

**PRACTICAL
LEGAL
GUIDE**

**DOING BUSINESS IN ALGERIA
2019**

 **FARES**
GROUP
Law Firm



WHY FARES GROUP LAW FIRM?

Because our strategy is uncomplicated : we are not interested in being the biggest, but focused on being the best.

A boutique law firm with deep local roots and global ambitions

FARES GROUP LAW FIRM opened its first office in 2007 among the forerunners in the legal sector thus recognizing the importance of a local presence in the emerging markets. Today, we are proud to be one of the most deeply rooted law firm in Maghreb but also in Europe and in other challenging countries.

Having a dynamic multicultural local team

Our local professionals are specialized in specific practice areas, most of them were educated abroad while many have a strong experience in public sector. We are fluent in Arabic, English, French, Spanish and we are able to provide our service in Italian as well.

Being a creative legal advisor and a tough litigator

Though we focus on success we also seek clear and concrete solutions. We have a reputation for providing confidential and prompt services and renowned for resolving legal cases of foreign entities before local courts and international arbitration.

Contributing to the success of the world's most innovative and leading companies: We are privileged to advise some of the largest groups operating and investing in various sectors but as well as a significant client base of medium-sized companies whose projects requires ongoing legal support. We regularly advise relevant public bodies and key International Organizations.

Providing flexible fees options and cost control policy

We offer a number of options when agreeing fees and we provide a transparent and clear pricing to ensure that costs are always predictable.

MEETING YOUR NEEDS

We assist you to face your challenges while expanding your cross border operations

TRADE AND COMMERCE

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- Cross Border Finance
- Custom Regulations

LITIGATION

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- Civil Procedure
- Debt Recovery

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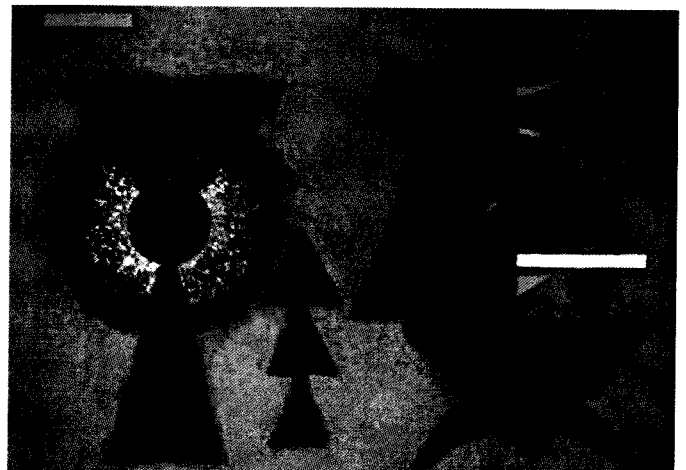
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Our DNA = creativity + ground approach

“At Fares Group we know the importance to build a team of experts able to operate successfully considering each local context rather than importing unsuitable way of thinking and behaving. The combination of our creativity with a ground approach ensures that your commercial objectives can be achieved within the framework imposed by the law.” **Rodolfo Drudi, Founding Partner.**



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1. CROSS BORDER TRANSACTIONS

The legal framework of International transactions is oriented and supervised by the Central Bank of Algeria. The policy behind the law is to maintain the balance of payments with the restriction of exit capital and the centralization of currency reserves being the main leverages to reach said goal. The principle is that any international fund transfer or exchange transaction must be channeled through an Authorized Banker and allowed by the Central Bank of Algeria regulations. In fact, such principles are quite simple and aim to policy control but implies the fulfilment of burdensome procedures, particularly when the transaction falls into the scope of the importation of goods or services. Consequently, the legal framework is volatile and subject to risks that impact on international transactions. Therefore, drafting of a contract is of the utmost importance.

1.1 Banking Domiciliation

Since the issuance of the Regulation N. 07-01, the exchange control previously performed by the Central Bank is now performed *a posteriori* and not systematically. Such power of control is transferred to the Authorized Banker through the domiciliation procedure.

Application of the Banking Domiciliation

Under the Regulation No. 07-01 of 03/02/2007, any international contract, whether commercial or public, for the importation of goods or services shall be subject to Domiciliation. (With the exception of those related to transit, diplomatic transaction, fair, travelers and any other contract for an amount lower than 100.000 DZD). Domiciliation must be carried out by the importer at the first stage (before the contract execution and/or any payment and/or custom clearance). In fact, domiciliation is an administrative registration of an international contract performed by a commercial bank and supervised by the Central Bank to issue a domiciliation number following compliance assessment. The policy behind the law is to fight against money laundering, illegal foreign currency transfer, illegal custom value statement, over invoicing etc.



Scope of the control

The authorized Banker must collect the documents related to the international transaction, assess their validity in compliance with the law and issue a domiciliation number to proceed with the opening of LoC and custom clearance. Since March 2016, pre-domiciliation is established to strengthen the control over the importers. In fact, the scope of assessment is broad and sometime implies discretionary powers. In any case, practice shows that the outcome of the clearance is positive when the commercial contract is accurately drafted in accordance with the applicable law and supported by the appropriate documents. Under the instruction 05/2017, the Central Bank of Algeria requires that all the importing transaction must be duly domiciliated. Thus, the importer is requested to establish a financial provision equal to 120% of the transaction value. Through this new instruction, it is about ascertaining that sufficient resources exist to cover the payment of the importation. This instruction applies only for the importation of finished goods intended for resale and not for raw material. Therefore, Algerian regulations are becoming more and more burdensome as regard to finished products. It is recommended, particularly for the importation of services, to liaise with the banks during the drafting of the contract prior to signing it in order to avoid any risk of rejection.

1.2 Methods of Payments

The methods of payments depend on the nature of the transaction itself. According to the Complementary Budget Law of 2009 and its amendment by the Budget Law of 2014, all payment operations of imported goods shall be done using two different methods: Letter of Credits (LoC) or Cash against Document (CAD). Nevertheless, a free bank transfer is allowed in few limited cases.

1.2.1 The Letter of Credits (LoC):

This method of payment is considered as the most secured method of payment for both Parties. In Algeria, LoC shall be governed by the Uniform Customs and Practice (UCP 600) but they shall also comply with the instructions issued by the Bank of Algeria. A LoC shall be opened before an authorized Banker and usually confirmed by a foreign Bank. According to a strict policy of the Bank of Algeria following its note of December 2010, the duration of a LoC, except in some particular cases, is unlikely to exceed 60 days. LoC shall be irrevocable and confirmed otherwise it can be canceled or modified without involving the other party's consent.

