is absolutely prohibited however.

Settlements occur depending on the insufficient or evaded duties, by notification or without notification. Settlements may occur before a ruling or after a ruling having acquired the authority of *res judicata*: the former terminates the fiscal and civil action, while the latter allows prison sentences to remain in effect.

Other violations observed and recorded by the customs authorities but not punished by the Customs Code

These are mainly violations of the foreign exchange legislation and regulation. The control officers may, during verification or control

operations, establish a customs violation related to a violation of foreign exchange regulations, particularly in the case of false declarations of value and illegal transfers of capital or in cases of inapplicable banking domiciliation certificates. These violations are prosecuted in accordance with Ordinance n° 96-22 of July 9, 1996 regarding the punishment of violations of the foreign exchange legislation or regulation, modified and completed by Ordinance n° 03-01 of February 19, 2003.

20 Arbitration

Since Algeria gave itself a new international arbitration law and has ratified the ICSID Convention of the World Bank on the settlement of investment disputes and the Seoul Convention on the Multilateral Investment Guarantee Agency, not to mention the impressive number of bilateral treaties (more than forty) the country has concluded, resorting to international arbitration has become the favored method for resolving disputes between Algerian and foreign firms, with both parties favoring institutional arbitration (International Chamber of Commerce or ICSID) and very rarely asking to resort to ad hoc arbitration.

Therefore, whether it is about the choice of arbitrators, the location of arbitration, the applicable procedural law, or, more important still, the basic applicable law, the provisions of Legislative Decree n° 93-09 of April 25, 1993, amending and completing the Civil Procedure Code and its subsequent practice, will give greater freedom to the parties and no less latitude to the arbitrator in determining applicable rules, should the contracting parties be silent on the issue.

At the same time, an arbitration ruling pertaining to two foreign firms can only be effective if it is enforced, the prevailing principle in this area being that the execution of the sentence must be voluntary, the losing party being required to graciously accept the sanction imposed by the arbitrators. Oftentimes, one party, without refusing to execute the sentence that condemns it, deems that it has to exercise the means of appeal authorized by the law before State jurisdictions first. However, there have been cases where the losing side acted in bad faith and tried to avoid fulfilling its obligation to comply with the final sentence, even though it had agreed to do so in advance by endorsing an arbitration clause.

Under Algerian law, the judge has in principle the obligation of enforcing an arbitration ruling, whether it is in the case of an appeal brought before



him (provided that the ruling was handed down in Algeria) or in the case of a request by the winning side to force the execution of the ruling, if the ruling was handed down abroad.

It is mainly with regard to the requirements posed by international public order, to the respect of the rights of the defense and the arbitrator's strict compliance with his mission that the Algerian judge assesses the validity of the ruling from the standpoint of Algerian judicial order. In the few cases of arbitration rulings brought to the attention of an Algerian judge over the past three years (which demonstrates that most arbitration rulings are voluntarily executed), the Algerian judge has adopted a resolutely favorable attitude towards international arbitration, by accepting to enforce foreign and international rulings, which in some cases condemned Algerian firms.

It is more and more obvious that, with the influx of foreign investors, the jurisdictional clause represents what legal experts call a "determining clause," in other words, a clause whose acceptance by the parties determines the acceptance of all the other clauses of the contract. Indeed, the very first clause that foreign firms negotiate with their Algerian partners is the arbitration clause. But there should be no misunderstanding, it is not really the choice of the method of dispute resolution that is being debated, but rather the choice between institutional arbitration – where the parties abide by the prescriptions of an arbitration rule – and ad hoc arbitration, set up almost exclusively by the parties.

Moreover, whether the law applicable to the dispute is Algerian or foreign (the law in effect in the country of the foreign partner for instance) is of little importance. Paradoxically, the foreign partner accepts even more willingly the jurisdiction of Algerian law given the fact that it grants more protection to the interests of the seller (in a sales contract) or the contractor (in a job contract) than to those of the Algerian consumer or client. If Algerian partners insist that Algerian law be used, it is because of their deep knowledge of that law and also because Algerian law is usually the law prevailing where the contract is bound to be performed.

