



HOW TO CREATE BANKS AND FINANCIAL INSTITUTIONS UNDER ALGERIA'S NEW MONETARY AND BANKING LAW NO. 23-09

KASDI FAIZA¹, ALAOUI TAYEB², BELFEDEL MOHAMED³

Environmental System Protection Legislation Laboratory, University of TIARET¹

Environmental System Protection Legislation Laboratory, University of TIARET²

Environmental System Protection Legislation Laboratory, University of TIARET³

algria-Faiza.kasdi@univ-tiaret.dz¹

tayeb.allaoui@univ-tiaret.dz²

mohamed.belfedel@univ-tiaret.dz³

Abstract -In order to enhance the strength and vitality of the banking sector, and promote economic development by avoiding the instability created by the rapid expansion of the banks number, and in an effort to create a healthy financial system and by identifying carefully monitored institutions; the legal status of the Algerian Monetary and Banking Council has been strengthened by granting it broad powers, the most important of which are: - setting the conditions for accreditation and license banks and financial institutions.

Keywords: license; accreditation; governor of the Bank of Algeria; Shareholding Company; banking committee.

INTRODUCTION

Banking law is at the heart of the current debate about the economic crisis and its repercussions. It is said that banks are both making crises and helping to resolve them by developing solutions and policies to cope with exceptional circumstances.

The case of the Bank of Khalifa preceded by the financial scandal of the Bank of Algeria's six agencies is among the most important reasons that led the Algerian legislator to move in all directions for a gradual review of several laws and this review culminated in the promulgation of a new banking law¹ whereby the provisions of the Monetary and Loan Act were repealed while retaining the applicable provisions shall be retained until the promulgation of the provisions adopted in application of this Act², to adapt the bank's legal system to current economic and financial transformations such as the Penal Code and the Code of Criminal Procedure to deal with new types of criminality analogous to money laundering - organized crime - crimes against informatics systems along with crimes and offenses relating to legislation on Monetary. In this context, Act No. 05-01, on the Prevention and combating of money laundering and Financing terrorism, was promulgated, in which the role of banks and financial institutions alone in the transfer of funds, bonds, or values abroad was emphasized.³ The provisions of the Monetary and Loan Act have been repealed with the retention of the applicable provisions.

The Act also placed legal obligations on these financial institutions to investigate all legal ways of origin and destination of funds and gave broad powers to the Banking Commission within the framework of its authorized monitoring. Given the critical importance of these financial institutions in developing the country's economy, we stress the importance of our research in studying very important issues in terms of the mandatory availability of the conditions under which banks' and

¹ Act No. 23-09 of 21 June 2023, containing the Monetary and Banking Act, Official Journal No. 43 of 27

² See article 166 of the Act No. 23-09,

³ Ahmed Beloudenin, The concise in the Algerian Banking Law, Belkis Publishing House, Algeria, 2009, P 07.



financial institutions creation are authorized. In fact, it is the basic pillar that will ensure the success of bank operations later.

In the same context, several legal problems, which have destabilized the banking system, have been raised ranging from embezzlement to abuses that have resulted from poor management and a lack of financial monitoring over the creation of banks and financial institutions.

So it appears that the issue has raised an important problem, which is reflected in the following question: What are the conditions under which the creation of banks and financial institutions are authorized? Who has the exclusive authority to determine these terms? Is the license alone sufficient to proceed with various banking operations?

The relationship between the stability of banks and financial institutions will be shown as well as how effective it is in terms of determining the requirement of its accreditation in order to provide adequate banking services to society; and this is through exposure to:

Firstly: Request for license

Secondly: The request for accreditation

Thirdly: Financial monitoring of the banks and financial institutions creation.

Firstly: Request for license

The Monetary Law and useful provisions came in the field of establishing banks and financial institutions⁴; by referring to Article 64 of it, we find that it authorizes the Monetary and Banking Council to issue administrative issues, especially those related to:

- to determine the general conditions under which banks and financial institutions are authorized to be created in Algeria; in particular, fixing the minimum capital that banks and financial institutions must have at their disposal.

-Setting the conditions for accreditation of foreign banks, national financial institutions, and representation offices of foreign banks.

This is confirmed by article 82 and what follows it in the Act (04-10), as well as the system related to the establishment and the conditions for the creation of a bank or a branch thereof, since the legislator required from the founder of banks to follow two procedures, namely, the license and then the accreditation in accordance with article 2 of this system.⁵

1. The concept of a license

We will refer to the definition and legal nature of the license and then to the license terms for the natural person and the moral person.

Definition of license

License in a broad sense is an authorization granted by the administrative or judicial authority for a particular person in order to carry out a particular legal act which a person cannot normally do alone⁶, however, the license in its narrow sense is an act whereby the administrative authority allows a beneficiary to exercise an activity or enjoy the rights of practicing it.⁷

The license in another definition is a procedure that enables the administration or the public authorities to exercise strict control over certain activities so that the latter is subject to a thorough and detailed study case- by-case basis on which the administration allows its usage and exploitation while maintaining the power to establish different conditions from another activity according to the

⁴ According to Article 64 of Law No. 23-09.

⁵ Regulation No. 2000/02 of 02/04/2000 setting out the conditions for the creation of a bank or financial institution and the conditions for the establishment of a branch of a foreign bank or financial institution. Official Journal No. 27 of 10/05/2000, p. 18, amended and supplemented by the Regulations 06/02 of 24/09/2006.

⁶ Kachi Allal, Central Bank monitoring on Commercial banks in Algerian Law, Journal of Legal and Administrative Sciences, University of Sidi Bel Abbès, 4th edition of 2006. P 33 et seq.