1.2.2 The Credit Against Documents (CAD):

In Algeria, many transactions are channeled through Credit Against Documents (CAD) which is of course less protective for the seller but it grants more flexibility in modelling contractual terms of payment. A CAD is a transaction, whereby an exporter (seller) mandates his bank to collect according to his indications a due amount (or a promissory note) from an importer upon submission of commercial documents along with or without financial documents. The Algerian Bank acts under a mandate and must strictly apply parties' instructions to remain neutral with respect to the transaction and ensure quick and careful handing over. CAD is governed by the Uniform Rules for Collections (URC 522), by the Algerian exchange control regulations and by the law on giving mandate. Usually, the Bill of Lading is addressed to the buyer mentioning his name rather to the bank, while it is recommended that the Original Shipping Documents must be sent to the domiciliary bank rather than to the buyer.

1.2.3 Bank transfer

As concerns the importation of services in Algeria (both those performed abroad or on the territory), it is allowed to proceed with their payment through free bank transfer. In other words, it is not necessary to open LOC or CAD. The free transfer is also allowed in few limited cases such as the importation of goods destined for production plants only. However, it is still mandatory for the importer to proceed with the domiciliation of the transaction before the bank.

1.2.4 Terms of payment

In any importation of goods' transaction, the advance payment cannot exceed 15% of the contract value and is submitted to the prior approval of the Central Bank of Algeria and the issuance of bank guarantee as specified in its Note of September 2009. So, the abroad payment shall be performed once the buyer shows the final invoices, the goods have been shipped, and the certificate D-10 has been issued by customs.

1.3 Custom Regulations

- The customs tariff is established in compliance with the Nomenclature of the International Harmonized System provided by the Brussels Convention which sets out customer's duties (exemption, 5%, 15%, 30%) and the VAT (9%, 19%). It has to be noted that a postal shipment is up to 30kg. Moreover, personal postal shipments, unlike commercial ones, are not subject to custom clearance and free of tax duties provided that their value does not exceed 500USD. The same rule applies to free commercial samples.
- Goods which are packed in containers in poor conditions shall not be allowed to be subject to custom clearance. Reimbursements of customs duties are allowed for damaged goods and non-conforming goods.
- Re-exportation of goods arrived in the destination site and not subject to custom clearance is allowed under certain conditions, following the fulfilment of a strict procedure and submission of specific documents including the non-transfer certificate.
- Custom authorities can proceed with inspection of the goods at the departure site through inspections companies.
- Products labeling in Arabic language must be done prior the arrival of the goods and stickers are generally allowed.
- Custom law provides for a temporary admission whereby the goods stay in storage for a period of 30 days after which they are re-exported, sold on the domestic market or stocked.

■ 1.4 Specific Requirements and Restrictions on Importation

Regulations for the importation of sensitive Goods:

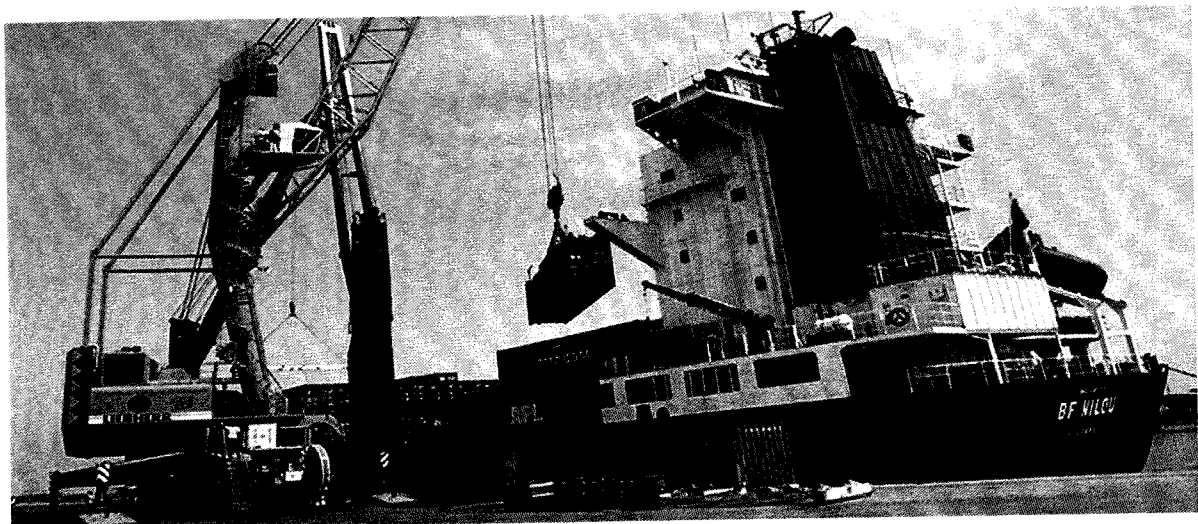
The principle is that the importation of goods in Algeria is free. Nevertheless, Importation of specific products interfering with human and animal health, environment, nature protection, cultural assets and security can be subject to particular provisions. Algeria is currently launching the local halal certification. For instance, under Decree of June 14th, 2016, the inclusion of the word "halal" shall be permitted only for foodstuffs meeting the requirements thereof. Prior and specific authorizations are required for the importation of certain goods representing a risk of dual use and/or representing any product for consuming use, which contains an element of toxicity, or that may be not in compliance with the national security, Public Order and Algerian moral values.

Restriction on importation through the imposition of taxes:

The recent government policy has been to limit finished products importation to boost the local production. The previous quotas legal framework to restrict the quantity of importation was mostly removed. Now, since January 2019, a wide range of products have been targeted by heavy taxes. In fact, according to the Complementary Budget Law of 2018, a wide range of imported goods and mostly consumption goods have been submitted to an additional tax which may range from 30% to 200% and is applicable in addition to customs duties. The lists of goods subject to this tax have been fixed by the Order of 2019, such as, food products, furniture, and laboratory equipment except industrial machinery. Moreover, the Executive Decree of 2019, has prohibited the importation of cars, except for the diplomatic agents and their mission.

■ 1.5 The Framework of Reverse Charge VAT

The VAT is applicable and due by any invoicing company based abroad which delivers goods to Algeria and/or services wherever to any Algerian tax payer. Thus, any foreign invoicing company must appoint a local proxy to reverse the VAT before the tax department. In any case, the local Client who purchases goods or services, shall be liable towards the tax department for paying the VAT. Nevertheless, foreign companies permanently established in Algeria are not subject to such VAT regime. Indeed, they are considered on this regard strictly as local tax payer, therefore they will be subject to the usual VAT regime. On the other hand, the companies not permanently established in Algeria according to the double taxation treaties shall not be subject to whatever VAT regime unless they do opt for the common tax regime instead of the withholding tax regime, which includes in a forfeit the VAT also.



