



## SETTLEMENT IN COMERCIAL DISPUTES

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### Abstract:

The Algerian legislator has included the judicial reconciliation system among the alternative methods for resolving disputes before the Algerian judiciary. This system has proved its importance in the Algerian legal framework by playing a significant role in resolving conflicts and reducing the pressure on the judiciary caused by the large number of cases brought before it. For this reason, the Algerian legislator has included in Algerian law the general provisions for the establishment of judicial conciliation as an alternative and amicable means of resolving disputes.

Judicial reconciliation in commercial matters is defined as a contract concluded between the debtor and the group of creditors, whereby they settle their debts with the least possible loss, allowing the debtor to regain his commercial standing and return to the management of his assets. This can be done either under judicial authority or by the will of the parties without judicial intervention; however, the judicial involvement gives the composition a certain rigour in the enforcement of its terms and provides creditors with guarantees for the recovery of their funds, which encourages them to resort to judicial composition rather than amicable composition.

**Keywords:** trader, specialised commercial court, bankruptcy, judicial conciliation, specialised courts, commercial conciliation.

### INTRODUCTION:

Commercial life is based on two main pillars: speed and credit, which in turn help traders to carry out various activities and commercial operations related to their trade. As a result, disputes often arise between merchants or even with debtors, requiring them to be brought before the judiciary for consideration. However, in view of Algerian legislation, and as a mandatory procedure before filing a complaint and initiating litigation, the judicial conciliation procedure for disputing parties was established by Law 22/13 of 12 July 2022<sup>1</sup>, which provides for the establishment of specialised commercial courts.

Judicial conciliation in the commercial field before specialised commercial courts is considered to be one of the most effective legal and judicial mechanisms for settling disputes and conflicts between contending traders, on the one hand, and between them and individuals, on the other. The wide openness of commercial life gives rise to a variety of disputes, the complexity of which is somewhat different from that of the past. In addition, the allocation of the power to resolve these disputes to a single judicial body leads to a backlog of cases before the ordinary commercial judge and increases the pressure on this body, leading to longer delays in resolution.

The Algerian legislator has therefore sought to improve the legal system to address these issues, as evidenced by the modification of the judicial structure that led to the creation of a specialised commercial court. This court has been assigned a number of disputes relating to commercial matters of a technical and precise nature, which require a highly competent body to rule on them.

### Section One: The legal system of specialised commercial courts

In this section, we will discuss the legal system of specialised commercial courts by defining the nature of specialised commercial courts, highlighting the evolution of the commercial judiciary in Algeria on the one hand, and shedding light on the composition of the specialised commercial court on the other. This will be addressed in the first requirement. Furthermore, we will determine the

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<sup>1</sup> Law no. 22-13 of 12 July 2022, published in the Official Journal of the Republic of Algeria no. 48 of 17 July 2022.



jurisdiction of the specialised commercial court by specifying its qualitative and territorial jurisdiction in the second requirement.

**First requirement: The legal system of the specialised commercial court**

The term “specialised commercial court” is new to Algerian law, as commercial disputes have traditionally been dealt with by the ordinary courts before the commercial division. For this reason, the first part of this study will examine the development of the commercial judiciary in Algeria, and the second part will discuss the structure and organisation of the specialised commercial court.

**Section One: The development of the commercial judiciary in Algeria**

The establishment of commercial courts dates back to the Middle Ages. Their origins can be traced back to Italian cities, as a result of the conflict in Europe between the feudal lords then in power and the emerging merchants, who had discovered a flexible source of wealth through their interactions with Muslim traders in the East during the Crusades. Trade was thus seen as an alternative to agriculture.

It is worth noting that during the Middle Ages, merchants, in order to protect their interests, established a system of guilds, with each guild monopolising a specific commercial activity. Non-members were not allowed to engage in this activity. In order to avoid having to resort to feudal courts, the members of these guilds set up a tribunal to settle disputes among themselves, presided over by a merchant of great expertise and competence, chosen from among the members of this group, known as the consul. These courts were therefore called consular courts (*Les juridictions consulaires*)<sup>2</sup>.

According to article 32 of the law 08-09, which states: “The tribunal is the judicial authority of general jurisdiction and is made up of sections which may also consist of specialised sections. The Tribunal hears all cases, in particular civil, commercial, maritime, social and real estate cases...”. Furthermore, the seventh paragraph of the aforementioned article 32 stipulates that “the specialised panels convened in certain courts shall have exclusive jurisdiction over disputes relating to international trade, bankruptcy, judicial settlement, banking, intellectual property, maritime and air transport and insurance”.

**First: The concept of specialised chambers**

The first paragraph of Article 32, referred to above, states that the general rule for the adjudication of disputes is the ordinary court, which has a number of divisions, including the commercial division, which has the power to adjudicate cases that do not fall within the jurisdiction of the specialised chambers.

The exception to this rule is the specialised chambers, as set out in Article 32(2) and (7).<sup>3</sup> The latter defines a number of disputes that are exclusively assigned to these chambers, meaning that all matters outside these six specified disputes fall under the jurisdiction of the Commercial Division.

The legislator has organised the composition of the specialised chambers in such a way that they are collective, given the specific nature of these disputes, which require a specific legal framework and specialised judges. The creation of these chambers was also aimed at keeping pace with the characteristics of commercial law, which is based on speculation and profit, as well as speed and dynamism, thus distinguishing between civil and commercial jurisdictions<sup>4</sup>.

**Second: The abolition of specialised commercial chambers.**

Article 32 was amended by Law 22-13, which abolished paragraph 7 concerning the competence of specialised civil chambers. This led to the introduction of Article 531 in the new amendment to the Civil and Administrative Procedure Code, which established specialised commercial courts<sup>5</sup>.

<sup>2</sup> Mestre, J., & Pancrazi, M-E. *Treatise on Commercial Law*, LGDJ, Paris, p. 2.

<sup>3</sup> Article 32 of the Code of Civil and Administrative Procedure.

<sup>4</sup> Haj Ben Ali Mohammed, MaghrebiKouider, "Towards Specialised Commercial Jurisdiction", *Journal of Law and Political Science*. University of Khenchela, Volume 5, Issue 1, 2018, p. 67.

<sup>5</sup> Article 531 of Law No. 22-13 on the aforementioned Code of Civil and Administrative Procedure.