⁷ Djeljel Mahfoudh Redha, Creation of banks and financial institutions in Algeria, Journal of Research and political Sciences, vol. 03, Issue No. 02, Ibn Khaldoun University, Tiaret, 2018, P 84.



importance and dangerousness of this activity. This type of procedure allows the administration to exercise its authority and control constantly on such activities.⁸

While license in Monetary and banking law differs from a license in administrative law, since it only permits to creation of a bank or a financial institution or a branch of them without banking activity because it needs another procedure which is accreditation; it is therefore an initial procedure that needs an accreditation.⁹

Concerning the legal nature of a license, it is a unilateral legal act under which a particular legal prohibition is lifted or removed; it is a prior and indicative administrative monitoring.

2. LICENSE REQUIREMENTS

For the legal person: According to the first paragraph of Article 91 of the Monetary and Banking Law, regardless of the possibility of establishing a bank or financial institution in the form of a cooperative after studying the feasibility of that by the Monetary and Banking Council, the legislator obligated the bank to be established in the form of a company with shares, the latter is a commercial company based on its form whatever its subject.¹⁰ With reference to Article 592 of the Commercial Code, the capital of a shareholding company is divided into shares and the number of partners should not be less than seven; if the shares of the company are indexed on the Stock Exchange, the capital should be distributed over 150 shareholders.

We know that the share is part of the company's capital and the shareholder is the company's partner and has the right to control and manage through the General Assembly and he only affords losses in the range of his stake.

The relevant question is why the Algerian legislature requires that the creation of banks and banking institutions be in the form of a shareholding company only. Perhaps this is because the latter is the ideal model for financial companies that are suitable for large economic projects¹¹ ; it is also a strategic issue that reflects the structure of the market economy and its evolution in the banking sector¹². Perhaps what reinforces this hypothesis is that the legislator is satisfied with the possibility of establishing payment service providers, independent intermediaries, and exchange offices in any form of other financial companies, as they do not rise to the category of large economic projects, unlike banks and banking institutions¹³.

As we notice through our examination of the regulation articles of the shareholding company compared to articles regarding other companies, we note that they are detailed.

- The shareholder company contract must be formalized and announced. Otherwise, the contract becomes void and the registration must be performed. The application of the provisions governing a commercial law corporation to banks and financial institutions does not mean that all the clauses related to the shareholding company are applied to banks and institutions; since it is subject to special rules contained in the Monetary and Banking and the Regulations issued by the Monetary and Banking council. Given the special nature of banking activity in the field of bank creation, the license and accreditation in order to exercise banking activity is required in addition to inscription and registration.

With regard to capital, the Commercial Code also stipulated the possibility of offering shares in the shareholding company as cash and in kind, while banks provide cash only and the minimum capital must be set, this is confirmed by Article 96 of the Monetary and Banking Law. There is also a difference in the area of surveillance, where we find it more stringent in the field of banks and

⁸ Redouane Magherbi, Monetary and Credit Council, Magister's degree thesis, University of Algiers, 2004, PP 70-71.

⁹ Djeljel Mahfoudh Redha, Creation of banks and financial institutions in Algeria, op.cit, P 85.

¹⁰ Cf. article 30 of Ordinance 75-59 issued on 26 September 1975 containing the Algerian commercial Law, amended and supplemented.

¹¹ Djeljel Mahfoudh Redha, op.cit, P 85.

¹² Ahmed Beloudenin, The concise in the Algerian Banking Law, op.cit, P 17 , et seq.

¹³ See Section 2 of Article 91 of Law 23-09 containing the Monetary and Banking Law



financial institutions. In the field of the minimum capital of a bank, should be at least ¹⁰ billion Algerian dinars, and 3.5 billion Algerian dinars for financial institutions.

This is stated in Regulation 08/04 of 23 December 2008, which deals with the minimum capital of banks and public financial institutions in Algeria in Article 2 of it. The Algerian legislator succeeded when referring the establishment of a capital minimum to create Banks and financial institutions to the legal systems issued by the Monetary and Banking Council because it can be changed depending on the financial and economic circumstances of the State¹⁴.

The minimum capital of the bank is not important in meeting the costs of its commencement operation and as a guarantee of the depositors' rights and using it in case of the absolute necessity to cover unexpected losses. It has become even more important as it is the primary guarantee in strengthening the Bank's capabilities and developing its performance levels, especially after the issuance of Basel I and II resolutions, which impose the capital adequacy ratio to comfort its depositors by protecting and securing their deposits against external casuals or possible losses¹⁵.

Banks and financial institutions whose headquarters are located abroad must grant their branches in Algeria an allocation at least equal to the minimum capital required, depending on the case, to establish banks and financial institutions subject to Algerian law, in implementation of the text of Article Three of Regulation 08/04 and the second paragraph of Article 96 of the Law. (09-23).

With regard to the issue of the bank's capital subscription, in accordance with Article 596 of the Commercial Code, it must be fully subscribed. The paid shares at the subscription must be at least one quarter of their nominal value and the hike is performed once or several times on the basis of the Board of Directors or the Executive Board decision depending on the case and within five years from the date of the bank registration to the trade register.

For natural person

Legal conditions

It means those conditions that must be met by the managers or directors within the bank, whether they are members of the Board of Directors the Executive Board the supervisory board, or even bank employees as well as the conditions relating to the stakeholders and shareholders; nor is there any restriction provided for the nationality of the managers or stakeholders.