2 THE LAW OF CONTRACTS

The rules on the commercial sales are essentially based on the Civil Code and complemented with some provisions of the Commercial Code as well as some regulations addressing competition and consumption. Commercial Usages also play a central role in commercial transactions. In fact, Algeria did not ratify the Vienna Convention on the international sale of goods (CISG) and domestic law is prominent when dealing with Algerian merchants. Algerian law of contracts is heavily and mainly governed by civil law principles inspired by the Napoleon Code and Islamic law remains a subsidiary source of law.

2.1 Principles

Freedom of contracting

The parties to a contract are granted with large freedom of contracting and have the duty to negotiate in good faith. Any damage raised during the pre-contractual period must be then recovered in according with the (Civil Liability, Art 124 Civil Code). The contract of sale is not subject to any formal requirement and can be concluded orally or in writing, including electronic means. The place of conclusion of contract is relevant as it may imply the competence of the Algerian Judge.

The contract is the law of the parties

Algerian law compels the parties to perform their contract as agreed, according to the usages and to equity but also in good faith. The contract is the law of the parties and can be amended only with mutual consent of the parties. The only exception is in case of hardship where the execution is still possible but it becomes extremely burdensome. Under such principle which applies also to public contracts, the judge may modify the provision of the contract. Equally, a party to a contract may refrain from performing its obligation when it becomes impossible i.e. in case of Force Majeure. Algerian concept of Force Majeure is provided by the civil code and it is very similar to the UNIDROIT's.

Remedies in case of breach of contract

If a party fails to perform its obligation, the other party may refrain from performing its obligation. Algerian Judge is provided with power to order forced execution of the contract where possible, for instance when the obligation is the delivery of goods or to pay. Equally, non-defaulting party may alternatively request the judge to terminate the contract. Here, it is worth to note that the insertion of a detailed termination clause is very relevant in commercial contracts in order to avoid to be bound.

Delivery of the goods

Under Civil Code, the seller has the duty to deliver the goods such as they were prior to the sale and any product sold must be identifiable through its specifications and qualities. If the sale agreement does not provide for the goods shipment, the delivery of goods is considered to be the moment of hand over and thus, unless provided differently, the Seller is liable until hand over to the buyer. According to a Note issued by the Central Bank of Algeria, INCOTERMS EX WORK are "reduced to the minimum" and then not widespread in practice. The Buyer must inspect the goods at the date of hand over and if defects are detected, he must notify the seller promptly, even if the defects appear later. Likewise, hidden defects are also covered, provided that the buyer notifies the Seller promptly after the date when such defects have been discovered. Finally, the Seller must transfer ownership of any goods sold unless retention rights apply. He also warrants that they are free from any lien or claim from any third parties.

Damages recovery

Strict liability applies to damage claims arising out of breach of contract. The aggrieved party is thus entitled to claim damages even if the other party was not defaulting. However, there is no liability when the breach of contract was caused by an act of a third party or by an event of force majeure. The damage includes direct loss (*damnum emergens*) as well as loss of profit (*lucrum cessans*). In case of late payment, the civil code does not provide for interests but parties are allowed to reach an agreement. Equally, liquidated damages are allowed according to the Civil Code provided that they meet some criteria.

2.2 Commercial Contracts

Contract of distribution

The distribution contracts are created by the business law practice. Algerian business law does not provide for a specific regulation governing distribution. However, such contracts are very common and must comply with many aspects of the law, such as the law of contract, consumer law and, in particular, competition law. For instance, any provision granting an operator with an exclusivity to carry out an activity is regarded as serious violation of the competition law according to the article 10 of the Order 03-03. Equally, the Intellectual Property Rights to be transferred and used by an Algerian distributor, are subject to prior registration. In brief, here, freedom of contracting is limited by the statutory public orders and many foreign suppliers are not able to enforce their contracts as they do not comply with such regulations. Therefore, it is crucial to draft a distribution contract very accurately and always in accordance with the Algerian law as the scope of public order is broad here.

Franchising Contract

The Algerian Commercial Code does not regulate the "franchise agreement" as a recognized form of doing business. The Algerian Government has been debating to issue a franchise law to address this problem. Therefore, franchising sees its development under the civil and commercial laws, the conditions governing business activities, banking regulations, Intellectual Property Rights and consumer protection laws. Here, the main issue is that the Central Bank of Algeria does not authorize the transfer of royalties, and to obtain permission to pay a franchise fee can also be difficult. The Intellectual Property Rights are facing a high level of counterfeiting. Sometimes franchisees are facing obstacles in land entitlement, especially in the choice of premises and secure leases because of unresolved land issues. For Distribution Franchise in place in Algeria, since it is impossible to be paid for the license to use a brand, because of burdensome exchange control regulations, the franchisor usually makes his profit on the sale price of the products.

Contract of commercial agency

Unlike distribution and franchising, agency contracts are defined by the commercial code as a contract whereby a person prepares or concludes commercial transactions on behalf of a merchant. In terms of material provisions, the Civil Code contains rules regarding the right to act and the legal effects of the agent's acts. Here, it is important to stress that the law of delegation (mandate) applies and that agent's acts may bind the represented person. On the other hand, Algerian law does not regulate the right of commission, nor the compensation in case of termination. There are no special requirements in terms of registration to act in the capacity of agent, except the obligation for the agent to be a merchant. Some conditions must also be complied with, in particular regarding the authentication of the contract before a Public Notary.

3 THE LAW OF PUBLIC CONTRACTS

3.1 Tender Award

The Bidding stage

Traditionally, public contracts for procurement are awarded through national tenders and, when the local offer is lacking, through international tender. Although direct order is equally allowed, it is an extraordinary procedure usually limited to emergency circumstances. Generally, before submitting its offer, the bidder must open a bid bond equal to 1% of the contract value with a local bank to be guaranteed by a foreign bank. Tenders are generally constrained by the fulfilment of some eligibility criteria and/or a pre-selection stage and shortlist registration. Here, to show its qualification and skills, a foreign company can use the capacities and expertise belonging to a parent company.

Most economically advantageous tender and national preference

A public contract is awarded to the Most Economically Advantageous Offer, which is assessed, in particular, in terms of quality, delay of execution, price, aesthetic, and the local contents. To promote national production, a preferential margin rate equal to 25% is granted to Algerian products and/or companies. Here, local companies are those that are owned and controlled by Algerian shareholder(s). Nevertheless, foreign companies can bid jointly with local companies and a preferential margin shall apply in proportion of the local ratio to be executed in according with the contract.