It should be noted that one of the main factors that led to the creation of this type of court is the specific nature of commercial transactions. The Algerian legislator, like other legislators, wishes to preserve the essence of commerce, which is essentially based on the principles of speed and credit. These courts have therefore been created to respond to these two characteristics, since they deal with specific cases, unlike the General Court, which has a fixed number of cases of various types, which leads to long delays in the adjudication of cases<sup>6</sup>.

It is also worth noting that these specialised commercial courts play an important role in the development of legal systems, as recourse to specialised judges in such disputes leads to the correct application of legal norms, thus increasing the confidence of traders in the judiciary.

### **Second branch: composition of the specialised commercial court**

Article 536 bis 3 of the Code of Civil and Administrative Procedure reads as follows: "The specialised commercial court shall be composed of sections presided over by a judge, assisted by four assistants who have extensive knowledge of commercial matters and who have an advisory opinion, and who are selected in accordance with the conditions and methods laid down by regulation".

The composition of the specialised commercial court is therefore collective rather than individual, given the nature of the disputes brought before it, which are complex and involve technical and specialised aspects. This requires a specialised human composition for the adjudication of these cases. For this reason, we will look first at the judicial body represented by the judge and then at his assistants.

#### **Firstly: The judge of the specialised commercial court**

The judge of the specialised commercial court is subject to the same law that governs the composition of the commercial section, namely the provisions of Organic Law No. 04/11 on the Basic Law of the Judiciary. Accordingly, the judge of this court presides over the session, hears the cases assigned to the section he presides over and, finally, renders a final judgement on the dispute.

However, judges appointed to the Specialised Commercial Court undergo training. According to the Dean of the Faculty of Law of the University of Constantinople, the Faculty, in cooperation with the Court of Appeal of Constantinople, has contributed to the training of specialised judges who are assigned to adjudicate disputes within the jurisdiction of this court<sup>7</sup>.

Moreover, the basic and specialised training of judges in such commercial matters is a fundamental pillar that can lead to effectiveness and the ability to manage new types of commercial disputes<sup>8</sup>.

#### **Second: The assistants of the specialised commercial court**

Article 536 bis 3 stipulates that the judge shall be assisted by four assistants selected in accordance with Decree No. 23-52. In order to clarify the concept of assistants, we shall first examine the legal provisions adopted by the Algerian legislator concerning their selection and then highlight their role in the performance of this task.

##### **A - Appointment of assistants to the specialised commercial court:**

The Algerian legislator issued Decree No. 23-52, which regulates the conditions and methods for the selection of assistants to the specialised commercial court. Article 2 of this decree states that there is a list of the names of the assistants at the specialised commercial court, which is drawn up and updated by a committee chaired by the president of the council of judges within whose

<sup>6</sup>- ZainiAyman Ramadan, "Economic Courts and Their Role in Promoting Investment", a presentation at the Conference on Law and Investment organised by Tanta University, 29-30 April 2015, p. 1.

<sup>7</sup>- QamouhMouloud, "Specialised Commercial Courts: Towards Specialized Jurisdiction in the Economic Field", a presentation at the Faculty of Law, organised by the Faculty of Law in collaboration with the PRFU research team, on 7 May 2023, Constantine 2023.

<sup>8</sup>- Skik Mohamed Amin, "Procedures Followed in the Work of Specialized Commercial Courts", presented at the Study Day on "Prospects and Challenges in Resolving Commercial Disputes in Light of the Establishment of Specialized Commercial Courts", organized by the Judicial Council of AinDefla, on 18 December 2022, Algeria, p. 10.



jurisdiction the specialised commercial court is located, or by his deputy. This committee shall be composed of:<sup>9</sup>

- The president of the specialised commercial court,
- The presidents of the commercial sections of the judicial councils under whose jurisdiction the specialised commercial court falls,
- The heads of the sections of the specialised commercial court.

Article 4 also empowers the Committee to consult any public or private body or institution, or any person it deems capable of assisting it in the performance of its duties.

In addition, the legislator has laid down certain conditions for the selection of assistants, as set out in Article 5 of the same decree, which requires the following:<sup>10</sup>

- Possession of Algerian nationality,
- enjoyment of civil and political rights and a good reputation,
- Not having been convicted of a crime or misdemeanour, except for unintentional offences. If all these conditions are met, the candidate will be subject to an administrative investigation initiated by the public prosecutor of the judicial council where the specialised commercial court is located. If the candidate is accepted, he or she will undergo specialised training in order to understand the judicial work and the competences of the specialised commercial court<sup>11</sup>. Upon completion of the training and before taking up their duties, they must first take an oath in the form provided for in article 7 of this decree, which reads as follows<sup>12</sup> "I swear by Almighty God that I will perform my duties to the best of my ability and will respect the confidentiality of the deliberations, information and documents that come to my knowledge during or in connection with the performance of my duties".

A record is then made of the proceedings, a copy of which is given to the persons concerned and kept in the archives of the Judicial Council. Then, in an official session of the specialised commercial court, a record is made and handed over to the court's secretariat, which in turn keeps it<sup>13</sup>.

#### **B - The role of the assistants in the specialised commercial court:**

The Algerian legislator has stated in Article 536 bis2 that the opinion of the assistants is a deliberative opinion, i.e. it is not advisory, and therefore it has value before the judge's decision. However, these assistants are not specialised in the field of justice; they are chosen from among those who have knowledge of commercial matters, which limits their ability to determine whether the dispute falls within the jurisdiction of the specialised commercial court or another judicial authority. As their opinion is therefore advisory, it may affect the professionalism of the court<sup>14</sup>.

It is noteworthy that the Algerian legislator has not clarified how decisions are taken within the deliberative body, such as the number of votes required, whether by absolute majority or relative majority, and what happens in the event of a tied vote, in particular if the vote of the president, referring here to the judge, prevails.

Furthermore, by referring to them as assistants, the legislator has not clarified the real value of their opinion, whether it is merely a clarification as a form of assistance to the judge or whether they are partners in the decision. Silence on the role of assistants in the deliberative chamber

<sup>9</sup> - Article 3 of Decree No. 23-52 of 14 January 2023 laying down the conditions and procedures for the selection of assistants for specialised commercial courts, Official Journal No. 02 of 15 January 2023.

<sup>10</sup> - Articles 04 and 05 of the same earlier decree.

<sup>11</sup> - Article 06 of the same former Decree.

