

# Specificities of Establishing Digital Banks in Algerian Law: A Legal Option or an Economic Imperative?

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## Abstract

The creation of a digital bank marks the start of a technological revolution in the national and international economic and financial sectors. Digital banks operate exclusively through virtual platforms, removing the need for customers or staff to be physically present and ensuring speed and flexibility in transactions. However, this raises several legal issues, primarily the need to implement robust cybersecurity measures to safeguard consumers' information and guarantee the confidentiality of their transactions and accounts. It also requires the state to assert its right to supervise these institutions. Providing an infrastructure suited to this type of banking from the outset is key to achieving this oversight. The Algerian legislator has sought to address these needs by imposing special conditions and procedures for establishing such banks. This legal approach is driven by economic necessity, stemming from the specific nature of digital banks and the risks they face. This study discusses these issues by examining the rules that govern the establishment of electronic banks under Algerian law.

**Keywords:** digital bank, digital platform, licensing, authorisation, establishment

## Introduction

Given the important and sensitive role of the banking sector as the driving force behind many financial, economic and development projects in the state, the Algerian legislator—like others—introduced several reforms in the new monetary and banking law. In addition to

promoting bank governance, green finance, the creation of digital currency and new supervisory committees, the law introduced the possibility of establishing digital banks and framed that possibility with legal rules governing the conditions and procedures for their establishment and operation, as well as supervisory mechanisms to monitor these new digital entities' compliance with the pre-established requirements.

A digital bank is any bank that provides banking services and products exclusively through digital channels, platforms or supports, relying on modern technologies in performing its activities. This makes it an optimal choice for offering distinguished banking services because it relies on technologies that save customers' time and enable faster, more flexible and more efficient services.

This study examines the adequacy and effectiveness of the legal provisions governing the establishment of digital banks in Algerian banking law, which is important for several reasons. The research question is therefore: 'What are the specific features of the legal regime for establishing digital banks in Algeria, and how well does it suit the current banking environment?'

This paper primarily aims to highlight the distinctive features of establishing digital banks compared with traditional banks in terms of both substantive requirements and procedural steps. The study employs an analytical approach, examining relevant legal texts on digital banks and identifying their shortcomings. This is supplemented by a descriptive approach to reviewing related terms and concepts.

In order to answer the aforementioned question, the article is divided into two main sections:

Section I: Formal and substantive requirements for establishing a digital bank.

Section II: Legal procedures for establishing a digital bank.

### **Section I: Formal and Substantive Requirements for Establishing a Digital Bank**

The process of setting up digital banks is the most important stage in creating a secure and efficient electronic banking system. These requirements are not merely legal obligations imposed by the legislator; they are also a form of prior supervision intended to verify the financial soundness of the entity before it enters the banking market. This is in keeping with the fundamental nature of banking, which is based on trust and credit. Based on the provisions governing the creation of digital banks in Algeria, the legislator has set out a number of conditions that must be met by the proposed project. Some of these conditions relate to legal persons (see subsection 1) and others to natural persons (see subsection 2).

### **Subsection 1: Requirements related to the legal person**

The Algerian legislator stipulates that banks and financial institutions must be established as either joint-stock companies or cooperatives<sup>1</sup>. The law also imposes specific capital requirements on banks in general and digital banks in particular. Additionally, the nature of a digital bank necessitates electronic establishment via the creation of a digital platform and its replicas. Accordingly, the first division will address the legal form and electronic framework of the digital bank, while the second division will address the capital requirements for a digital bank at the time of establishment.

#### **Division 1: Legal Form and Electronic Framework of the Digital Bank**

Algerian monetary and banking law requires both traditional and electronic banks to adopt a specific legal form, which will be discussed first. Furthermore, a distinctive requirement for establishing digital banks is the obligation to create the digital platform and its copies in Algeria.

##### **First: Legal form of the digital bank**

This section addresses three points: the requirement that a digital bank be a joint-stock company, the prohibition on establishing it as a branch of a foreign bank, and the requirement to have a registered office.

##### **A) Requirement that the digital bank be a joint-stock company**

Under Article 91 of the Monetary and Banking Law — “Banks and financial institutions must be established in the form of joint-stock companies; the Council may assess the feasibility of establishing a bank or financial institution as a cooperative” — banks and financial institutions subject to Algerian law must be set up as joint-stock companies, with a narrow exception allowing cooperative form in some cases.

The legislator probably demanded the joint-stock model because it is favoured for capital-intensive economic projects. While the law permits cooperatives, this structure is generally unsuitable for digital banks. Article 2 of Law 07-01 on savings and credit cooperatives clarifies that cooperatives are non-profit organisations intended exclusively for their members. This conflicts with the commercial nature and operational model of a digital bank<sup>2</sup>.

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<sup>1</sup>- Article 91 of Law No. 23-09 dated 21 June 2023, which contains the Monetary and Banking Law, Official Gazette No. 43 dated 27 June 2023.

<sup>2</sup>- Article 02 of Law No. 07-01 dated 09 Safar 1428 corresponding to 27 February 2007 concerning savings and loan cooperatives, Official Gazette No. 15 of 2007.