Joint tender through the pooling

Indeed, foreign companies can bid jointly with Algerian or overseas companies by setting up a pooling, the so called "Groupement". It is basically a contractual or "paper" Joint Venture the terms and conditions of which are freely agreed upon by the members with view to performing a single contract jointly. Here, the public contract may establish for the payments to be made directly to each member. In brief, Groupement is a very common flexible device local and foreign companies use to pool their resources, thus increasing their chances to be awarded. However, said agreements must be accurately drafted to mitigate the liabilities and must be registered in compliance with local procedures, and the public notary to be granted legal personality must follow certain formalism.

■ 3.2 Public Contract Execution:

- The bidder is liable once its bid is approved and contract becomes enforceable.
- The private party must fulfil its obligations as provided by the contract and only occurrence of an event of force majeure can suspend the contract execution.
- The contract can be amended with the mutual consent of both Parties and a fair compensation is due to the contractor when a new provision is inserted unilaterally.
- The contractor has the right to request judge to terminate contract should the modifications exceed a certain limit, or in case of substantial price variation or where the execution is suspended for more than one year.
- The law of public contracts does not limit the liability of the contractor.
- Execution of the contract must be guaranteed by opening a performance bond which ranges from 5% up to 10% of the tender value. It must be opened prior to any payment receipt and can be converted into a guarantee bond at the provisional take over date.
- Performance Bonds are not required when the duration of the tender does not exceed 3 months or where, according to certain conditions, it concerns study or services.
- Subcontracting must be approved and cannot exceed 49% of the total contractual value.

■ 3.3 Contractors Payments

Payments are usually made by milestones and via direct transfers abroad, within 30 days from the date of payment request. Delay in payments leads to penalties, the interest rate is fixed by the Central Bank of Algeria.

Subcontractors can be entitled to direct payments.

Most Public contracts provide for an advance payment which is generally up to 15% of total tender value but may exceptionally increased where required and paid up in one or more instalments. In any case, advance payments cannot exceed 50% of the tender value.

The advance Payments amount must be assured through a bank guarantee to be opened with an Algerian bank. The Bank guarantee must be irrevocable, payable on first demand and unconditioned.

The Contract Price can be updated or revised according to the contractual terms; also, the hardship principle is recognized by the Algerian Jurisprudence and the judge is allowed to revise the price to keep the financial balance of the contract.

4. BANK GUARANTEES

As being generated from the international practice, the bank guarantee is a commitment by which a bank (the guarantor) commits to pay on behalf of its client supplier (contractor) a fixed sum, in order to allow the purchaser (beneficiary) to obtain a fixed amount in case of supplier's failure. Being irrevocable, it is an autonomous and independent commitment arising from the main contract. It shall be payable either upon first request (unconditional) as soon as it is called without any required formality or support, or documentary (conditional) upon submission of mentioned documents in the guarantee deed. It must be established, at the latest, on the date on which the contracting partner submits the first down payment request to the contracting department. The performance bond rate cannot be above 10% of the contract's amount and it is up to the contracting party to fix the amount. In principle, the project performance bond shall apply to all project categories, however the Public Tender Code provides for certain exemptions, such as construction work contracts in which the contracting service may exempt the contracting partner from the performance bond of the contract, under the following conditions:

- If the period of the contract's execution does not exceed three months;
- If the contract is made by mutual agreement or with public institutions
- In addition to certain study and service contracts where the contracting service can verify the proper performance before payment of the services
- Also for some study and service contracts where the contracting department can verify the proper performance before the payment of the service.

Applicable law

Whereas at international level, this bond is governed by URDG (Uniform Rules Demand Guarantee) developed by ICC, Algeria imposes the application of the Algerian law relative to bank guarantees. These latter, shall therefore comply with a pre-established pattern delivered by the Ministry of Finance and with some regulations of the Bank of Algeria under the control of the Foreign Bank of Algeria. The relations between the parties are therefore presumed to be governed by the general principles of contract theory and, in particular, by the freedom of contracting.

Ground of actions

Whereas in terms of stand-alone guarantee issued by URDG, the action of the Contractor is based mainly on showing the presence of an abuse defects of the form, for the guarantee, all exceptions to the contract are opposable to the beneficiary. Only abuse or obvious fraud can prevent the payment of guarantee upon first request, as well as for any request made after the expiry date or which has not been complying with what has been mentioned in the contract. However, under some provisions of the Civil Code that apply, the default of the Contractor should in theory be established before any payment of the guarantee. In addition, and according to the Civil Code and the Supreme Court Jurisprudence, it is possible to request an immediate releasing of the bank guarantee by executing this obligation without necessarily obtaining the release statement. In brief, the Algerian law does not include any provision related to the international practice and so a ground of action shall be selected to obtain the release or the blocking of the payment.

Legal actions

Considering the legal state of flux, the Algerian or foreign judge has a wide power of interpretation. Before contacting courts, an amicable settlement must be actively sought by the Contractor and shall include all stakeholders. The Contractor may suspend the involvement of the guarantees before the emergency Judge until the trial decision. The contractor may request the cancellation / release of the guarantees before the competent judge abroad or in Algeria. Indeed, even if the text of the Guarantee gives jurisdiction to the Algerian judge, an action for cancellation or suspension may be presented before a foreign judge.

Public project

Bank Guarantees are mainly used to guarantee the execution of public projects or even at the bidding stage by the issuance of the bid bond. Like payment deductions, they are defined by the public tender code as a financial guarantee. Their contents and the terms of their refund are fixed, for each case separately, in the specifications of the tender document or in the contract's binding provisions. Indeed, they are compulsory in public projects under many forms.

Advance payment bond

Firstly, the advance payment bond aims to ensure the refund of lump sum advances and advances made on supply. In fact, the holder of the project cannot receive advance payments only after making deposit for refund of the advances. Its amount is equal to the value of the granted payment and must be issued by an Algerian bank. The partial refund of advances can be subject to partial release.

Performance bond

On the second hand, the performance bond provides the contracting service in case of inability of the project holder to complete the contract within the time and under the conditions laid down.

Warranty bond

The warranty bond ensures the proper performance of the contract and the refund of sums due by the holder of the project under the contract. It applies to projects for which a warranty period is provided and it is made by the transformation of the performance bond of the project. It is performed at the provisional acceptance and is released at the final acceptance and returned within one (1) month from the date of final acceptance of the contract except if any observations have not been cleared.