<sup>12</sup> - Article 07 of the same former Decree.

<sup>13</sup> - Article 08 of the same former decree.

<sup>14</sup> - Watass Al-Hassan, "Procedures Before Specialised Commercial Courts" (An Evaluative Study presented at the National Scientific Conference on the Settlement of Commercial and Maritime Disputes in the Light of Amendments to the Law on Civil and Administrative Procedures, issued on 08-07-2022, on 11-05-2023), D.B.N., 2023, p. 06.



could lead to abuse and disregard of their opinions by the judge, rendering their role nominal and without practical value<sup>15</sup>.

### **Section Three: Organisation of the specialised commercial court**

In examining Algerian legislation, we note that the legislator has mandated the establishment of specialised commercial courts under the jurisdiction of certain judicial councils, as provided in Article 06 of Law No. 22-07 on the division of jurisdiction, which states: “Specialised commercial courts shall be established within the jurisdiction of certain judicial councils”<sup>16</sup>.

Article 536 bis 03<sup>17</sup> of the Code of Civil and Administrative Procedure states: “The president of the specialised commercial court, after hearing the opinion of the public prosecutor, shall determine the number of sections by order, based on the nature and volume of judicial activity”.

It follows from this text that the sections within the specialised commercial court are determined by the nature and volume of cases that may arise in the geographical area assigned to that court and are determined by the president of the specialised commercial court after hearing the opinion of the public prosecutor. Thus, the President of this court has a discretionary power to determine the sections, while the opinion of the Public Prosecutor is required due to the duality of his powers, which include an administrative function allowing him to express his opinion on the determination of sections within the court<sup>18</sup>.

Since the Specialised Commercial Court began its work in the Algerian capital, it has issued a decree on the distribution of tasks for this court for the judicial year 2022-2023, presided over by Judge Damdash Aziza. In addition, five sections have been set up, named as follows:<sup>19</sup>

- Section for disputes between banks and financial institutions with merchants and international trade;
- Intellectual Property Disputes Section;
- Section for Urgent Commercial Matters; as the Algerian legislator considered the existence of urgent matters, which are present in all other courts, due to their preventive role in preserving rights and preventing the deterioration of the situation;
- A section for maritime disputes, air transport and commercial insurance;
- A section for company disputes, court settlements and bankruptcy.

### **Section 2: Jurisdiction of the specialised commercial court**

The specialised commercial court is responsible for adjudicating on certain disputes specified by the legislator in the Code of Civil and Administrative Procedure. It has an extended regional jurisdiction and a special pre-litigation system. Therefore, it is necessary to clarify the qualitative jurisdiction of the specialised commercial court in the first subsection and to define its regional jurisdiction in the second subsection.

#### **Subsection 1: Qualitative jurisdiction of the specialised commercial court**

Qualitative jurisdiction refers to the power of a court, at whatever level, to hear a particular type of case. It involves the allocation of cases to different courts according to the nature of the dispute. In other words, it defines the range of cases that a given court can deal with according to the nature of the claim<sup>20</sup>.

With regard to the specialised commercial court, the legislator has granted it exclusive qualitative jurisdiction to adjudicate on disputes defined in Article 536 bis<sup>21</sup> of the Code of Civil and Administrative Procedure, which states “The specialised commercial court has jurisdiction in the following disputes - Intellectual property disputes - Commercial company disputes, in particular disputes between partners and the dissolution and liquidation of companies - Judicial settlements

<sup>15</sup> - Watass Al-Hassan, same reference, p. 07.

<sup>16</sup> - Law No. 22-07 of 5 May 2022 on the division of jurisdiction, J.R.J.J. No. 32, published on 14 May 2022.

<sup>17</sup> - Article 536 bis 3 of Law No. 22-13 on civil and administrative procedure.

<sup>18</sup> - Watass Al-Hassan, same reference, p. 8.

<sup>19</sup> - Watass Al-Hassan, same reference, p. 10.

<sup>20</sup> - Barbarrah Abdul Rahman, *supra*, p. 81.

<sup>21</sup> - Article 536 of Law No. 02-22-13 on the Code of Civil and Administrative Procedure.



and bankruptcy - Disputes between banks and financial institutions and traders - Maritime, air transport and insurance disputes relating to commercial activity - Disputes relating to international trade”.

According to the aforementioned text, the specialised commercial court has exclusive jurisdiction over the disputes specified in this article, and the legislator has presented this list as exhaustive. The disputes specified are the following:

**First: Intellectual property disputes**

Intellectual property, or more specifically intellectual property rights, refers to the moral rights associated with a creative or intellectual product. These rights fall into two categories: industrial and commercial property rights, and copyright and related rights.

The first category includes patents, governed by Ordinance No. 03-07 of 19 July 2003, trademarks, governed by Ordinance No. 03-06 of 19 July 2003, trade names, and industrial designs, governed by Ordinance No. 03-08 of 19 July 2003, relating to the layout of integrated circuits.

The second category consists of literary and artistic property rights, also known as copyright and related rights, which are governed by Ordinance No. 03-05 of 19 July 2003.

It should be noted that intellectual property rights play an important role in the world of commerce and can be a fundamental element of a trader’s financial portfolio. A pertinent question arises: Do copyright disputes fall within the jurisdiction of the specialised commercial court, given that the author is a civil person? It can be argued that the legislator left the concept of “intellectual disputes” broad and did not limit it to disputes between entrepreneurs. Therefore, a dispute between civil persons may also fall under the jurisdiction of the specialised commercial court<sup>22</sup>.

Given that jurisdiction is a matter of public policy, it does not allow for wide interpretation or discretion. Thus, all disputes related to intellectual property fall under the jurisdiction of the specialised commercial court, regardless of the status of the parties involved, whether they are civil persons or entrepreneurs. This underlines the objective jurisdiction of the specialised commercial court and the exclusion of personal jurisdiction by the legislator<sup>23</sup>.

**Second: commercial company disputes**

According to article 536 bis of the Civil and Administrative Procedure Code, the legislator has stipulated that the type of company must be commercial in order for a case to be brought before the specialised commercial court. The dispute must relate to a category of commercial companies, thus excluding disputes relating to civil companies from the jurisdiction of this court. According to Article 544 of the Commercial Code<sup>24</sup>, the commercial nature of a company is determined either by its form or by its object. A company is considered commercial by virtue of its form, regardless of its subject matter, including partnerships, simple and joint stock companies, limited liability companies, sole proprietorships and traditional and simple joint-stock companies. If the dispute concerns one of these types of company, the specialised commercial court has jurisdiction.