With respect to the number of managers as stipulated in Article 98 of Law 23-09, amended and supplemented by ordinance 10/04 at least two persons must manage the bank, be appointed to the highest two posts in the hierarchy and they must have the status of permanent residents.

In accordance with article 612/01 of the Commercial Code, a natural person cannot belong at the same time to more than five boards of directors within shareholder companies based in Algeria.

The legislator requires the board of directors to be the owner of a number of shares representing at least 20 percent of the company's capital in order to ensure the management's functioning.

The same applies to branches of foreign banks, as at least two people must be appointed to manage and represent this branch and bear responsibility for its management according to the text of Article 98, Paragraph 02 of Law 23/09, and they must be obtained from the bank's governor for all managers, especially those at the highest rank; since article 12 of Regulation 06/02 stipulates that the curriculum vitae and the administrative file must be sent to the Bank's governor for accreditation and the persons concerned by this ordinance are: the Board of directors members, or members of the supervisory board, general managers, and the general assistant directors who are not members of directors as well as the members of the Board of directors who are assigned to manage the bank or financial institution.

This procedure is also applied to foreign bank and financial institution branches, as confirmed in instruction 07/01.

¹⁴ Article 96 of the Monetary and Banking Law stipulates in its first paragraph that: "Banks and financial institutions must have fully liberalized capital and cash equivalent to at least the amount determined by a regulation adopted by the Council in accordance with Article 64.

¹⁵ Foudhil Farés, Banking techniques (Lectures and Applications), first edition, part one, Al Mossak Al Rachid Press, Kouba , Algeria, P 94.



Any change in the members or leaders mentioned above requires approval by the bank's governor even if the bank or financial institution is accredited and started banking activity.

The names of at least two appointed managers are published in the Official journal with the Bank's or institution's financial accreditation so that a third party identify the managers and guarantee the depositors' rights¹⁶.

Ethical conditions

Working at a bank requires a range of ethical conditions and Professional competencies. As for the ethical conditions, according to article 87 of the Monetary and banking law which stipulates the prevention of cases from establishment and membership at the Board of Directors, supported by regulation No. 92/05 of 22 March 1992, which stipulates the conditions to be met in the founders, directors and representatives of banks and financial institutions ¹⁷ besides the instruction N2000/5 of 22/04/2000.

This is considered to be a deviation from the general rules regarding the creation of shareholding companies, which are based on financial considerations, but in banks and financial institutions, two shareholders are earnestly considered, given that article 80 from Ordinance No. 03/11 defines the acts committed by each shareholder as if he is one of the bank founders. He is not allowed to exercise any banking activity if he is sentenced for the following reasons: Embezzlement, treachery, stealing, bribe, check without credit, or violation of the banking laws¹⁸.

Article 30 of Regulation No. 06/02¹⁹ also included in the application file for authorization given its importance consisting of the quality and honorability of the shareholders and their potential guarantors besides the financial capability of each one of them and their guarantors, as well as the availability of experience and competence in the banking and financial field for the major contributors.

In addition to the preceding articles, article 99 of the Monetary and banking law stipulates that contributors must submit a program of activity and financial and technical possibilities, as well as provide the description of the persons providing the funds and their guarantors, when necessary, and justify all sources of funds.

The shareholders who have the right to vote must also fill in the special appendix related to the role and identity of the shareholders, which is contained in instruction No. 07/01.

In this sense, We believe that Algerian legislators are concerned with the personal aspect of shareholders as well as financial consideration in the establishment of banks and financial institutions. This is not only enshrined in commercial law. Where is the financial aspect of shareholders? This privacy is due to the role of banks and financial institutions and the sensitivity of their position in the economy. In addition, the two elements of credit and trust that start with the

¹⁶ Examples of managers names published in the official Journal: mentioned in : Djeljel Mahfoudh Redha, op.cit, P 87.

-Decision No. 06/03 of 14 Chaaban 1427 (07 September 2006) the accreditation of Fransabank El Djazair is stipulated in Article 2 of the decision to place the bank under the supervision and responsibility of the two Messrs.

- Nadim al-Qassar, Chairman of the Board.

- Joseph Daqaq, General Manager.

- Decision No. 08/02 of 10 Ramadan 1429 (10 September 2008), includes the accreditation of AAssalam Bank - Algeria.

- Hussein Muhammad Al-Misa , Vice Chairman of the Board.

- Ibrahim Fnik, General Manager.

¹⁷ Official Journal N. 08, of 07/02/1993, p. 10.

¹⁸ Fodhil Fares, op. cit.p. 94.

¹⁹ Regulation No. 06/02 of December 24, 2006 concerning the terms for the creation of a bank and financial institution and the condition for establishing a foreign bank branch and financial institution.



founding persons of shareholders, especially the major shareholders, cannot contribute to the establishment of a bank.

From the above, we see that the Algerian legislator paid attention to the personal aspect of shareholders in addition to the financial consideration in establishing banks and financial institutions. This is contrary to what is enshrined in commercial law, where it only cares about the financial aspect of shareholders. This specificity is due to the role of banks and financial institutions and the sensitivity of their position in relation to the economy in addition. The elements of credit and trust must be available, which begins with the founding shareholders, especially the major shareholders. It is not possible for a person convicted of theft or embezzlement to participate in establishing a bank or financial institution.

3. Banks and financial institutions subject to license

The licensing process includes both national and foreign banks and financial institutions, as well as representative offices and branches of foreign banks and financial institutions.