5 CORPORATE DEVICES

■ 5.1 Joint Venture Company

The most common and frequently used corporate devices in Algeria is the Joint Venture whereby the foreign investor is entitled to own up to 49% of the company shares. The establishment of the joint venture falls into the scope of investment law and hence many prerogatives, privileges and exemptions might be granted to venturers. A joint venture can be established through a Joint Stock Company with a minimum share capital of around 10.000,00 USD or through a Limited Liability Company with a minimum share capital of around 1,00 USD. Although local financings facilities are available, the shareholders generally contribute sufficient finance/capital through share capital contributions and increases to obtain the company's purpose. Internal loans are also allowed but strictly regulated by the Central Bank. In both cases, the share are registered and the joint Venture has limited liabilities. Management of the company is often entrusted to foreigners which are allowed to act both as directors or managers without restriction.

■ 5.2 The Temporary Establishment

Foreign companies willing to perform on spot contract on site have the right to register a temporary establishment. Here, the foreign company must register its private or public contract with the tax department. It shall then be considered as a local tax payer with two different applicable regimes (withholding taxes at flat rate or common regime) depending on the specificities of the project. Here, it is important to mention that double taxation can be circumvented with countries that have signed a double taxation convention with Algeria. The foreign companies shall be given a fiscal number and a certificate of existence in order to open bank accounts, hire foreign and local manpower and perform any commercial acts falling within the scope of its project. The Temporary Establishment has no legal personality and unlike the joint Venture, the mother company shall bear all the liabilities.

■ 5.3 Representative Office

Representative Offices has been flourishing since 2009 with the enactment of the "51/49%" rule dealing with foreign investment. In practice, many foreigners have been using the Representative Offices in order to circumvent the provision of the 49/51% but also for taxation purposes. The Ministry of Trade, through its Order dated on the 9th November 2015, clarified the applicable legal framework but also intends to compel certain foreign manufacturers to invest in Algeria rather than act as mere importers.

Purpose of the representative office

Under the Order, the Representative office is a temporary structure with no legal personality and its scope is limited to the performance of scouting, marketing and administrative activities. In addition, Article 9 of the Order forbids the Representative Office to perform any business or any economic activity.

Duration of the representative office

Article 5 states that "the opening of the Representative Office is subject to the issuance of the Authorization by the Ministry of Trade whose duration is 2 years, renewable." Nevertheless, the policy behind the Order is to use the Representative Office as a temporary device in order to assess the opportunity to invest in Algeria and not to develop a continuous activity.

Entities prevented from registering a representative office:

The Order excludes some activities while some corporate forms are set aside. Indeed, consultants, custom brokers and other merchants performing an activity not listed in the Commercial Register are not allowed to open a Representative Office. Equally, according to the Article 14, physical persons, branch offices or commercial representations are not able to open a Representative Office.

Registration Cost to open a representative office:

Finally it is worth to mention that the decision also states that a deposit bond equal to 30,000.00 USD be opened and 5,000.00 USD be deposited on a "CEDAC" bank account. Registration taxes amount to 1,5 Million DZD.



6 THE LAW OF INVESTMENT

The new investment law, which entered into force in August 2016, is not a single piece of legislation gathering investment law, finance law, tax codes and regulations on exchange control. However, it should be considered as the main governing law in the field of investment. Basically, the Law provides a broader notion of investment while reinforcing and facilitating the advantages for investors. Equally, the law shows a clear willingness to amend the funding system although major steps are still to be achieved on that concern.



A new definition of investment

Investments are now defined by the new Investment Law (Articles 2) as (1) an acquisition of assets for creation of new activities, 2) expansion of production capacities, 3) and /or rehabilitation. Firstly, Executive Order No.17-101 sets the creative investment through the acquisition of new assets to create a non-existent activity or a new activity eligible for privilege. Secondly, the expansion investment is made by the increase of the production capacity or by acquiring new production means. Finally, the rehabilitation investment includes the acquisition of goods and services for the restoration of existing plants and equipment. Unlike the creation of investment, any expansion and rehabilitation of an investment must respect minimum financial thresholds in order to be eligible for privileges. Contrary to the previous law, the shareholding related to the privatization of a public company is not considered anymore as an investment and is now only governed by Article 62 of the 2016 Budget Law. Additionally, the award of a concession or a license is still not falling into the scope of investments.

A broader notion of contribution in shareholding

Contributions in a company share capital are not limited to cash and new goods through the kind contribution. Unlike, the previous law, nothing impedes the investor to contribute in industry at least in a Limited Liability Company. Equally, under Articles 6 of the Law, a contribution in kind can be achieved through the importation of used assets provided when falling into the scope of a delocalization operation. Such provision was already in force through Article 59 of the Budget Law of 2016 whereby used goods of less than 2 years were allowed to be imported but not applied in practice. The application of this provision is still broad as it must be clarified by regulations. Likely, kind contributions can be done through the importation of new goods falling into the scope of an international leasing transaction. Importation procedures shall be simplified and not subject to authorization in both cases.

The 51/49 rule is still applicable but removed from the law corpus

Although under the current applicable framework, a foreigner is still not able to own more than 49% of a company shareholding, such provision now is removed from the Law and provided only by Budget Law 2016. In other words, the 51/49 should not be considered any longer as a main principle and is very likely that foreigners shall be entitled to control companies operating in certain sectors on the upcoming months. For instance, the draft of the Budget Law 2017 provides that the share capital of certain bank shall be owned up to 66% by foreigners. In brief, the Law should be understood as the first step of the establishment of more flexible and friendly system for foreign investors.

Activities falling in the scope of the Investment Law

Under the Investment Law, some activities are excluded from advantages and shall not give any privilege. In fact, the Executive Decree No. 17-101, lists all forms of imports and assembly activities which do not satisfy the integration rate fixed by the regulations in force. Additionally, the renovated goods intended for the activities of the first list are excluded from the advantages, as well as the stocks. In the case of the exercise of a joint activity or of several activities, only eligible ones are entitled to advantages.

The obligation of local funding is removed

The Law removes the obligation for investors to call only for local funding for project finance. It is worth to remind that Article 55 of the Budget Law of 2016 provides the right to call for foreign funding for strategic investment project. Although, a further regulation shall clarify the funding framework, it seems under the combination of the Law and the Financial Law 2016, that strategic investments projects can be financed by funds raised abroad. Usually, investor's private equity through subscription of share capital represents 30% of the total investment project value. The balance is usually provided by local bank and shareholder loans.

The granting of advantages is facilitated

The law sets forth an automatic system of advantages with the aim of reducing bureaucracy. In other words, investors are now required to perform a single registration through the submission of a single document. In brief, the granting of advantages is not subject to decision from Investment Authorities but automatic if the investment is eligible. Under the law, any investment is eligible except those pertinent to some activities and to the acquisition of certain goods. For major investment projects, a decision from the National Council of Investment is still required because the advantages granted thereof are extraordinary and freely negotiated by the parties.

