



## THE SPECIFICITY OF COMMERCIAL PLEDGE IN ALGERIAN LAW

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### Abstract:

*The commercial establishment represents a significant financial value; therefore, it can be offered as collateral for a merchant to obtain the necessary credit for commercial exploitation. The fluctuating nature of commercial life may lead a merchant to present their establishment as security to secure a loan through pledging it. Since the commercial establishment is classified as movable property, the merchant can only pledge it possessively, transferring possession to the secured creditor, which consequently deprives the merchant of utilizing their store. This study concludes with a set of findings.*

**Keywords:** Pledge, Commercial, Algerian Law.

### INTRODUCTION:

A merchant cannot obtain credit secured by their commercial establishment, as the latter is classified as movable property, except through a possessory pledge, which is permitted by commercial law<sup>1</sup>. Contrary to the general rule regarding pledging movables, which requires the transfer of possession to the secured creditor, the pledge of a commercial establishment is considered a pledge without the removal of possession, allowing the merchant to continue utilizing the establishment to enhance its value and thereby repay the debt subject to the pledge. This situation prompted the Algerian legislator to regulate the process of pledging commercial establishments under specific rules<sup>2</sup>. The issue of possessory pledges for commercial establishments is organized<sup>3</sup>, as the latter does not adhere to the principle of “possession in movables as evidence of ownership.”<sup>4</sup> The commercial possessory pledge is classified as a commercial act in form<sup>5</sup>. This leads us to pose the following question: How can a merchant borrow against their commercial establishment without being stripped of possession, and what are the implications of this?

To address this question, our study will first explore the conclusion of the commercial pledge contract, the implications of this contract for third parties, and finally, the termination of the pledge contract. We will rely on a descriptive analytical approach to clarify the Algerian legislator’s position regarding the aforementioned contract.

### FIRST - CONCLUSION OF THE COMMERCIAL PLEDGE CONTRACT:

The Algerian legislator has organized the commercial pledge contract under specific rules. However, it did not define this contract but merely mentioned the necessary data to be followed when registering the

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<sup>1</sup>- See Article 118 of the Algerian Commercial Code: "Possessory pledges of commercial establishments are permitted..."

<sup>2</sup>- See Articles 118 to 122 of the Algerian Commercial Code.

<sup>3</sup>- See Articles 118 to 168 of the Commercial Code.

<sup>4</sup>- Mustafa Kamal Taha, Wael Anwar Banduq: Principles of Commercial Law, Dar Al-Fikr Al-Jami'i, Alexandria, 2013, p. 118.

<sup>5</sup>- According to Article 3 of the Commercial Code, "Commercial acts are defined by their nature: ... operations related to commercial establishments."



pledge, the elements subject to the pledge, and the procedures for executive seizure, etc. This is in contrast to civil law, which defines the possessory pledge as “a contract by which a person, as security for a debt owed by him or another, undertakes to deliver to the creditor or to a third party designated by the contracting parties something that grants the creditor a real right allowing him to withhold the thing until the debt is settled.”<sup>6</sup> However, this definition does not apply to the pledge of a commercial establishment, as possession remains with the pledging debtor. Unlike the pledge of movables, which grants the creditor a real right allowing them to withhold the item until their right is fulfilled, the pledge of a commercial establishment is a real guarantee without the removal of possession. It involves the debtor merchant presenting the commercial establishment to the secured creditor<sup>7</sup>, granting credit as collateral to enable them to prioritize and pursue their right in case of non-fulfillment by the debtor. The secured creditor can undertake executive seizure procedures followed by public sale procedures without ordinary creditors and those ranked below competing for the sale price of the commercial establishment.