National and foreign banks and Financial institutions

In order to overcome obstacles facing the national economy, the Algerian legislator no longer differentiates between national and foreign banks, as was the case in the past, based on the capital of this bank. Previously, foreign banks and financial institutions were not allowed to be licensed to operate in Algeria unless there was a partnership representing the national shareholding. The resident owns at least 51 percent of the capital²⁰.

The most notable example is the Algerian Al Baraka Bank in 1990 between the Saudi-based Al Baraka International Group and the Algerian Rural Development and Agriculture Bank, with 51 percent of the national capital and 49 percent for the Al Baraka International Group.

It should be noted that the legislator, through the new monetary and banking law, has dropped this condition, and this is what can be seen from the text of Article 93 of it, which was satisfied only by taking into account the principle of reciprocity in licensing foreign banks and financial institutions to operate in Algeria. This is due, in our estimation, to the legislator's adoption of a policy of moving towards encouraging. Foreign investment in Algeria to meet the requirements of the current stage, as one of the reasons for presenting this project was the aim of adapting the legal and regulatory system to respond to the profound economic and financial transformations, technical and technological challenges, and allowing openness to new actors.

Representative offices of banks and foreign financial institutions:

Algerian legislation indicates the possibility of opening representative offices of the latter, but this is accompanied by the necessity of obtaining a license from the Monetary and Banking Council²¹.

Branch Bank or Foreign Financial Institution²² :

Although the representative office of a foreign bank or financial institution based abroad is not allowed to conduct business operations, on the contrary, the branch of the foreign bank is the place of banking operations, although it does not have an independent legal personality, it enjoys autonomy in terms of administration and management²³ .

4. The content and procedures of the license

The Monetary and Banking Law and Regulation No. 06/03 of 24 September 2006 on establishing the conditions for creating a bank, financial institution, and the conditions for creating a foreign financial institution and branch to the license procedures. The application for a license is submitted to the Monetary and Banking Council as the competent authority in granting the license, following Article

²⁰ Cf. Article 83 amended and supplemented in accordance with the Ordinance 10-04 related to Monetary and Credit. -Canceled-

²¹ Cf. article 92 of Law 23-09 mentioned above.

²² Cf. Article 93 of Law 23-09 mentioned above.

²³ Kachi Allal, Op.cit, P 38.



64 of the Monetary and Banking Law and Article 02 of the previous Regulations No. 06/02. The license is granted by individual decision and the application must be attached to a file.

License Content (components of license request file)

With reference to Article 99 of the Monetary and Banking Law, by referring also to regulation 06-02 in Article 03 which defines the components of the license application file which includes :

- An activity program: That contains the following information and data:

Full description of the banking activities and services the bank aims to provide to its customers.

Providing details of the proposed advantages for competitiveness and opportunities.

Enclosing an economic feasibility study conducted as well as marketing modalities details.

Clarifying how to deal with current and future circumstances and their impact on the banking sector.

Giving details about the 12-month activity program following the beginning of its activities and then about 05 years after its work started by providing estimated financial data.

Financial means, their origin and the used technical means.

The network development strategy and methods used for this purpose.

List of major managers according to article 98 of Law 23-09.

The financial ability of shareholders and their guarantors.

The major contributor's core among the contributor group, particularly with regard to their financial capacity, experience and efficiency in the banking and financial field in general, and their obligations to provide support, should be reflected in a form of an agreement between shareholders.

The status of the institution representing the referential shareholder, particularly in its country of origin, includes indicators of its financial integrity.

The founders of the bank who asked for the license must present a detailed operating plan, including targeted activities and the financial resources needed to carry out these activities; the Council should therefore ensure that capital is sufficient to support this strategic plan, as well as the requirement to not borrow money in order to pay the capital by the founders, along with examining the source of funds to ascertain the legitimacy of their source.

The Bank's managers must possess the so-called standards of convenience, i.e. they should have the following characteristics²⁴:

- A competence reflected by experience for at least 05 years.
- A competence reflected in a particular level of education.
- The availability of prior evidence of the ability to make sound, practical decisions.
- Holding high integrity and adherence to conventional principles.
- The absence of dishonesty evidence or financial manipulation.
- Enjoy a good reputation and respect among the financial community.
- Knowledge of the banking sector.
- Commitment to learning the Bank's business and dedicated effort and time.
- * Available capacity to deal with and manage crises in the short and long term.
- Experience in global markets.
- Leadership personality and the ability to grant prerogatives and prepare employees.

- To submit the draft organic Law if it comes to creating a bank, the Organic Law of the bank when it comes to establishing a branch of a foreign bank, in addition to the internal organization chart, i.e. the organogram with reference to the number of employees and each department prerogatives.

- The status of persons providing the funds (their names, their chosen addresses, the amount of their shares) and their guarantors, if necessary.

Contribution to the economic growth of the country and the development of the banking sector:

During the Council's examination of a bank's license application, it must take into consideration the Bank's intention to contribute to economic development in Algeria including its plans to develop the

²⁴ *C.f.* Regulations No. 92-05 of 23/03/1992 concerning the conditions to be met in the founders of banks and financial institutions, as mentioned above.



banking sector through providing sophisticated banking services in a context that is consistent with the banking system proper functioning through providing a written statement to prove it²⁵.

The file must be attached to five appendices:

Appendix 01: Detailed information about the identity of shareholders, their financial activity, and ethical status.

Appendix 2: Includes an accurate description of the business item project with all information on the financial, professional, and ethical situation of the managers.

Appendix 3: Declaration on the validity of this contribution information by means of a letter specimen included in the Appendix.