The advantages granted to investors are enlarged

The new system of advantages is now built around 3 different levels in order to give more incentives to the strategic projects. The first level is a series of common provisions which introduces more advantages such as many estate tax exemptions and allowances. More significantly, all investors are now granted with a 3 years duration exemption of the Income tax and Profession tax while those creating 100 job places are granted with 5 years. The second level is the additional advantages granted to investment project based in some priority zones and/ or pertinent to specific sectors (tourism, agriculture, and industry) or generator of jobs. Here, the advantages are significantly enlarged while their duration is extended up to 10 years. The last level is the extraordinary advantages for those investments falling into the scope of the national interest. Here, the granting of advantages is not automatic but subject to party's negotiation. Among the several advantages and privileges, it is worth to mention that the law provides for funding facilitations. Here, further regulations must clarify the applicable regime such as, for instance, the possibility for those projects to call up for foreign funding as allowed by the Article 55 of the said Budget Law.

Free transfer abroad of the investment and its generated profits

Although the transfer of funds remains quite burdensome because of the still applicable banking regulations, the Law aims to enhance the transfer abroad of the funds falling in the scope of the investment. Indeed, under its article 31, investments reaching a certain threshold are granted with a guarantee of transfer abroad as well as their generated benefits. The guarantee of transfer is granted to foreign investors when their share contribution in the company reached a minimum value. However, the failure to reach such minimum value deprives the investment of the guarantee of transfer but it will be admitted for the benefit of advantages in any case. Finally, it is worth to underline that the share of financing of the total investment cost incurred by the foreign shareholder must be proportional to the shareholding held by the same in the company. Unlike the former practice, the law now considered reinvestment of the profits and dividends as an investment in the form of an external contribution. Indeed, the obligation to reinvest 30% profits set forth by the last Budget Law shall be considered as an investment. Moreover, the burdensome obligation provided by the previous law whereby the investor was obliged to maintain a positive balance of currency in favor of Algeria is banned. In brief, the policy behind the law is to ease progressively the transfer of funds generated by investment abroad in order to attract more IDE.

The state preemption right still in force

Unlike announced by the initial draft of the law, under Article 30 and 31 of the Law, the State's preemption right is still in force. Such right grants the Algerian government with the priority in purchasing any share when a transfer is intended to be made from and/or to a foreigner. In addition, such right applies also to indirect share transfer whereby a foreign based company holding shares in an Algerian based company which is granted with investment privileges is willing to transfer shares. In this case and provided that the subject share transfer shall overcome 10% of the share capital, the Algerian State shall be able, under some conditions, to purchase the target shares. The policy behind the rule is to provide the hosting state with a right of control towards companies granted with privileges as per the international investment practice and standards. It is worth to underline that the annual information obligation regarding the shareholding of foreign legal entities owning shares in Algerian companies is removed.

7 INTELLECTUAL PROPERTY RIGHTS

While the system of protection of labels and intellectual property is fully operational, a reform process was initiated in order to ensure compliance of the system of protection of intellectual property rights with international standards, in particular with the rules of the World Trade Organization. Algeria signed many international treaties related to the protection of Intellectual Property such as the Protocol of Madrid dealing with trademark registration and the Patent Cooperation Treaty (PCT) for that addresses the registration of patents. In addition, Algeria can count on a solid domestic legal framework in terms of IP protection. Indeed, Algerian laws comply with international regulations in terms of both their scope and the penalties in case of violation. Nevertheless, on the ground violations of IPR are common because of the lack of enforcement. In any case IPR owners must adopt a proactive approach, as local registration is required to be granted with protection but also for its exploitation. The trend in Algeria, particularly in the Industrial Sector, is the management of the Contract of Licence. Equally, the performance of public contracts implies a transfer of know how while the customs clearance procedures of certain products requires the use of IPR.

■ 7.1 Trademark Registration

Usually, registration of international trademark is performed in Algeria through the mechanism of extension provided for by the Protocol of Madrid. In fact, under Order 03/06 of 2003, to be used in Algeria, is subject to a prior registration before the INAPI. Such registration shall grant the applicant with the right of ownership and forbids the use of the trademark without its consent. The protection period is 10 renewable years. The registration procedures must be performed by an authorized Attorney, usually a lawyer, and it must comply with the provisions of Order 03/06 of 2003. Trademarks Infringement might be considered as a criminal offence and punished by jail penalties and fines up to 10.000.000 DZD. INAPI is responsible for monitoring domestic producers for patent infringements, but, in practice, the companies holding the patents have to bring possible violations to INAPI's attention.

■ 7.2 Patent Registration

Algeria ratified PACE treaty. Patent provides their owners with the exclusive right to refrain and prevent any third party from using, selling or importing the product or the process subject of the invention without the owner's consent. The patent owners are also able to transfer the use or the property by any means including license agreements. A patent registration request must be submitted before the INAPI and foreign applicants must be represented by a lawyer.

8 THE LAW APPLICABLE ■ TO FOREIGN WORKERS

The conditions of entry, stay and movement of foreigners in Algeria are governed by Law No. 08-11 of 25 June 2008 subject to international agreements and/ or reciprocity principles. The employer may recruit foreign Workers under conditions prescribed by legislation and regulations in force. In fact, the foreign worker must hold a labor contract in order to get the working visa.

■ 8.1 Immigration Requirement for Foreign Workers:

The local labor contract

The original employment contract is signed for a period of two years and may be renewed for further periods of one-year each. The contractors must clearly show their willingness to renew the contract three months before the expiration of the current contract (Article 3 of decree no. 86-276 of 11th November 1986 laying down the conditions of recruitment of foreign persons in the service of the state, local authorities, establishments, organizations and public companies).

The working visa

The work visa is issued to a foreigner who holds a labor contract, work permit and a temporary work authorization by the competent employment office. Moreover, it is necessary a certificate delivered by the same services, whereby the employing organization ensures the repatriation of the foreign worker after the expiration of the labor contract (Article 5 bis 1 of Presidential Decree no 03-251 on the situation of foreigners in Algeria). The temporary work visa is issued to a foreigner holding a fixed term contract whose duration cannot exceed 3 months.

The local labor contract

Concerning foreign workers holding a work permit, it is compulsory to carry out the formalities for obtaining a residence permit no later than eight (8) days before the expiry of their work visa. The residence card is generally used for short periods, usually between three (3) and twenty four (24) months. This card is issued to expatriates (foreign workers) by the foreign labor office through the local police department. It should be pointed out that the work permit is a prerequisite for obtaining residence card, which cannot be obtained before formalities' completion for obtaining the work permit.