For the commercial pledge contract to be valid and effective, and to protect third parties so they are aware that the establishment has become subject to a possessory pledge despite being in the hands of the merchant, the Algerian legislator has stipulated specific objective and formal conditions related to its conclusion and publicity, which both the pledging debtor and the secured creditor must follow. Additionally, the subject of the contract must exist in the legal sense:

#### 1. Objective Conditions:

For the validity of the pledge of a commercial establishment, the general objective conditions required for all contracts must be fulfilled, governed by the general rules of civil law. These conditions are consent, subject matter, and cause<sup>8</sup>. The penalty for breaching any of these elements is the nullity of the contract. There are also specific objective conditions for the commercial pledge contract, both for the pledging debtor and the secured creditor. These include:

##### A. For the pledging debtor:

This is the person who offers their commercial establishment as collateral for a debt. They must own the pledged item and be competent to dispose of it<sup>9</sup>. The pledge is valid only if it is approved by the true owner, as one who does not own something cannot transfer ownership to another. If the pledge is made by someone who does not own the commercial establishment, it is a relatively void pledge, applying the general rules of pledges by analogy to the sale of someone else’s property. The commercial establishment cannot be pledged whether its owner is the owner of the property in which the trade is conducted or a tenant of it. If the pledging merchant is in a state of suspicion and the creditor is aware of this—that is, aware of the debtor’s financial distress—then the debtor’s act is subject to annulment. If the commercial establishment is pledged by a debtor who has been declared bankrupt, such an act is not enforceable against the group of creditors, as the moment the bankruptcy ruling is issued, the debtor is prohibited from managing their assets and disposing of them. Additionally, a pledge made by a free manager is void; if the owner of the commercial establishment assigns it under a “free management” contract, this does not prevent them from arranging a pledge in favor of another person<sup>10</sup>.

<sup>6</sup>- See Article 948 of the Algerian Civil Code.

<sup>7</sup>-Bloudnine Ahmed: Summary of Algerian Commercial Law, Dar Balqis for Publishing, Algeria, 1st ed., 2011, p. 90.

<sup>8</sup>-Fadila Nadia: The Legal System of the Commercial Establishment (The Commercial Establishment and Related Operations), Vol. 1 and 2, Dar Houmah, Algeria, 2011, p. 110.

<sup>9</sup>-Jamaa Ridwan: Provisions of Pledge of the Commercial Establishment in Algerian Legislation, Master's Thesis, Faculty of Law, University of Algiers, 2001, p. 22.

<sup>10</sup>-Jamaa Ridwan: Provisions of Pledge of the Commercial Establishment in Algerian Legislation, previous reference, p. 25.



## B. For the secured creditor:

This is the person who benefits from the commercial establishment as collateral for a debt owed to them by the pledging debtor, or in the case of a guarantor, if the pledger is a material guarantor. It is not required for the secured creditor to be a merchant; they can also be an ordinary individual<sup>11</sup>.

**2. Formal Conditions:** The fact that the pledged commercial establishment remains in the hands of the pledging debtor, who continues to exploit it, does not allow for an understanding of the debtor's true financial situation. This leads to the assumption that the establishment is not encumbered by a pledge. For this reason, the Algerian legislator has stipulated precise formal conditions and specific procedures for publicizing the pledge process to protect third parties, so they are aware that the establishment has become subject to a possessory pledge, even though it is in the hands of the merchant. These conditions are as follows:<sup>12</sup>

### -Official Writing of the Contract:

The official writing of the contract is an essential component, not merely a condition for its proof. If the official writing is absent, the pledge contract is void, similar to the sale of a commercial establishment<sup>13</sup>. The possessory pledge of a commercial establishment must be proven by an official contract; the writing here is necessary to establish the pledge and provide the owner with a means to assert their right against third parties. The possessory pledge is established by an official contract, and the existence of the privilege resulting from the pledge is determined as soon as it is registered in the public record at the National Commercial Register, which encompasses every branch of the commercial establishment covered by the commercial pledge.