It should be noted that in disputes between partners in commercial companies, some of these partners acquire the status of merchants by operation of law pursuant to Article 551 of the Commercial Code<sup>25</sup>. This includes partners in general partnerships and general partners in limited partnerships, as well as partners who have been granted the status of managers, regardless of whether they are natural persons or organisations represented by a specific body, such as members of the board of directors of a joint-stock company under modern regulations. They acquire the status of merchants by operation of law, unlike the members of the board of directors under the old system, who, with the exception of the chairman of the board and the managing directors, do not acquire this status.

<sup>22</sup> - HananMaza, Bougrour Said, "The Legal System of the Specialized Commercial Court", Comparative Legal Studies Journal, Vol. 9, No. 1, 2023, Faculty of Law and Political Science, University of Oran 2, Mohamed Ben Ahmed, p. 569.

<sup>23</sup> - HananMaza, Bougrour Said, same reference, p. 670.

<sup>24</sup> - Article 544 of Decree No. 75-59 of the previous law.

<sup>25</sup> - Article 551 of Decree No. 75-59 of the previous law.



### **Third: Litigation and bankruptcy**

Bankruptcy can be defined as a legal system applicable to traders, whether they are natural or legal persons. It also applies to certain legal entities governed by private law, even if they are not traders, with the aim of organising the collective enforcement of the financial assets of a debtor who has ceased to pay his due debts<sup>26</sup>.

With regard to judicial arrangement, it is defined as a procedure that allows a trader who has suspended payments, whether a natural or legal person, and who has not committed a serious fault, to benefit from the provisions of judicial arrangement. The aim is to enable the debtor, after taking the necessary precautions, to resume the management of his business<sup>27</sup>.

Bankruptcy is thus a system aimed at liquidating the assets of the bankrupt debtor who has ceased to pay his debts. Under Article 215 of the Commercial Code<sup>28</sup>, the Algerian legislator has included legal entities under private law, such as civil companies and cooperatives, in the bankruptcy and judicial settlement system. Although these are civil entities and do not have the status of traders, they are not excluded from the legal text, which allows these civil entities to be prosecuted before the specialised commercial court. This leads to the conclusion that this court has jurisdiction not only over disputes between entrepreneurs, but also over disputes involving civil persons.

Consequently, the head of the commercial section of the court must, when a dispute of this nature is brought before him, rule on the dismissal of the action for lack of jurisdiction of the court. The lack of jurisdiction is a matter of public policy which the judicial authority must raise automatically at any stage of the proceedings, in accordance with the provisions of Article 36 of the aforementioned Code of Civil and Administrative Procedure.

### **Fourth: Disputes between banks and financial institutions and merchants.**

Disputes involving banks and financial institutions fall under the jurisdiction of the specialised commercial court, provided that the other party is a trader, either objectively or by law. In this case, the dispute is of a purely commercial nature, since financial institutions and banks are considered to be commercial companies, as they are required to be incorporated. If the opponent of the bank or financial institution is a civil entity, jurisdiction is established in the court, either in the civil section or in the commercial section, according to the plaintiff's choice, since the relationship is of a mixed nature.

### **Fifth: Maritime, Air and Insurance Disputes Related to Commercial Activity**

The legislator, in application of Article 3 of the Commercial Code, considers any contract related to maritime or air transport to be a commercial contract and a commercial act by form, even if its subject is civil. The legislator has also subjected maritime and air transport disputes, which include the transport of goods and passengers, to the jurisdiction of the specialised commercial court<sup>29</sup>.

Insurance disputes are considered to be among the most important disputes that fall under the jurisdiction of the specialised commercial court, since trade relies on insurance of goods and facilities, which is mandatory. If the insurance dispute with the trader is not related to his commercial activity, the specialised commercial court does not have jurisdiction<sup>30</sup>.

### **Sixth: Disputes relating to international trade**

International trade refers to the exchange of goods and services across borders and different regions, related to import and export. All disputes related to it fall under the jurisdiction of the specialised commercial court.

If we look at article 536 bis of the Civil and Administrative Procedure Code, we can see that the legislator has listed exhaustively the types of disputes that fall under the jurisdiction of the

<sup>26</sup> - Ben Antar, Leila, "Explanation of the provisions on bankruptcy and judicial settlement in Algerian commercial law", 1sted: House of Ideas, 2020, p. 24.

<sup>27</sup> - Rashid, Rashid, "Commercial Papers, Bankruptcy and Judicial Settlement in Algerian Commercial Law", 5th edition, University Publications Bureau, 2005, Algeria, p. 217.

<sup>28</sup> - Article 215 of the Commercial Code.

<sup>29</sup> - HananMaza, Bougrour Said, same reference, p. 671.

<sup>30</sup> - HananMaza, Bougrour Said, same reference, p. 672.



specialised commercial court. No judicial authority other than the specialised commercial court has the power to rule on these disputes. Therefore, pursuant to Article 531 of the Code of Civil and Administrative Procedure<sup>31</sup>, it is not within the competence of the president of the commercial section of the court to consider them. On the other hand, the latter is competent to decide on the remaining commercial disputes not mentioned in the aforementioned Article 536a<sup>32</sup>, which fall under the jurisdiction of the specialised commercial court.

### **Section Two: Regional Jurisdiction of the Specialized Commercial Court**

Regional jurisdiction refers to the authority granted to a specific judicial body to hear cases brought before it based on a geographical criterion subject to judicial division.