Administrative formalities

Before any international deployment, many procedures must be done by the employee to be expatriated and his employer. These procedures which have to be known and carried out with the utmost care for the successful completion during working period abroad and for the safety of all.

Obtaining a work permit

In general, and without the application of international conventions or mutual agreements, obtaining a work permit is done in five steps:

- Obtaining an agreement in principle from the Ministry of Labor, Employment and Social Security;
- Obtaining the approval of the National Employment Agency (ANEM);
- Obtaining the temporary work permit from Employment Directorate;
- Obtaining the work visa for foreign workers at the Embassy of Algeria;
- Obtaining the work visa (permit);

It should be noted that temporary work permits are issued to foreign workers who are required to work for less than or equal to three (3) months. They cannot be renewed more than once in the year. Above a period of three (3) months, and after one month extension, a work permit will be required.

Repatriation of salaries

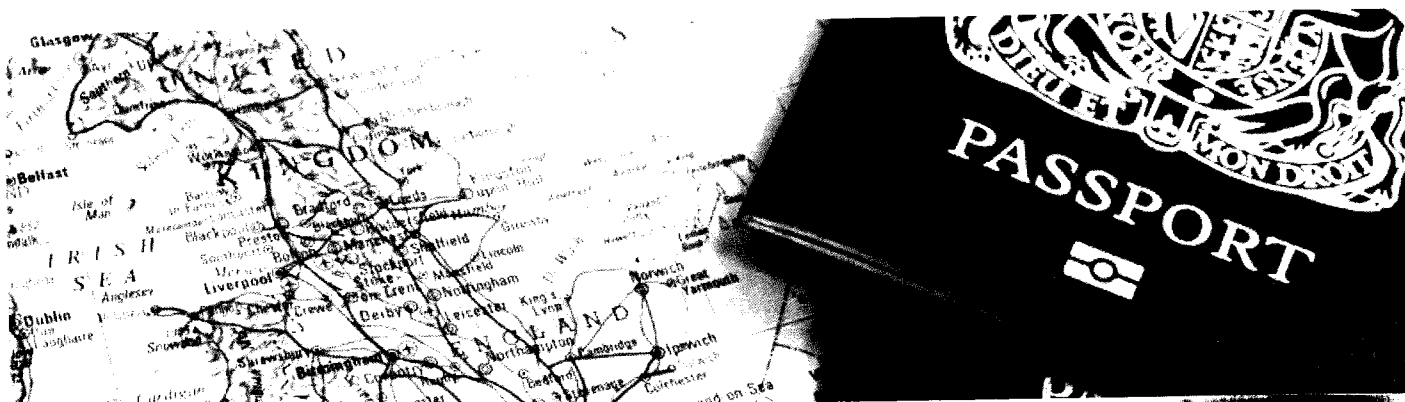
The instruction No. 2-98 on the transfer of wages received in Algeria by foreign workers stipulates that foreign workers who are allowed to transfer part of their wages must meet the two below mentioned conditions:

- Hold a work permit (or declaration receipt) or a temporary work permit, and a work contract.
- Be hired by Algerian authorities and economic agents.

The transfer is made through any authorized intermediary bank or financial institution counter, or the post office where the application must be domiciled.

The following are excluded from the above referred instruction advantage:

- o Foreign workers governed by an agreement with a foreign government or international body, and subject to the special transfer rules provided for in the said convention;
- o Foreign workers who do not have the status of short-term employees on mission, paid on lump-sum or sessional basis, subject to the transfer conditions set out in the corresponding Contract;
- o Foreign workers employed by foreign companies operating in Algeria as part of the execution of works contracts or services;
- o Foreign workers employed as individual contractors and making transfers for other activities;
- o Foreign workers shareholders in Algerian companies producing goods or services;



The business visa

The business visa is issued to the foreigner who has mission in the Algerian territory and holding either a letter of invitation from the Algerian partner or a mission order from the employing organization of the visa applicant together with a hotel reservation or a certificate of acceptance by the inviting body. The foreigner must hold a passport with a validity of at least 6 months. Special regime applies for the independent consultant which is an expert who performs a service outside a local labor contract. If the foreign consultant is resident, he is subject to the same rights and obligations as the Algerian consultant. Otherwise a 24% withholding tax is paid by the employing organization.

8.2 Taxation of Expatriate Workers

The expats coming from a Country which did not sign a bilateral tax treaty

The income of any kind as well as those of Algerian nature (currency) received by persons residing or not residing in Algeria, are subject to tax application in Algeria.

People whose tax domicile is in Algeria are liable to income tax on the basis of their total income; they are thus subject to an unlimited tax obligation.

People whose tax domicile is outside Algeria are subject to this tax for their Algerian nature income; they are thus subject to an unlimited tax obligation.

The income tax (IRG) is based exclusively on the amounts of salaries, allowances and emoluments, wages paid to employees and fringe benefits they receive.

The above mentioned remuneration is taxable according to the principle of withholding tax. The levy of the tax is thus discharging and freeing the recipient of the income from any declaration.

The expats coming from a Country which signed a bilateral tax treaty

The persons of foreign nationality who, having or not their fiscal domicile in Algeria and who are receiving an income of which taxation is attributed to Algeria under a tax convention concluded with other country, are liable to income tax. In fact, according to tax treaties made with Algeria (OCDE sample), the term "Resident of a Contracting State" refers to any person who, under the law of that State, is liable to tax in that State due to his domicile, his residence, his head office, or of any other similar nature. Progressive monthly income tax scale (amounts mentioned in Algerian dinars):

Fraction of monthly taxable income (Algerian dinars)	Rate
Not exceeding 10 000	0%
From 10 001 to 30 000	20%
From 30 001 to 120 000	30 %
Above 120 000	35 %

Summary table of the main bonuses and allowances:

The following table summarizes the main allowances and bonuses that are subject to taxation and contributions and those that are not.

Nature	Subjected to contribution	Taxable
Shift work allowance	Yes	Yes
Paid vacation	Yes	Yes
Overtime	Yes	Yes
Nuisance	Yes	Yes
Individual productivity bonus	Yes	Yes
Group productivity bonus	Yes	Yes
Area allowance	No	No
Vehicle allowance	No	Yes
Meal allowance	No	Yes
Travel allowance	No	Yes
Family allowances	No	No
Premiums for single salary	No	No
Tuition premium	No	No
Travel and Mission Expenses (if not included in the pay slip)	No	No
Expatriation allowance for foreigners)	Yes	Yes

Remark: The structure of the remuneration is set by each employer according to the salary, it has to be understood that the rate of non-taxable and /or subject to contribution allowances must be within the generally accepted limits in order to avoid any possible requalification thereof, in addition to salary and any subsequent adjustment by the tax or social administration.