Additionally, it is required that the secured creditor be one of the banks or institutions specified by the minister, as a pledge in favor of non-licensed banks is considered absolutely void due to its classification as a matter of public order. The aim of this is to safeguard the interests of the pledging debtor, ensuring that their need for cash does not lead to exploitation by others. This condition is related to public order and cannot be violated; otherwise, the pledge is rendered absolutely void. The rationale behind this is to protect the interests of commerce in general<sup>14</sup>.

However, although the general principle is that official writing is necessary to prove the pledge, the Algerian legislator has recognized an exception to this rule in the law concerning currency and loans, permitting the pledge process to benefit banks and financial institutions. The approval of the possessory pledge occurs through a contract registered according to the proper procedures, whether the contract is official or customary, and registered for a specified fee. This means that the writing in which the contract is formulated may be official or customary, provided that the signatures are authenticated. In other words, the legislator does not require an official document as mandatory, as is the case with official pledges<sup>15</sup>, because

<sup>11</sup>-Fadila Nadia: *The Legal System of the Commercial Establishment (The Commercial Establishment and Related Operations)*, previous reference, p. 112.

<sup>12</sup>- Farha Zarawi Saleh: *Complete Guide to Algerian Commercial Law (Commercial Transactions, Merchants, Craftsmen, Regulated Commercial Activities, Commercial Register)*, 2nd ed., Ibn Khaldun Publishing, Algeria, 2003, p. 252.

<sup>13</sup>- See Article 120 of the Algerian Commercial Code.

<sup>14</sup>-Amoura Amar: *Contracts and the Commercial Establishment in Algerian Law*, Dar Al-Khaldounia, unpublished, Algeria, p. 204.

<sup>15</sup>- See Article 123 of Order No. 03/11 concerning Currency and Credit dated 27 Jumada II 1424 (August 26, 2003), Official Gazette No. 52.



it is assumed that the merchant understands the nature of their actions and their implications and is aware of the risks involved in pledging the commercial establishment<sup>16</sup>.

#### **-Publicity of the Commercial Pledge Contract:<sup>17</sup>**

The publicity of the contract is achieved as soon as the pledge is registered in a special register at the National Commercial Register, which encompasses the commercial establishment. Through this publicity, the pledge becomes enforceable and can be invoked against third parties. Once the registration procedures are completed, the existence of the privilege resulting from the pledge is established, similar to the privilege granted to the seller of the commercial establishment. If the possessory pledge includes a branch or branches of the establishment, the same procedure must be followed, meaning that the aforementioned registration procedures must also be fulfilled. The pledge must be registered within 30 days from the date of the foundational contract; otherwise, it will be subject to nullity<sup>18</sup>, and any interested party, including the debtor themselves<sup>19</sup>, may invoke this nullity<sup>20</sup>.

The registration determines the order of priority among the secured creditors based on the chronological order of their registrations. Creditors registered on the same day will have equal priority. Failure to register the pledge results in its non-enforceability against third parties, meaning it cannot be invoked against the creditors of the owner of the commercial establishment. This solution is rooted in the nature of the pledge of the establishment, which occurs without the removal of possession. This necessitates its publicity so that third parties are informed about it. Therefore, the Algerian legislator has required the completion of registration procedures to protect creditors and, consequently, to safeguard the rights of third parties.

The legislator has also adopted certain precautionary measures. If a bankrupt debtor registers a possessory pledge on their commercial establishment after declaring bankruptcy, it cannot be enforced against creditors. If the pledge includes industrial property rights, such as patents, trademarks, or industrial designs, it will not be enforceable against third parties unless specific procedures for these rights are completed at the National Institute of Industrial Property. Thus, contracts involving the pledge of patents or industrial designs must be documented in writing and registered in a special register; otherwise, they will be void<sup>21</sup>. Consequently, a merchant, whether a natural or legal person, is obligated to complete the compulsory legal publicity procedures to inform third parties about the contents of the contracts concluded.