Appendix 4: Information required by the management of a bank, financial institution, branch, or international organization abroad

Appendix 5: Declaration on the validity of information in Appendix 4.

The first appendix contains information about the shareholders with their identities and, if there is a legal person among the shareholders, the name of the business, the legal status in the commercial register, and the permanent register should be provided if he is a member of the management board. For the average person, personal information about the identity of the contributor should be provided, specifying whether the founders of the bank or financial institution are shareholders and the number of shares per member.

The second appendix contains the names of the managers and founders or the proposed commercial name, the core, phone number, and Fax.

License procedures

After the application file is constituted, it will be sent to the Monetary and Banking Council together with a specimen used for this purpose with a questionnaire filled out by shareholders²⁶.

The Monetary and Banking Council, as the sole licensee of banks, shall ascertain all the elements and information contained in the application, in particular the findings of the investigation relating to the provisions of Article 87 of Law 23-09. Also, Regulation No. 06/02 sets forth the conditions for the creation of a bank or financial institution and the conditions for the establishment of a bank branch and a foreign financial institution, in particular its articles II and III, as well as the instructions issued by the Bank of Algeria under Articles 07/11 on the conditions for the creation of a bank or financial institution and the establishment of branches of a bank or financial institution.

He must decide within two months from the delivery of the license application and make his decision either to refuse or grant the license.

In case the license is refused

We should point out that the Monetary and Banking Council reserves the absolute right to reject applications if it does not previously meet the set of conditions and criteria. In this case, the rejection decision can only be appealed directly to the Administrative Court of Appeal of the city of Algiers,

²⁵ *C.f.* the last paragraph of article 99 of Law 23-09

²⁶ *Cf* the instruction No. 96/06 of 22 October 1996 issued by the Bank of Algeria which apply the Regulation 93/01. three appendix have been attached to this instruction (Appendix VII, Appendix VIII, Appendix IX), which contains:

Appendix I: Information provided by shareholders with at least 10 percent of voting rights, it is basically a form that must be filled by them.

Appendix II: Description of the project (Organic Law and at least two persons' identity to ensure the effective functioning of the bank activity and the identity of the statutory auditors).

Appendix III: A letter addressed by shareholders to the Governor.



without requiring the resubmission of a second application, as was previously done, in order to overcome obstacles to investment in the banking field²⁷.

In case the license is approved

If the Monetary and Banking Council issues a preliminary approval decision on the license application, it must be issued in the form of an explicit decision to be notified to the interested party.

It shall enter into force on the date of its adoption in accordance with article 06 of Ordinance 26/02 which stipulates: “the license granted to create a bank or financial institution as well as the license to establish a branch of a foreign financial institution and a foreign financial institution bank enter also on force as of the date of its notification”. Obtaining the license enables the creation of a shareholding company under Algerian law.

In order for the bank's project to acquire a legal personality, the constitutive contracts must be deposited at the National Center for Commercial Registration and proclaimed them, otherwise they will be null, as provided for in article 548 of the Commercial Code, and article 04 of Act No. 04/08 stipulates mandatory of registration according to commercial code²⁸.

And also binding branches that engage in commercial activity in Algeria, according to article 06 of the previous law 08/02: “Every establishment operating in Algeria on behalf of a commercial enterprise that is based abroad must register in the commercial register and the registration file in the commercial register for companies under Algerian law comprises.

According to the text of article 09 of Executive Decree No. 15-111 dated 14 Rajab 1436 AH (30 May 2015) establishing the modalities of registration, adjustment, and erasure in the commercial register, and the legal person concerned shall be registered in the commercial register with the following conditions:

A signed and edited application on a form handed over by the National Center for Commercial Register.

A copy of the Organic Law that includes the creation of the company.

A copy of the publication announcement of the company's organic law in the Official journal dedicated to Legal publication.

Proving the existence of a qualified location to host a commercial activity by providing an ownership act, or a leasing contract or concession to the real estate base holding the commercial activity or any contract or place of allocation granted by a public authority.

For branches and commercial representations or any other commercial affiliated establishment to a company based abroad, it must be registered in the commercial register, in accordance with article 10 of the same decree, which provides for the submission of a signed and edited application on a form handed over by the National Center for commercial register, together with the following documents:

Proving the existence of a qualified location to host a commercial activity by providing an ownership act, or a leasing contract or concession to the real estate base holding the commercial activity or every contract or place of allocation granted by a public authority.

One copy of the Organic Law, which includes the establishment of the parent company, certified by the departments of the Algerian consulate, translated if necessary to Arabic.

One copy of the deliberation record, which stipulates the creation of a company in Algeria, certified by the departments of the Algerian consulate, translated if necessary to Arabic.

Obtaining a license is only a preliminary procedure by which the bank is created and a person cannot conduct financial operations before obtaining accreditation²⁹.

Secondly- the request for accreditation

²⁷ *Cf.* article 95 of Law 23-09

²⁸ Act No. 04/08 of 27 Jomada Al Thani 1425 AH (14 October 2004) concerning the conditions of commercial activities practice amended and supplemented.

²⁹ *Cf.* Articles 67;95;99 of Law 23-09.



A license for a bank or a financial institution does not permit the banking business because it lacks the procedure of accreditation, which grants them the status of bank or financial institution; pursuant to a decision of the Governor of the Bank of Algeria, because it is considered as a single administrative act allowing the conduct of banking activity until it is published in the Official journal.

Procedures for accreditation request

If the Monetary and Banking Council issues the decision to grant the license, it must specify the requirements and conditions for obtaining the final license or the so-called accreditation.