What would be the contribution rate?

The social security contributions in Algeria are calculated according to a single rate of 35%, divided as follows: 26% at the employer's expense and 9% at the employee's expense. The rate of 35% is distributed as follows:

Summary table

Branch	Employer's share	Employee's share	Total
Social insurance	12.5 %	1.5 %	14%
Accident at work and occupational diseases	1.25 %	-	1.25%
Retirement pension	10.5 %	6.75%	17.25%
Unemployment insurance	1%	0.5%	1.5%
Early retirement	0.25 %	0.25%	0.5%
Social housing fund	0.5	-	0.5%
Total	26%	9%	35%

8.3 Social Security Agreement Availability

For nationals of countries that previously signed bilateral agreements with Algeria, the taxation in the country of origin may be maintained for a certain period precisely set in the conventions. Algeria has signed several social security agreements with France, Belgium, Tunisia, and Romania.

9 LITIGATION

Although cross-borders transactions are generally channelled through safe methods of payments, commercial transactions do not always run easily. Indeed, sometimes linguistic and cultural differences may lead to misunderstandings, and the regulatory environment is often unpredictable. In view of such complications, it is crucial to know how potential disputes may be solved. A proceeding before foreign courts or arbitration is not usually the most viable option. Rather, it is recommended to assess the competent venue on a case by case basis. In Algeria, disputes related to commercial transactions can be settled through courts or arbitration. In any case, the setting-up of an appropriate dispute resolution mechanism should be part of the structuring of the overall project.

9.1 Competence of the Ordinary Courts for Commercial Disputes

Ordinary Courts are competent to resolve commercial disputes. Under the Code of Civil Procedure, merchants have the right to agree on the competent venue to resolve their disputes whether in Algeria or abroad. Should the parties fail to do so, Algerian conflict of laws shall apply, which usually lead to the competence of the Algerian Judge. In fact, according to the long-arm jurisdiction principle, Algerian courts exercise jurisdiction over foreign defendants based abroad even in the event of commercial disputes. Usually the time of the procedures changes from one case to another and, more significantly if expertise is requested during the trial. It is not usual for decisions to be issued within a year. As Algerian judiciary system is based on the double degree of jurisdiction with the Supreme Court as the top of the pyramid, court decisions are subject to appeal twice.

9.2 Local Arbitration

Traditionally, arbitration did not have a strong foothold in North Africa. Algeria recognised explicitly the arbitration in 1993 as a mean for dispute resolution and its harmonization with the framework for arbitration proceedings. Indeed, The Algerian Chamber of Commerce and Industry (CACI) provides a Conciliation, Mediation and Arbitration Center with qualified arbitrators, sustainable costs and acceptable timeframe. Indeed arbitration rules provide for a time limit of the mandate of the arbitrators: the arbitrators must render their award within six months after taking on the mandate. All the rules of procedures aim to strengthen the position of the arbitral tribunal and limit the involvement of national courts as far as possible. Also, injunctions and orders must be sought before ordinary courts following the authorization of the CACI. It is worth to note that the parties are able to set aside their right to appeal. In other words, the right of appeal is not mandatory for local and international arbitration awards.

9.3 Public Tenders and Procurement Disputes

Since 2008, administrative courts are established to receive the litigations concerning the exercise of the Public Powers. Generally, most of the contracts between authorities and private persons fall within jurisdiction of the general court system. Equally, parties to a public contract may agree to settle their disputes by local or international arbitration. In any case, the decree No. 15-247 governing public contracts compels the parties in a public contract to seek for amicable settlement through mediation or conciliation mechanisms before launching any litigation procedure. Often the parties resolve any issues during the contract execution stage. The policy behind the rules is to reduce unfavorable arbitration awards for the government. Indeed, even if foreign arbitration is still accepted, under the new framework, it must require the prior approval of the competent Ministry.

9.4 Simplified Procedures and Emergency Procedures

Certain monetary claims can be enforced through a payment order system. Beside ordinary trial, Algerian Civil Procedure Code provides for a special procedure related to debt recovery. This procedure is available for uncontested, quantifiable monetary claims that have become due. Indeed, a creditor can request the judge to issue an injunction forcing the debtor to pay. Even though, such procedure is very quick and efficient as one hearing is sufficient to be delivered with an enforceable decision, but must still fulfil strict criteria. If the petition is rejected by the court, the creditor can launch an ordinary claim for trial. The Algerian Judge is also entitled to take emergency decisions through both temporary restraining orders and preliminary injunctions. The goal of which is usually to preserve the status quo so that the court decide the case. Indeed, the creditor has the right to request the judge to take a preliminary measure for the freezing of the debtor's bank account.

9.5 Enforcement Procedure

If debtors do not fulfil their obligations voluntarily, creditors can be granted with the right to enforce claims against their assets in Algeria following the issuance of an enforceable order by Algerian courts. The enforceability is used to the *res judicata* effects of the decision, which occurs once the appeal or opposition period has expired. Judgments and arbitral awards of foreign courts are not considered as enforcement orders. The Recognition and enforcement of foreign courts decision are governed by the Code of Civil Procedure through the so called *Exequatur* procedure. Nevertheless, Algeria signed several Bilateral Judiciary Treaties with many countries worldwide including Poland, UK, Spain, France, Italy and Switzerland. Also, Algeria is member state of the New York Convention dealing with recognition and enforcement of foreign arbitral awards. Even though the recognition procedure is eased according to the applicable international law, the broad Algerian concept of Public Order may imply some difficulties on the ground. Consequently, it is of essence to deeply assess each transaction before submitting it to foreign courts and/or arbitration.



10. Note

By nature, the information made available in this presentation can neither be exhaustive nor tailored to the specific needs of an individual case. It does not constitute advice, nor any other form of legally binding information or a legally binding proposal on our part.

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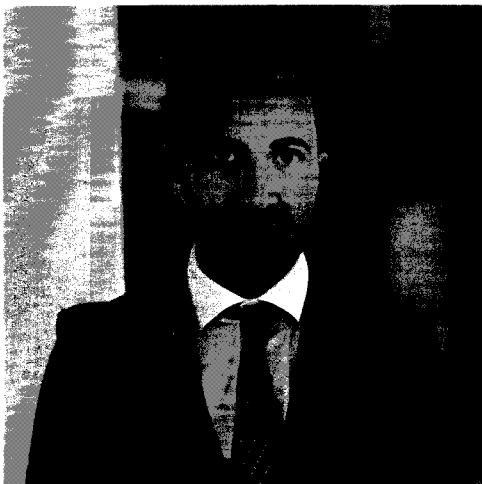


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