Therefore, the specific provisions regarding legal publicity apply to the process of pledging the commercial establishment. Based on this, publicity is carried out in the official bulletin of legal announcements and in national newspapers. This means that the registration process at the National Commercial Register is conducted in the same manner as the transfer of the commercial establishment, by announcing it in the form of a summary or notice in the official bulletin of legal announcements, and additionally in a newspaper specialized in legal announcements within the jurisdiction or province where the commercial establishment operates<sup>22</sup>. It should be noted that the National Commercial Register is responsible for organizing all mandatory legal publications to ensure that third parties are aware of changes occurring in commercial

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<sup>16</sup> - Mustafa Kamal Taha, Wael Anwar Banduq: Principles of Commercial Law, Dar Al-Fikr Al-Jami'i, unpublished, Alexandria, 2013, p. 11.

<sup>17</sup>- Farha Zarawi Saleh: Complete Guide to Algerian Commercial Law, previous reference, p. 255.

<sup>18</sup>- This is stipulated in Article 121 of the Algerian Commercial Code.

<sup>19</sup>- Mohamed Farid Al-Arini and Jalal WafaMohideen: Commercial Law (Commercial Transactions, Merchants, Commercial Establishment), Dar Al-Matbou'at Al-Jami'iyah, Egypt, 3rd ed., 1998, p. 252.

<sup>20</sup>- Article 122 of the Algerian Commercial Code.

<sup>21</sup>- This means that pledge procedures must be registered with the Algerian National Institute of Industrial Property to be enforceable against third parties.

<sup>22</sup>- Farha Zarawi Saleh: Complete Guide to Algerian Commercial Law, previous reference, p. 258.



establishments and maintains the public register for transactions related to the establishment, such as sales and pledges.

### 3. Subject of the Pledge:

The entire commercial establishment can be pledged as it is considered a movable intangible asset. The pledge can also include one or several of its elements<sup>23</sup>. However, if the elements included in the pledge are not specified, the pledge will only apply to the essential and necessary elements for the nature of the commercial activity conducted by the merchant<sup>24</sup>. For the pledge to be valid, there must be an actively utilized commercial establishment<sup>25</sup>; the subject of the pledge must be a commercial establishment that exists in a legal sense, meaning that its material and immaterial elements must be present at the time the pledge is created.

The commercial establishment arises from the combination of these elements. Therefore, a pledge cannot be considered a pledge of commercial establishments unless it pertains to elements sufficient by themselves for the existence of the commercial establishment. If the possessory pledge includes the commercial establishment and its branches, the locations of these branches must be precisely designated. However, this cannot be inferred merely from the agreement to pledge the main establishment, as each branch contains the necessary elements for the existence of the commercial establishment, particularly the element of customer contact. Thus, the branch is considered an independent establishment in this regard and will not be included in the pledge unless agreed upon<sup>26</sup>. If the pledge includes a branch of the commercial establishment, or furniture or equipment located in another jurisdiction, registration must also be conducted at the commercial register office in that jurisdiction for these items<sup>27</sup>.

It is important to note that the registration of the privilege is maintained for a period of ten years from its date and will be automatically canceled if it is not renewed before the expiration of this period<sup>28</sup>.

## SECOND - EFFECTS OF THE POSSESSORY PLEDGE OF THE COMMERCIAL ESTABLISHMENT AND ITS TERMINATION:

The effects arising from the pledge of the commercial establishment can be divided into two types: effects concerning the parties to the contract and effects concerning third parties. We will then address how the possessory pledge contract of the commercial establishment comes to an end.

### 1. Effects of the Possessory Pledge of the Commercial Establishment:

The pledge of the commercial establishment imposes several obligations on the pledging debtor and the secured creditor, which represent a set of rights and obligations for both parties. Regarding third parties as well:

#### A. For the Pledging Debtor:<sup>29</sup>

The possessory pledge contract imposes several obligations on the debtor. They must maintain the pledged items in good condition without the right to claim compensation from the creditor for doing so. A debtor who

<sup>23</sup>- See Article 119 of the Algerian Commercial Code.

<sup>24</sup>- The concept of a commercial establishment as defined in Article 78 of the Algerian Commercial Code.