According to article 12 of instruction No. 07/01, the accreditation request file contains seven copies, each copy includes:

- An engagement letter validated by the General Shareholders' Assembly and signed by the chairman of the Board.
- The original copies of the original laws and the shareholder's Agreement written under a notarial act or validated copies of the organic laws of the Enterprise when it concerns a foreign bank branch.
- A certified duplicate of the trade registry³⁰.

³⁰ The bank has acquired a legal personality since its entry into the commercial register pursuant to article 549 of the Algerian Trade Law. Before submitting the file to the Governor of the Bank of Algeria for approval, an important measure of registration must be taken into account in the commercial register, so that the bank's project or financial institution can acquire a legal personality. The constitutive contracts are submitted to the National Register Center and announced, otherwise they will be invalidated.

According to article 548 of the Commercial Code and article 04 of Act No. 04/08 of 14 April 2004 concerning the conditions of practicing commercial activities, the registration on the commercial register is required.

Article 06 of Act No. 08/04 of the previous Act also obliges the branches to register in the commercial register, as the article stipulates: "Every organization operating in Algeria shall be required to register in the commercial register in the name of a commercial company located abroad."

The registration file for companies subject to Algerian law is contained in the Executive Decree No. 15-111 establishing the modalities for registration, adjustment and erasure from the commercial register. According to article 09 of this decree, the registration of a legal person on commercial register shall meet the following conditions:

- A signed and edited application on a form handed over by the National Center for Commercial Register.
- A copy of the organic Law that includes the creation of the company.
- A copy of the publication announcement of the company organic in the Official journal dedicated to of Legal publication.
- Proving the existence of a qualified location to host a commercial activity by providing ownership act, or a leasing contract or concession to the real estate base holding the commercial activity or any contract or place of allocation granted by a public authority.

As for branches and commercial representatives (commercial representation offices) or any other enterprise of a business company based abroad, they must be registered on the commercial register and this is in accordance with article 10 of the same previous executive decree. This latter stipulated provides for the submission of a signed and edited request on a forms delivered by the National Center for Commercial Registry, annexed to the following documents:

- Proving the existence of a qualified location to host a commercial activity by providing ownership act, or a leasing contract or concession to the real estate base holding the commercial activity or any contract or place of allocation granted by a public authority.
- One copy of the organic Law, which includes the establishment of the parent company certified by the departments the Algerian consulate, translated if necessary to Arabic.
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- One copy of the deliberation record, which stipulates the establishment of a company in Algeria, certified by the departments the Algerian consulate, translated if necessary to Arabic.



- A certified duplicate of the tax clearance report issued by the tax collection office at the location of the social headquarters.
- Certificate of full releasing of minimum capital or part of social capital, when the latter surpasses the minimum capital, or the edited allocation at a notary as well as the actual deposit of payments into a bank account.
- The hard currency monetary certificate for non-resident shareholders.
- Original copies of the portions delegate's report from the in-kind portions values.
- A notarial record of the Constituent Assembly including the members' signature, in particular its chairman or the monitoring board record including the members of the Board and its Chairman's appointment, or the board of directors or the monitoring Board of the Foreign Bank concerning the prerogatives granted to the Branch's managers.
- The record of the ordinary General Assembly that includes the appointment of the management organ, the organ management record of the parent enterprise's headquarters which must appoint at least two designated persons for the activity and the branch.
- An endorsement by the Bank of Algeria Governor of the management organ members or the persons responsible for the operation and management of the branch.
- The meeting of management organ record which includes in particular the election of its Chairman and the appointment of the Directors-General.
- A certified copy of the title or the rental contract for the bank's or branch locations with address, phone number, and Fax.
- The financial liability situation issued by a notary for natural persons among shareholders.
- Presenting a detailed study of the project, which consists of the organizational structure of the enterprise, the identity and function of the management executive along with their curriculum vitae and the enterprise development plan.

The file must be sent with the accreditation request within a maximum period of 12 months from the date of the license notification before the approval is granted by an explicit governor decision. It must be ensured that the conditions on which the license was granted are met, in particular the ethical and professional requirements of both the board members and the Board of Directors, through consolidating the file with the following documents:

- A. Civil status certificate.
- B. The criminal record
- C. The experience.
- D. The professional qualifications.

The accreditation shall be a decision issued by the governor who will issue and publish it in the Official Journal, where the bank is granted the status of an accredited intermediary to practice bank operations³¹.

What is observed from the legislator, he did not specify the period of time required for granting the accreditation, but left it unlocked, which could lead to a long period if the duration is not restricted, and this is what happened in fact to the Algerian Rayan Bank, which obtained the license on 28 November 1998, whereas the accreditation was granted only in 2000 by decision No. 2000-03 of the 8 October 2000, therefore, the legislator must rectify this branch and limit the crediting time to support investment in the banking field³².

³¹ *C.f.* the last paragraph of article 100 of the law 23-09.

³² Examples of accreditations granted under a decision by the Governor of the Bank of **Algeria**:

- Decision No. 97-01 of 06 April 1997, setting out the accreditation of the National Fund for provision and Reserve, Official Journal, No. 33 of 1997.

- Decision No. 99-02 of 28 October 1999, setting out the accreditation of the Algerian Bank Company, the Official Journal No. 81 of 1999.



After the credit is granted, the bank can carry on the banking operations that have been authorized. As for the accreditation decision, the legislator did not stipulate how to appeal it in the event of rejection of accreditation, so the method of appeal must be stipulated or it should be considered merely a formal procedure subordinate to the licensing application procedure.