Given that specialized commercial courts are considered special judicial bodies, the legislator established them only in certain judicial councils. The regional jurisdictions of these courts were defined by Executive Decree No. 23-52 dated January 14, 2023, which enumerated twelve specialized commercial courts across the national territory. The aforementioned text included an annex that specified the judicial councils regionally associated with each specialized commercial court, referred to as the regional jurisdiction of specialized commercial courts, organized as follows:

- The specialized commercial court of Béchar, with the following attached judicial councils: Béchar - Adrar - Timimoun - Beni Abbes;
- The specialized commercial court of Tamanrasset has the following attached judicial councils: Tamanrasset - Illizi - BordjBadjiMokhtar - Ain Salah - AinQazem - Gant;
- The specialized commercial court of Djelfa, with the attached judicial councils: Djelfa - Laghouat - Tiaret - Tissemsilt;
- The specialized commercial court of Blida, with the following attached councils: Blida - Medea - Tipaza - AinDefla;
- The specialized commercial court of Tlemcen, with the attached councils: Tlemcen - Saida - SidiBel Abbes - El Bayadh - Naama;
- The specialized commercial court of Algiers, with the following councils: Algiers - Bouira - TiziOuzou - Boumerdes;
- The specialized commercial court of Setif, with the following councils: Setif - Batna - Bejaia - M'Sila - BordjBouArreridj;
- The specialized commercial court of Annaba, with the following councils: Annaba - Tebessa - Qalmaa - El Tarf - Souk Ahras;
- The specialized commercial court of Constantine, with the following councils: Constantine - Oum El Bouaghi - Jijel - Skikda - Mila - Khenchela;
- The specialized commercial court of Mostaganem, with the following councils: Mostaganem - Chlef - Ghilizan;
- The specialized commercial court of Ouargla, with the following councils: Ouargla - El Oued - Ghardaia - Touggourt - El Meghir - Meni'a - Biskra - OuledJellal;
- The specialized commercial court of Oran, with the following council: Oran - Mascara - AinTemouchent.

The legislator stipulated in Article 3 of the Civil and Administrative Procedures Code that jurisdiction is established for each of the specialized commercial courts as determined by a decision from the Minister of Justice, related to the judicial council within whose jurisdiction it falls. Exceptions are made for the specialized commercial courts of Algiers, Oran, and Constantine, which are provided with special premises. As for the remaining rules of territorial jurisdiction, the provisions stated in the Civil and Administrative Procedures Code or specific texts apply.

Thus, with regard to intellectual property disputes, while the law previously conferred territorial jurisdiction on the court convened at the location of the Judicial Council within the jurisdiction of the defendant's domicile, pursuant to paragraph 4 of Article 40 of the Code of Civil and

<sup>31</sup>- Article 531 of Law No. 22-13 amending and supplementing the Code of Civil and Administrative Procedure.

<sup>32</sup>- Article 536 of the aforementioned Law No. 22-13.





Administrative Procedure, territorial jurisdiction is now transferred to the commercial court that the Judicial Council follows, located in the jurisdiction of the defendant's domicile<sup>33</sup>.

With regard to disputes involving commercial companies, the specialised commercial court to which the Judicial Council is subject<sup>34</sup>, located in the jurisdiction of the head office of the company or one of its branches, is competent to hear the case, in accordance with paragraph 4 of Article 39<sup>35</sup>.

In the case of bankruptcy and composition proceedings, as well as in the case of disputes between shareholders of commercial companies, the specialised commercial court in whose jurisdiction the bankruptcy or composition proceedings have been initiated or in whose jurisdiction the head office of the company is located shall have jurisdiction, in accordance with paragraph 3 of Article 40 of the Code of Civil and Administrative Procedure<sup>36</sup>. If the dispute relates to international trade, including sea and air trade, the specialised commercial court within whose jurisdiction the promise, delivery of goods or performance must take place shall have jurisdiction, in accordance with paragraph 4 of Article 39 of the Civil and Administrative Procedure Code<sup>37</sup>.

In addition to the cases mentioned above or specifically mentioned, the general rules of territorial jurisdiction apply, i.e. jurisdiction is conferred on the specialised commercial court of the defendant's domicile or last known domicile or, in the event of choice, the domicile chosen. In the case of multiple defendants, it is sufficient to follow the domicile of one of them, in accordance with Articles 37 and 38 of the Code of Civil and Administrative Procedure<sup>38</sup>.

#### **Chapter Two: The procedure before the specialised commercial court**

In this chapter, the first section deals with the system of proceedings before the specialised commercial court, and the second section deals with the competence of the specialised commercial court in deciding the case.

##### **Section One: The system of proceedings before the specialised commercial court**

The system of proceedings before the specialised commercial court is characterised by the imposition of pre-litigation procedures in the first subsection, followed by the subsequent procedures for the registration of the lawsuit in the second subsection.

##### **Subsection One: Pre-litigation proceedings before the specialised commercial court**

The legislator has stipulated that before a lawsuit is registered with the specialised commercial court, a settlement must be reached between the parties to the dispute. Consequently, there are two possibilities: either the parties reach an agreement and settle the dispute, or no settlement is reached.

In the latter case, the dispute is continued by registering the claim with the specialised commercial court, thus initiating legal proceedings<sup>39</sup>.

It is noteworthy that the legislator, in article 536, paragraph 4 of the Civil and Administrative Procedure Code, has made conciliation an obligatory procedure prior to the filing of a lawsuit before the specialised commercial court, and not an optional one<sup>40</sup>, as is the case with the provisions on conciliation in book five of the Civil and Administrative Procedure Code on alternative dispute resolution methods, as provided for in article 990 of the Code<sup>41</sup>.

In addition, it is important to note that the legislator has assigned specific provisions to the conciliation procedure before the specialised commercial court, which means that the provisions on conciliation in Book Five of the aforementioned law apply only in the absence of a specific provision.

<sup>33</sup> - HananMaza, Bougrour Said, same reference, p. 674.

<sup>34</sup> - Article 40 of Law No. 22-13 on the Code of Civil and Administrative Procedure.

<sup>35</sup> - Article 39 of Law No. 22-13 on the Code of Civil and Administrative Procedure.

<sup>36</sup> - Article 40 of Law No. 22-13 on the former Code of Civil and Administrative Procedure.

<sup>37</sup> - Article 39 of Law No. 22-13 of the former Code.

<sup>38</sup> - Articles 37 and 38 of Law No. 22-13 of the previous law.

<sup>39</sup> - HananMaza, same reference, p. 675.

<sup>40</sup> - Article 536 bis 4 of Law No. 22-13 of the Code of Civil and Administrative Procedure.

<sup>41</sup> - Article 990 of Law No. 22-13 of the previous law.



The legislator may have been right to impose the requirement of conciliation before filing a lawsuit, as this is better than mediation, which has become mandatory before the commercial division of the court under Article 534 of the Civil and Administrative Procedure Code<sup>42</sup>. Mediation is a procedure that is part of the litigation process and is used after the filing of a lawsuit, while conciliation is a procedure that is used before the filing of a lawsuit and allows for the resolution of the dispute without the involvement of outside parties, unlike mediation, which begins with the appointment of a mediator in a public meeting, making the existence of the dispute known even to those outside the parties involved.