<sup>25</sup>- Mohamed Farid Al-Arini and Jalal WafaMohideen: Commercial Law (Commercial Transactions, Merchants, Commercial Establishment), previous reference, p. 457.

<sup>26</sup>- See paragraph four of Article 119 of the Algerian Commercial Code.

<sup>27</sup>-Samihah Al-Qalyubi: The Commercial Establishment (Sale and Pledge of the Commercial Establishment, Rental and Exploitation), Dar Al-Nahda Al-Arabiya, Cairo, 4th ed., 2000, p. 152.

<sup>28</sup>- This is stipulated in Article 103 of the Algerian Commercial Code.

<sup>29</sup>-Fadila Nadia: The Legal System of the Commercial Establishment (The Commercial Establishment and Related Operations), Vols. 1 and 2, Dar Houmah, Algeria, 2011, p. 112.



deliberately wastes or damages the pledged machinery or furniture of the commercial establishment is penalized for harming the rights of the secured creditor. The same penalties apply to anyone attempting to deceive with the aim of depriving the creditor of their right of privilege over the encumbered assets. If the pledged items are equipment and tools<sup>30</sup>, they must be preserved and maintained. Furthermore, the legislator permits the beneficiary of the pledge on these items (equipment, tools, and materials) to request the pledging debtor to affix clear identifying marks on this equipment indicating its pledge, along with the location, date, and registration number of the encumbering privilege<sup>31</sup>. The debtor may not oppose this measure<sup>32</sup>. The marks placed in this manner must not be subject to destruction, removal, or concealment before the expiration of the creditor's privilege or its cancellation<sup>33</sup>.

If the subject of the pledge includes the intangible elements of the commercial establishment, the most significant of which is the element of customer contact, the pledging debtor must maintain these elements and is liable to the secured creditor for any actions that would alienate customers or deter them from engaging with the establishment. The pledging debtor also has the duty to preserve their right to lease by paying rent for the premises occupied by the commercial establishment on time, so as not to risk the termination of the lease contract. The legislator has mandated that secured creditors be informed in the event of a lawsuit to terminate the lease contract of the commercial establishment, at the chosen location specified in each creditor's registration. A judgment shall not be issued until one month has passed from the date the secured creditors are informed. If the lease contract of the commercial establishment is terminated by mutual agreement, the termination does not become final until one month has passed from the date of notifying the registered secured creditors at their chosen location. During this period, any registered creditor may request the public sale of the commercial establishment.

In exchange for these obligations imposed on the pledging debtor, despite the commercial establishment being encumbered, the debtor retains a set of rights<sup>34</sup>. The most important of these is their right to possess the commercial establishment, allowing them to continue operating it as long as they maintain its elements<sup>35</sup>.

#### **B. For the Secured Creditor:**

The secured creditor is legally obligated to monitor the actions of the pledging debtor, particularly during the transfer of the commercial establishment or the termination of the lease, and to take the necessary measures to prevent the debtor from attempting to deprive them of the privilege established over the commercial establishment. The registration of the pledge must also be transferred to the new assignee. The pledge grants the secured creditor a real right over the pledged commercial establishment<sup>36</sup>. They have the right to enforce the pledge against the pledged item with priority over other creditors and the right of follow-up if the item is transferred to another party<sup>37</sup>. The right of priority establishes a privilege for the secured creditor over the pledged commercial establishment, taking precedence over other creditors of the pledging debtor according to the order of their registration<sup>38</sup>. This is determined once the pledge is registered in the commercial register located in the jurisdiction of the commercial establishment, and

<sup>30</sup>- This is also stipulated in Article 167 of the Commercial Code.

<sup>31</sup>- Article 154 of the Commercial Code.

<sup>32</sup>- Otherwise, penalties outlined in Article 376 of the Algerian Penal Code will apply.

<sup>33</sup>- See Article 154, paragraph 2 of the Commercial Code.