The cases of accreditation withdrawal

Withdrawal of credit from the bank or financial institution may be within the jurisdiction of the Monetary and Banking Council and may also be within the jurisdiction of the Banking Committee. As for the Monetary and Banking Council, it is in accordance with Article 104 of Law 23-09 in the following cases:

Case 1: At the request of the bank or financial institution.

Case 2: An auto withdrawal:

- If the conditions to which the accreditation is subjected are not available.
- If the accreditation has not been used for 12 months. If the accreditation is not used for 12 months.
- If the activity subject to approval has been ceased for six months.

It may be within the jurisdiction of the Banking Committee in accordance with Article 126 of the same law, as it is considered one of the penalties imposed by the Banking Committee, which is withdrawal of credit and liquidation of the bank (examples of Al-Khalifa Bank, Industrial and Commercial Bank).

Examples

a) The decision issued by the Bank of Algeria on 29/05/2003 to conceal the accreditation from the Bank of Al-Khalifa because of its inability to pay as well as recording a significant shortfall in financial resources.

b/ Decision No. 06.01 of 19/03/2006 which includes the withdrawal of accreditation from the Algerian Ryan Bank³³.

Thirdly: Financial monitoring over the creation of banks and financial institutions

For the safety and stability of banks, monitoring of banks and financial institutions should be achieved. On the other hand, to protect depositors' and shareholders' money, the need for monitoring increased in recent years, taking into account the appearance of private banks in Algeria, the tendency toward openness to the world economy, the liberalization of foreign trade, along with the increase of banks' operations, the different complications in banking and financial services, and the extension of the size and quality of the problems facing banks. For these reasons, The Monetary and Banking Law regulated the oversight structures for banks and financial institutions, whether at their establishment or during the exercise of their activity.

Instances responsible for monitoring the creation of banks and financial institutions
The Algerian legislator assigned monitoring tasks over the creation of commercial banks to two instances operating under the authority of the Bank of Algeria, namely the Governor of the Bank of Algeria and the Monetary and Banking Council.

5. The Governor of the Bank of Algeria

The Governor of the Bank of Algeria is responsible for the administration of the Bank of Algeria; he is also the chairman of its board of directors with the assistance of three deputies; in addition to being the chairman of the Monetary and Banking council³⁴. He is appointed by presidential decree for a period of five years, renewable once, provided that he meets a set of conditions while exercising his duties as director of the Bank of Algeria, the most important of which is³⁵:

- Taking the oath before the competent judicial authorities within whose jurisdiction the central headquarters of the Bank of Algeria is located.

- Decision No. 03-03 of December 15, 2003, setting out the accreditation of the Algeria Gulf Bank, the Official Journal, No. 79 of 2003.

³³ Official Journal , 2006, No. 15, pp. 25-26.

³⁴ Articles 13 and 62 of Law 23-09 .

³⁵ C.f articles 14, 15 and 16 of Law 23-09.



- To not cumulate the position of the governor with governmental or legislative mandate or any public function
- To avoid practicing any activity, occupation, or position during his term; except for representing the State in international at international institutions of a monetary, financial, or economic nature.
- To not borrow money from any Algerian or foreign institution.
- To not accept any pledge signed by one of them in the central bank portfolio or the portfolio of any operating institution in Algeria.
- They must not, during the next two years of the end of their term of office, manage or operate in an institution under the authority or control of the Central Bank or a company controlled by this institution, or act as a representative or adviser to similar institutions or companies.

The Algerian legislator has envisaged including these conditions for the assumption of Algeria governor and deputies' duties in order to immunize them financially and ethically against the possibility of involvement or implication in crimes carried out through the banking system³⁶.

It is noted through the Monetary and Banking Law that the legislator has moved to adopt a trusteeship system whereby the governor and his deputies assume the management of the Bank of Algeria for a period of five years, renewable only once, and in the event of a legally proven incapacity, their duties are terminated in the same manner³⁷.

The Monetary and Credit Council

Under the amended and supplemented Article 58 of Ordinance No. 03-11, on the Credit and Monetary, the Monetary and Credit Council, which is composed of the Governor and his three deputies plus three high-ranked employees, in addition to two personalities chosen by virtue of their competence in economic and monetary matters³⁸, has become the legislative organ of the banking system by virtue of being the monetary authority issuing the regulations. Its prerogatives have been expanded from those it was authorized under Act No. 90-10 in order to make it more effective in conducting monetary policy and setting the terms and parameters of central bank operations, particularly through the following³⁹ : “ It set out the conditions of bank and financial institutions' accreditation and opening as well as the conditions of establishing their networks, in particular the minimum capital of banks, financial institutions and the modalities of the discharge.....”.

The effectiveness of the Monetary and Credit Council in organizing these tasks is demonstrated by the issuance of Regulation No. 97/02 of 06 April 1997 on the conditions for the creation of banks and financial institutions' Networks, supplemented by regulation No. 02-05 of 31 December 2002.

Monitoring the activities of banks and financial institutions

The Algerian legislator has empowered some public instances of the banking system to monitor the activity of banks and financial institutions. These instances are, in particular, the Banking Committee, the central of risk, the central of unpaid liabilities, and the central of budgets. It is a direct monitoring that will allow looking at the financial situation of these banks and institutions, on the one hand, and investigate some of the excesses that took place within it, including money laundering operations, on the other.⁴⁰ However, we will highlight the monitoring role of the Banking Committee on the bank or financial institution that violates legislative or regulatory provisions concerning to practice of the banking profession.

³⁶ Fadhila Melhak, Preventing the Algerian banking system from laundering money, Dar Houma, Algeria, 2013, P175.