Mediation is conducted by a judge-appointed mediator, who may not be specialised in commercial disputes, which may hinder the ability to reach a consensus between the conflicting parties. This explains the rarity, if not the non-existence, of mediated settlements.

On the other hand, conciliation before the specialised commercial court is supervised by a judge who has received special training in resolving commercial disputes, which increases the likelihood of resolving the dispute at the conciliation stage without the need to resort to litigation.

The Algerian legislator has defined reconciliation in Article 459 of the Civil Code as “a contract by which the parties put an end to an existing dispute or prevent a potential dispute by each party waiving its rights in exchange”. Thus, the reconciliation procedure required by the legislator before filing a lawsuit with the specialised commercial court is in line with the aforementioned article, which states that reconciliation is a means of ending an existing dispute.

With reference to the provisions of the Code of Civil and Administrative Procedure, in particular Article 536, paragraph 4<sup>43</sup>, conciliation shall be sought as a mandatory preliminary step upon the request of one of the parties submitted to the president of the specialised commercial court. The party requesting the conciliation must have legal capacity; for example, a minor cannot make such a request. Furthermore, in Article 460 of the Civil Code, the legislator stipulates that the party requesting reconciliation must have the capacity to act with regard to the rights covered by the reconciliation contract. For example, a representative of a legal entity can only conclude a reconciliation if he or she is authorised to act on behalf of the legal entity, either by law or by agreement.

Once the request has been received, the president of the court shall, within five days and by order, appoint one of the judges to conduct the conciliation within a period not exceeding three months. The party requesting the conciliation is responsible for notifying the parties to the dispute of the date of the conciliation session, after it has been set by the judge.

The legislator has allowed the supervising judge to seek the assistance of any person he deems appropriate to facilitate the settlement. If a settlement is reached, a record of what the parties have agreed is drawn up and signed by the judge, the court clerk and the parties. The settlement record must be deposited with the court clerk’s office in order to serve as an enforceable title, allowing the interested party to execute it, in accordance with Article 993 of the Code of Civil and Administrative Procedure<sup>44</sup>.

Pursuant to Articles 462 and 464 of the Civil Code, the settlement terminates the existing dispute and results in the waiver of rights and claims when one of the parties definitively relinquishes them<sup>45</sup>. Furthermore, the terms of the waiver contained in the settlement, regardless of its wording, must be interpreted strictly, since the waiver only covers rights that were clearly the subject of the dispute resolved by the settlement<sup>46</sup>.

If the attempt to settle fails, a record of non-settlement will be made. The party claiming the right to bring the case to court must submit a request for the commencement of proceedings, which is subject to the general rules on the commencement of proceedings and must be accompanied by the

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<sup>42</sup> - Article 534 of Law No. 22-13 of the same name.

<sup>43</sup> - Article 536 of the Code of Civil and Administrative Procedure.

<sup>44</sup> - Article 993 of the Code of Civil and Administrative Procedure.

<sup>45</sup> - Article 462 of the Civil Code.

<sup>46</sup> - Article 464 of the Civil Code.



record of non-settlement, failing which the case will be dismissed on procedural grounds. Thereafter, the litigation procedure will continue as described in the next section.

### **Section Two: Procedures for the commencement and conduct of litigation before the specialised commercial court**

The Algerian legislator has not provided for special procedures for the filing of a lawsuit before the specialised commercial court; rather, it is subject to the conditions for the filing of ordinary lawsuits before the court, except for the requirement to attach the report of the failure to settle to the lawsuit. Failure to do so will result in the dismissal of the action on formal grounds, as provided for in the third paragraph of Article 536 bis 4 of the Code of Civil and Administrative Procedure<sup>47</sup>.

In addition to the mandatory attachment of the opening petition with the report of non-reconciliation, it is necessary to consider the general conditions for the acceptance of the lawsuit, including the need for the parties involved to have legal standing and for the plaintiff to have a legitimate or potential interest recognised by law, as well as the need to obtain permission, if required by law.

The action is brought by the plaintiff personally, or by his representative or lawyer, by means of a written, signed and dated petition, the number of copies of which corresponds to the number of parties. It should be noted that the legislator has not made representation by a lawyer compulsory before the specialised commercial court. The obligation to be represented by a lawyer applies only to the Court of Appeal and the Court of Cassation, according to Article 10 of the Code of Civil and Administrative Procedure. As the court is a court of first instance, it does not require the parties to be represented by a lawyer<sup>48</sup>.

However, this position of the legislator is criticised in our view, as litigation before specialised judicial bodies requires specialised legal professionals. Given the specialisation of judges in commercial matters, especially in disputes within the jurisdiction of the court, it is necessary to require representation by lawyers specialised in commercial law. This would facilitate the presentation of disputes in a manner conducive to reaching appropriate resolutions, with the aim of increasing the efficiency of the specialised commercial court<sup>49</sup>.

Once the claim has been filed, it is necessary to carry out the procedures for summoning the parties, submitting documents and proceeding with the case in accordance with the rules set out in the Code of Civil and Administrative Procedure. However, due to the specific nature of the disputes dealt with by these courts, it would have been preferable to establish special procedures that take into account the principles underlying commercial life, such as achieving speed, maintaining commercial credit and preserving professional confidentiality<sup>50</sup>.

Finally, in accordance with the provisions of Article 536 bis 5 of the Code of Civil and Administrative Procedure<sup>51</sup>, the specialised commercial court decides in a collective formation of one judge and four assistants, or two judges and assistants, or three judges, depending on the absence of assistants, as explained above. The decision is an initial judgment that can be appealed to the Court of Appeal. If an appeal is lodged, the dispute is re-examined on the basis of the facts and the law before the Commercial and Maritime Chamber at the level of the Court of Appeal. In this way, the case is returned to an ordinary court, which is familiar and not specialised, and which can legally overturn the decision of the specialised commercial court and re-examine the dispute from the point of view of the second-degree judges. Therefore, it would be preferable to establish a specialised court at the second level of litigation, which would also deal with appeals against judgments issued by the specialised commercial court.

### **Section Two: The competence of the specialised commercial court to decide on disputes**

<sup>47</sup> - Article 536 bis 4 of the Code of Civil and Administrative Procedure.