<sup>34</sup>- See the text of Article 124 of the Algerian Commercial Code.

<sup>35</sup>-Fadila Nadia: *The Legal System of the Commercial Establishment (The Commercial Establishment and Related Operations)*, previous reference, p. 117.

<sup>36</sup>- See Articles 126, 127, and subsequent articles of the Algerian Commercial Code.

<sup>37</sup>- This privilege lasts ten years from the date of registration and will be automatically canceled upon expiration unless specified otherwise before the end of this period; see Article 103 of the Commercial Code.

<sup>38</sup>- See Article 120 of the Commercial Code.





similarly applies to branches of the commercial establishment if the pledge is registered in the register located in the jurisdiction of the branch.

The right of follow-up allows the secured creditor to pursue the pledged item and claim their rights with priority over ordinary creditors or subsequent secured creditors. The secured creditor has the right of follow-up for the commercial establishment in every hand it passes to, maintaining their rights resulting from the pledge against the pledging debtor as well as against the new owner, and has the right to initiate enforcement actions against the actual possessor of the establishment<sup>39</sup>.

### C. For Third Parties:

Third parties refer to those not involved in the pledge contract, including ordinary creditors and the landlord of the property housing the commercial establishment. For ordinary creditors whose debts relate to the operation of the commercial establishment prior to the registration of the pledge, if they suffer harm from the establishment of the pledge—such as if the debt secured by the pledge exceeds the value of the establishment and the debtor has no other assets— they have the right to request the court to declare the expiration of the term and to demand payment of their debts before their due dates<sup>40</sup>. The legislator has allowed ordinary creditors whose debts are related to the operation of the commercial establishment to seek a court ruling for the early settlement of their debts if they are harmed by this registration, particularly if the debt secured by the pledge exceeds the value of the establishment and the debtor has no other assets<sup>41</sup>.

As for the landlord of the property in which the pledged commercial establishment is located, they have the right to refuse to renew the lease or to request the termination of the lease contract with the pledging debtor. This right is linked to the crucial element of the right to lease, which is an important aspect of the commercial establishment. Therefore, the landlord's exercise of their right to terminate or refuse to renew the lease has a direct impact on the pledged commercial establishment. This has led the Algerian legislator to legally require the landlord to notify the secured creditors at the chosen location specified in each of their registrations, enabling them to exercise their right to maintain the lease element by paying the rent<sup>42</sup>.

### Third - Termination of the Pledge of the Commercial Establishment:

There are no specific provisions regarding the termination of the pledge of the commercial establishment in Algerian commercial law; hence, we refer to civil law. From the texts of Articles 964 and 965 of the Civil Code, we can infer the reasons for the termination of the pledge of the commercial establishment. The pledge is terminated upon the extinction of the debt through its payment, followed by procedures for the cancellation of the pledge, or through other general reasons for the extinction of the debt, such as release or set-off.

Additionally, the pledge is terminated by enforcement against the pledged item in the event of non-payment of the debt by the due date, according to enforcement procedures. For example, the secured creditor may request the sale of the commercial establishment due to non-payment of the debt, and the court may decide to announce the establishment for public auction<sup>43</sup>.

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<sup>39</sup>-BouzraBelkacem: *The Concise Commercial Law*, Riyadh Printing, Constantine, 1st ed., 2004, p. 224.

<sup>40</sup>- See Article 123 of the Commercial Code.

<sup>41</sup>- Ahmed Mahrez: *Algerian Commercial Law: Commercial Contracts*, Vol. 4, Dar Al-Nahda Al-Arabiya, 1981, p. 228.

<sup>42</sup>- See Article 124 of the Commercial Code.

<sup>43</sup>- Samir Jamil Hassan Al-Fatlawi: *Algerian Commercial Contracts*, Diwan Al-Matbou'at Al-Jami'iya, Algeria, 1st ed., 2008, p. 89.