³⁷ Cf. article 13 of the Law 23-09.

³⁸ What should be noted is that the legislator through monetary and banking law has changed the composition of this Council from that under the abolished law in terms of the number of members and their qualifications so that the members become seven instead of five. In terms of their qualifications, the members of the Board of Directors of the Bank of Algeria and one personality chosen by virtue of their competence in Islamic banking The number of members of the Bank of Algeria and one person chosen by virtue of their competence in economic, financial and new matters is the addition of a personality chosen by virtue of their competence in Islamic banking and another within the framework of the Bank of Algeria with the rank of general manager. .

³⁹ C.f article 64 of the Law 23-09.

⁴⁰ Fadhila Melhak, Op.cit, P 198; Foudhil Farés, Op.cit, P 61.



A. Direct monitoring of the Banking Committee:

It is an instance responsible for monitoring the following operations⁴¹:

- The extent to which banks and financial institutions respect the legislative and regulatory provisions applicable to them;
- To punish violations that have been witnessed during monitoring operations.
- It examines the conditions for the exploitation of banks and financial institutions and ensures the quality of their financial situation.
- It ensures compliance with the rules of the profession's good functioning;
- It examines offenses committed by persons involved in the activities of the bank or financial institution without being accredited; along with carrying out disciplinary sanctions as provided for in the Monetary and Banking law without affecting other criminal and civil proceedings.

The Bank of Algeria is charged with organizing such monitoring on behalf of the Commission via its agents⁴², and the Commission can be entrusted with the task of monitoring anyone who has chosen it. The Committee organizes its program of monitoring process, establishes the list of submissions, its modality, and the timelines for the communication of documents and notifications it considers useful. It is also authorized to require the banks and financial institutions to provide all information, clarifications, and evidence necessary to carry out its task. The Commission can ask everyone concerned to hand over any document or provide any information, and professional confidentiality cannot be invoked against the Committee⁴³.

The Banking Committee is composed of the following members⁴⁴:

- Governor of the Bank of Algeria, Chairman;
- Three members selected by virtue of their competence in banking, financial and accounting;
- Two judges, the first assigned by the Supreme Court and chosen by its Chairman, the second assigned by the Council of State and chosen by the Chairman of the Council, after consultation with the Supreme Judicial Council;
- A representative of the Accountability Council selected by the Chairman of this latter among the first chancellors;
- A representative of the Minister of Finance with at least the rank of director.

The members of the Banking Committee shall be appointed by presidential decree for a period of five years and it makes decisions by majority. In the case of equal votes, the chairman shall provide the casting vote. The Committee decisions concerning the appointment of a temporary administrator or a liquidator as well as the disciplinary sanctions alone shall be subject to judicial appeal to the Administrative Court of Appeal of Algiers within the time limits established by the provisions of the Code of Civil and Administrative Procedure⁴⁵.

The violation of legislative provisions situation

In the case of a legislative or regulatory provisions violation concerning the banks and financial institutions' activity, or failure to comply with an ordinance or not taking into account the warning given by the Committee, this latter requires the following sanctions⁴⁶ :

- Injunction;
- Reprimand;
- Denial of practicing certain operations and other types of activity limitations;

⁴¹ C.f article 116 of the Law 23-09.

⁴² Among the Bank of Algeria regulatory instances: Tax Administration, Customs Administration, statutory auditors, Accountability Council, General inspection of Financial, – Stock Exchange activity regulation and surveillance committee, National authority for prevention and combating corruption.

⁴³ Mohamed said Bousaadia, Introduction to the Algerian monitoring law study, Dar Al Cassabah publishing house, Algeria, 2014, P201.

⁴⁴ Cf. article 117 of the Law 23-09.

⁴⁵ Cf. articles 117-119 of the Law 23-09.

⁴⁶ Cf. article 126 of the Law 23-09.



-Temporary suspension of one or more managers with the possibility of appointing a temporary administrator;

-To lay off one or more of these same persons with the possibility of appointing an administrator.

Withdrawal of accreditation

In addition to these sanctions, the Commission may establish financial sanctions which are at most the minimum capital that the bank or financial institution is required to provide. The Treasury collects the correspondent amounts.

CONCLUSION

Based on strengthening and revitalizing the banking sector and promoting economic development by avoiding the stability generated by the rapid expansion of banks, and with the aim of creating a healthy financial system and in order to identify carefully the institution subjected to monitoring; the legal status of the Algerian Monetary and Banking Council has been reinforced by giving it broad prerogatives, the most important of which are:

-Establishing conditions for the accreditation and license of banks and financial institutions.

In reviewing license requests, the Central Bank should take into account the overall impact on the safety of the banking sector, which will help it to ensure that the number of banks does not increase adversely affecting the financial sector; or on the contrary, a deficiency in their numbers in the way that adversely affect credit or their ability to provide adequate banking services to the society.

Although the license and certification processes cannot guarantee the bank's good governance after it has been in operation, they can be an effective way to reduce the number of unstable institutions that may join the banking system.

Finally, it should be noted that the recent legal reform of banks in Algeria in its licensing, accreditation, and control of banks has failed to meet the requirements of the current phase, except for some changes that have not affected the substance of the abolished monetary and exchange law.

- The Bank of Algeria must be given greater independence from the executive organ of the State with legal mechanisms for its accountability and control of its operations in order to carry out its functions fully, particularly in the process of establishing and controlling banks and financial institutions.

- There is a need for physical reform that corresponds to legal reform and is in keeping with the world's rapid technological development in the banking sphere.

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