<sup>48</sup> - HananMaza, Bougrour Said, same reference, p. 676.

<sup>49</sup> - HananMaza, Bougrour Said, cited above, p. 677.

<sup>50</sup> - HananMaza, Bougrour Said, same reference, p. 678.

<sup>51</sup> - Article 536 bis 5 of the Code of Civil and Administrative Procedure.



With the recent amendment, the legislator has granted the Specialised Commercial Court the power to consider claims brought before it, including those of an urgent nature in the first stage, as well as to rule on ordinary claims in the second stage by means of a judgment that is subject to appeal.

**First section: The urgent matters judge of the specialised commercial court**

Bringing a substantive action before the specialised commercial court may prolong the time taken to reach a decision, which may result in the loss of rights for the parties involved. This has prompted the legislator to establish a procedural system aimed at providing temporary solutions or precautionary measures to protect the rights of the parties, especially in commercial disputes that require speed and flexibility in their resolution. Thus, the legislator granted the President of the Court the power to deal with urgent cases as a matter of principle (first), while at the same time empowering the head of a section within the specialised commercial court to deal with urgent cases (second).

**First: President of the specialised commercial court**

With the recent amendment, the legislator has maintained the original principle in the general rules that the president of the ordinary court is the judge competent to hear urgent matters. Thus, the president of the specialised commercial court exercises all the powers vested in the president of the ordinary court in commercial matters, according to the first paragraph of article 536 bis 6<sup>52</sup>, which reads as follows “The president of the specialised commercial court shall exercise all the powers assigned to the president of the ordinary court in commercial matters...”. However, pursuant to the second paragraph of the same article, the president of a section of the specialised commercial court may examine urgent matters relating to the adoption of provisional or precautionary measures.

In addition to the powers of the president of the specialised commercial court to appoint a judge to conduct the conciliation and to have jurisdiction in urgent matters as a general rule, the president of the specialised commercial court has other powers under article 536, paragraph 4<sup>53</sup>, which include the following

- Since the issuance of payment orders falls within the jurisdiction of the president of the ordinary court, the president of the specialised commercial court may also issue payment orders in disputes that fall exclusively within its jurisdiction, as specified in Article 536 bis, in accordance with Article 306 of Law 08-09<sup>54</sup>, which contains the amended and supplemented Code of Civil and Administrative Procedure<sup>55</sup>.

The President of the Specialised Commercial Court is also competent to issue orders in response to petitions filed with him in disputes that fall within his jurisdiction, for the purpose of making a finding, issuing a warning or conducting an investigation on a matter that does not affect the rights of the parties, provided that a decision is issued within three (03) days from the date of the filing of the petition, in accordance with Article 310 of Law 08-09, which contains the amended and supplemented Civil and Administrative Procedures Code<sup>56</sup>.

**Second: Head of Department in the Specialized Commercial Court as an Urgent Matters Judge**

As for the requests of the parties aimed at taking any temporary or precautionary measures urgently to avoid imminent harm and to preserve the rights subject to the dispute, they can present them before the head of the department in the specialized commercial court where the

<sup>52</sup> - Article 536 bis 6 of the Code of Civil and Administrative Procedure.

<sup>53</sup> - Article 536 bis 4 of the same code.

<sup>54</sup> - Article 306 of the same law.

<sup>55</sup> - Ben Toumi Zahra, "Powers of the President of the Specialised Commercial Court and Litigation before it", presented at the seminar on "Specialised Commercial Courts in the Code of Civil and Administrative Procedure" organised by the Setif Judicial Council in cooperation with the Setif Lawyers' Organization, at the Lawyers' Club, El-BazSetif, on 11 February 2023.

<sup>56</sup> - Article 310 of the same law.



substantive case is filed, in accordance with the second paragraph of Article 536 bis 6, which states:<sup>57</sup>

“... The head of the department in the specialized commercial court may take urgent temporary or precautionary measures to preserve the rights subject to the dispute according to the procedures stipulated in this law and specific texts.”

The urgent lawsuit is filed by means of a petition in accordance with the legally established conditions and is notified to the parties to attend the session according to the legal procedures stipulated in Articles 18 and 19 of Law 08-09, which contains the amended and supplemented Civil and Administrative Procedure Code mentioned above

It is required that the filed urgent lawsuit meet the element of urgency and not affect the original disputed right. It is resolved by an urgent order that is subject to appeal according to Article 304, paragraphs 1 and 3, of the amended and supplemented Civil and Administrative Procedure Code within a period of 15 days from the date of official notification of the order<sup>58</sup>.

Among the urgent cases that may be brought before the specialised commercial court, we find, for example

Disputes concerning commercial companies, in particular disputes between shareholders, dissolution and liquidation of companies: Any partner may, as a matter of urgency, request the appointment of a judicial representative to convene the partners to examine the final accounts, to approve the management of the liquidator, to relieve him of his duties and to verify the completion of the liquidation, in accordance with Article 773 of the Commercial Code<sup>59</sup>.

In addition, disputes may arise between shareholders during the formation of the company, which may require the intervention of the judge of urgent matters to take provisional measures, which may include the appointment of a judicial administrator to manage the company and the interests of the shareholders until the court issues a judgment for the liquidation of the company and the appointment of a liquidator to manage it.

### **Section Two: The appealability of judgments of the specialised commercial court**

Since the specialised commercial court is an independent judicial body, it is empowered to deal with commercial disputes specifically defined by law. Ultimately, it resolves these disputes by means of judgments that are subject to appeal in accordance with the law.

#### **First: The judgment resolving the dispute**

A judgment is the procedural act that resolves a legal dispute; it is the decision issued by the court, in accordance with the rules laid down by law, whether on the substance of the dispute or on a procedural matter.

Once the exchange of memoranda and the necessary procedures have been completed, the case is resolved by an initial judgment at the first level, in accordance with Article 536 bis 5 of the aforementioned Law 22-13, which states that “The case shall be decided by the specialised commercial court by means of a judgment which may be appealed against before the Court of Appeal in accordance with the provisions of this law.

#### **Second: Appeal against judgments of the specialised commercial court**

According to Article 332 of Law 08-09, which contains the amended and supplemented Code of Civil and Administrative Procedure, an appeal is a procedure in which a party requests a review of a first instance judgment in order to have it reviewed by a higher court. It states: “The purpose of the appeal is to reconsider or annul the judgment issued by the court”, and the appeal is conducted in accordance with the conditions established by law.