Therefore, if the pledge is terminated and pertains to the commercial establishment as a whole, the registration must be canceled from the commercial register<sup>44</sup>. The pledge may also be terminated by the waiver of the secured creditor's right to the pledge, which can be explicit or implicit<sup>45</sup>.

The pledge can also terminate through transfer of ownership, whereby the secured creditor acquires the pledged asset, such as purchasing it from the pledging debtor before the maturity of the secured debt, or inheriting it. Additionally, the complete destruction of the pledged asset is a cause for the termination of the pledge<sup>46</sup>.

### CONCLUSION:

The diversity of elements that constitute the commercial establishment, both material and immaterial, and their union as a group to achieve a commercial purpose, has led to the distinct characteristics of the commercial establishment, making it a movable intangible asset that is tradable. It has become exceedingly important in the conduct of various commercial activities. The exploitation of the establishment is not limited to the merchant themselves as a trader engaging in a specific commercial activity; rather, they can utilize the commercial establishment as a commercial property in other ways that can yield profit. Additionally, they can dispose of this establishment either by transferring ownership through sale, which is considered a commercial act even if the seller is a private individual, such as an employee who inherits the commercial establishment through inheritance, gift, or bequest. The sale of a commercial establishment is a commercial act regardless of the parties involved and their status at the time of the contract.

Furthermore, non-transfer of ownership operations can occur regarding the commercial establishment, represented by a possessory pledge through which the merchant obtains credit. For this reason, the Algerian legislator, similar to other comparative legislations, intervened to regulate all contracts related to the commercial establishment, whether through direct regulation in commercial law or indirectly by referring to the general provisions concerning such contracts in civil law. This aims to create a balance between the interests of the parties involved in contracts concerning the commercial establishment by granting each party a specific privilege that, when legally exercised, achieves the intended purpose. This has been the subject of our study in this article.

As a result of the above, we have reached the following conclusions:

- The Algerian legislator has organized the contract of pledge of the commercial establishment under special rules but has not defined this contract, merely mentioning the data to be followed when registering the pledge, in contrast to civil law.
- The Algerian legislator has stipulated precise formal conditions and specific procedures for publicizing the pledge process to protect third parties so they are aware that the establishment has become subject to a possessory pledge, even while in the hands of the merchant.
- The Algerian legislator requires that the secured creditor be one of the banks or institutions designated by the minister, as a pledge in favor of non-licensed banks is considered absolutely void due to its classification as a matter of public order.
- The pledge contract in Algerian law applies only to the essential and necessary elements for the nature of the commercial activity conducted by the merchant.
- For the pledge to be valid, there must be an actively utilized commercial establishment; the subject of the pledge must be a commercial establishment.

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<sup>44</sup> - Under specific procedures outlined in Articles 106 and 107 of the Commercial Code.

<sup>45</sup> - See Article 965 of the Algerian Civil Code.

<sup>46</sup> - This is also stipulated in Article 965 of the Algerian Civil Code.





## References:

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- [12] *Samir Jamil Hassan Al-Fatlawi: Algerian Commercial Contracts, Diwan Al-Matbou'at Al-Jami'iya, Algeria, 1st ed., 2008.*

### 2. Laws and Decrees:

- [1] *Algerian Civil Code issued by Order No. 75-58 dated September 26, 1975, containing the Civil Code, amended and supplemented.*
- [2] *Algerian Commercial Code amended by Order No. 96-27 dated 9/12/1996, Official Gazette No. 77 dated 11/12/1996.*
- [3] *Algerian Penal Code, Order No. 66/156 dated 8/6/1966, containing the Algerian Penal Code.*
- [4] *Order No. 03/11 concerning Currency and Credit dated 27 Jumada Al-Thani 1424 corresponding to August 26, 2003, Official Gazette No. 52.*
- [5] *Executive Decree No. 97/41 dated 18/01/1997 concerning the conditions of registration in the commercial register, Official Gazette No. 05, issued on 19/1/1997, amended and supplemented.*