Pursuant to the aforementioned Article 536 bis 5, the judgments of the specialised commercial court of first instance may be appealed to the Court of Appeal.

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<sup>57</sup> - Article 536 bis 6 of the same law.

<sup>58</sup> - Article 304 of the Code of Civil and Administrative Procedure.

<sup>59</sup> - Article 773 of the Commercial Code.



It should be noted that the legislator's wording of Article 536 bis 5 has been criticised by lawyer SalihSaad due to the nature of the judgments issued by the specialised commercial court for the following reasons:

1. Preliminary rulings issued by specialised commercial courts prior to the substantive decision, such as an order to conduct an investigation, to hear witnesses or to appoint an expert, are not subject to appeal unless they have the force of *res judicata* pursuant to Article 334 of Law 08-09<sup>60</sup>.
2. Judgments handed down in *absentia* by the specialised commercial court may be appealed against in accordance with Article 328<sup>61</sup> of the aforementioned Law 08-09, with the exception of those excluded by the provisions of Article 334.

Although this article does not specify the court of appeal before which the appeal is to be lodged, it can be inferred from the third paragraph of Article 03 of Decree 23-53, which defines the regional jurisdiction of the specialised commercial courts, that the appeal is lodged with the commercial chamber of the court of appeal within the jurisdiction of the specialised commercial court<sup>62</sup>.

For example, judgments of the specialised commercial court of Constantinople are appealed to the commercial chamber of the court of appeal of Constantinople.

This raises the question of whether the specialised commercial court, with its unique composition of four assistants with commercial expertise and specialised judges, is adequately equipped to resolve disputes based on specific judgments that are appealed to a commercial chamber composed of ordinary judges who are not specialised.

It would have been preferable for the legislator to have established, in addition to these specialised commercial courts, if not specialised appellate commercial courts, at least a specialised commercial chamber at the level of the Court of Appeal which has jurisdiction over the specialised commercial court. This is essential due to the nature of commercial disputes, which have specific characteristics, and the judgments rendered in this context, which require specialised, trained judges to ensure that their rulings and decisions are fair and effective.

#### **Conclusion:**

From the above, we conclude that conciliation is a limitation of the right to file a lawsuit; unlike conciliation in the general rules, which can take place at any stage of judicial proceedings, conciliation before the specialised commercial court must precede the filing of a lawsuit.

Reconciliation is also mandatory and must be completed, unlike in some cases where reconciliation is optional, except in family law and labour disputes where reconciliation is mandatory<sup>63</sup>. In the former, the absence of conciliation may lead to the judgment being set aside for breach of a fundamental procedural rule.

In addition, conciliation must be requested by a party with an interest; the legislator, in Law 22-13 amending and supplementing the Code of Civil and Administrative Procedure, has allowed anyone whose economic rights have been infringed to request judicial conciliation without the judge's involvement in proposing it. This is in contrast to the general rules that allow judges to intervene in reconciliation between parties.

<sup>60</sup>- Article 334 of the amended and supplemented Code of Civil and Administrative Procedure states:

"Judgments which rule on a part of the dispute or which order the execution of an investigative or precautionary measure shall not be subject to appeal except together with the judgment which rules on the main case in its entirety, unless otherwise provided by law...".

<sup>61</sup>- Article 327 of the amended and supplemented Code of Civil and Administrative Procedure states: "The judgment or the absence of a judgment shall be subject to appeal before the same judicial authority that issued it, unless the law provides otherwise".

<sup>62</sup>- Article 03 of Executive Decree No. 23-53, which defines the territorial jurisdiction of the specialised commercial courts, states: "... each of the other specialised commercial courts shall be convened by decision of the Minister of Justice, Keeper of the Seals, depending on the judicial council that falls within the jurisdiction of the specialised commercial court".

<sup>63</sup>- Order No. 05-02 of 27 February 2005 amending and supplementing Law No. 84-11 of 9 July 1984 on family law, published in the Official Journal No. 15 of 27 February 2005.



There must be an existing dispute; the existence of a disagreement between the parties is a prerequisite for conciliation, as there can be no conciliation in the absence of an existing dispute.

In addition, the parties must reciprocally renounce their claims, although it is not necessary that this renunciation be equal between the parties. A settlement can be reached regardless of the sacrifices made by one party in relation to the other.

This means that the parties must have the intention to resolve the dispute, either by ending it if it is ongoing, or by averting it if it is potential. The parties may settle all or part of the dispute, with the judge resolving any remaining issues by means of an award.

Trade embodies the economic depth of nations and individuals; therefore, organised legal frameworks have been established for it, whether it is practised domestically or internationally.

As mentioned above, the Algerian legislator, through Law No. 22-13, has established the competent authority for resolving commercial disputes. There are now two judicial bodies responsible for adjudicating commercial disputes. This study has clarified both the commercial section and the significant changes that have been made to it in terms of composition, jurisdiction and the compulsory mediation process. On the other hand, the specialised commercial court only deals with the disputes referred to in Article 536a of the Civil and Administrative Procedure Code, and analyses the legal provisions governing this new judicial body within the Algerian judicial system.

**The main findings include the following:**

1. The legislator has given alternative dispute resolution mechanisms a more effective role in commercial disputes through Law No. 22-13, which amends and supplements the Civil and Administrative Procedure Code.

2. The legislator has considered the conciliation procedure before the specialised commercial court as a limitation of the right to file a lawsuit before it.

Based on the conclusions of this study, we propose the following proposals:

1. Re-evaluate the time limits for the conciliation procedure in order to adapt them to the nature of commercial disputes, which are characterised by speed.

2. Establish a clear and organised regulatory and legal framework to bring the role of mediators into line with other legal professions and to ensure that mediators are legally trained and not just commercially literate.

3. Make the mediation process a prerequisite for bringing an action before the commercial division, similar to conciliation, in order to enhance the role of amicable means in the resolution of commercial disputes.

4. Organise training sessions for judges of the specialised commercial court and their assistants on commercial disputes, especially those related to the commercial court.

5. Enforce mandatory representation by a lawyer specialised in commercial law before the specialised commercial court due to its unique nature.


6. Establish a specialised appellate commercial court as a second level of litigation to reinforce the principle of a two-stage litigation system, which would rule on judgments rendered by the specialised commercial court in the first instance.

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