### **B) Prohibition on establishing a digital bank as a branch of a foreign bank**

Decree-Law No. 24-04 (Article 4)<sup>3</sup> prohibits the establishment of digital banks as branches of foreign banks. This prohibition can be explained by the particular risks of the virtual environment in which electronic banks operate, and by the state's interest in protecting depositors' and customers' funds. For these reasons, the legislator has barred foreign banks from opening digital bank branches in Algeria.

### **C) Requirement to establish a registered office for the digital bank**

Article 6 of Decree-Law No. 24-04 obliges the founders of a digital bank to designate a registered office in Algeria for administrative purposes. This office is also used to handle customer complaints. The registered office is the principal place of business and determines the company's domicile.

Article 7 of the same decree adds that the digital bank may open branches other than "digital" branches, which operate fully automatically. The digital bank may also provide services to customers through its own network of banking robots (ATMs/automated agents), or via networks belonging to other banks.

### **Secondly, the digital framework of a digital bank is its electronic platform.**

The virtual nature of a digital bank requires advanced software to represent its entity. The Algerian legislator has therefore imposed legal requirements for this, notably Instruction 25-02, which sets out the specific conditions for the licensing, approval and operation of a digital bank<sup>4</sup>. Article 2(1) of Decree-Law 24-04 defines a 'digital bank' as any bank that provides banking services and products exclusively through digital channels, platforms or technologies<sup>5</sup>. Founders must build a digital platform that is subject to strict supervision by Bank of Algeria engineers, in order to ensure sound design and cybersecurity. The platform undergoes a complete development lifecycle, from technical planning to final testing, before receiving official approval. The digital platform comprises core components and is constructed in specific stages.

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<sup>3</sup>- Ruling No. 24-04 dated 10 Rabi' al-Thani 1446 corresponding to 13 October 2024, concerning the special conditions for licensing the establishment, approval and operation of digital bank activity, Official Gazette No. 77, dated 19 November 2024.

<sup>4</sup>- Instruction No. 25-02 dated 02 March 2025 regarding the special conditions for licensing, approval and operation of digital bank activity, Official Gazette, 25 February 2025.

<sup>5</sup>- Ruling No. 24-04, concerning the special conditions for licensing the establishment, approval and operation of the aforementioned digital bank activity.

**A. The components of the digital bank platform are as follows:**

**1- Integration layer and user interface (APIs and front end/customer experience).**

The interface is not merely cosmetic; it is the primary means of establishing trust in the digital environment. It includes smartphone applications (iOS/Android) and web interfaces that provide a unified omnichannel user experience<sup>6</sup>.

**2- Backend services and operations management**

Functions include identity and document management, transaction management, and management of financial products.

**3- Core banking systems:**

Systems for risk management and compliance, including anti-money laundering (AML) systems<sup>7</sup>.

**4)- Cybersecurity:**

- Measures such as data encryption, multi-factor authentication and fraud detection<sup>8</sup>.

Cybersecurity is arguably the most critical requirement for building the digital bank platform. It protects the infrastructure and secures the information system. Without adequate cybersecurity, a digital bank project cannot be licensed.

**B) Stages of building the digital-bank platform**

The digital-bank platform is built through the following stages:

**1) Preparation and planning**

- Conduct an initial analysis of legal and regulatory requirements and prepare technical requirement documents.
- Select technologies, define core banking services, and determine the cloud infrastructure (e.g., Azure, AWS).
- Choose programming languages and frameworks appropriate for the project.

**2) Design and establishment:**

Design the architecture and service layers (APIs and API Gateway) and plan for scalability and high availability.

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<sup>6</sup>- Information about creating digital platforms is available on the following websites:  
<https://developers.home.google.com/apis#automation>  
<https://aws.amazon.com/ar/what-is/api/> , on 05-10-2025, 15:00

<sup>7</sup>- Same reference.

<sup>8</sup>- Mechanisms to ensure cybersecurity are available via the website:  
<https://www.mastercard.com/mea/ar/business/cybersecurity-fraud-prevention.html> , on 02-10-2025, 12:00

Adopt security standards such as encryption and authentication, and follow best practices (OWASP, PCI-DSS).

- Ensure multi-tenant and multi-user compatibility, authentication and account management.

### **3) Development (build):**

Implement core services, payment systems, various customer channels and external integrations (e.g. KYC).

- Perform automated testing, including unit, integration and security tests, using tools such as Postman and OWASP ZAP<sup>9</sup>.

### **4) Deployment:**

Create environments for development, testing and production, and establish monitoring and data segregation.

### **5) Launch:**

There are two phases: a closed beta pilot with early users to collect feedback, refine the platform and discover security gaps, followed by a public launch once corporate formation, licensing and approval have been completed.

### **6) Maintenance and updating:**

Ongoing after launch: bug fixes, new features and continuous improvements to security and performance according to user needs<sup>10</sup>.

## **Division 2: Capital requirements for founding a digital bank**

Given the economic importance of the banking sector, Algerian legislation treats the founding capital of banks, including digital banks, under a special regulatory framework and prescribes how it must be raised. Article 96 of Law 23-09 (Monetary and Banking Law) provides that: ‘Banks and financial institutions must have fully paid and cash-paid capital at least equal to the amount determined by a regulation adopted by the Council pursuant to Article 64 above.’

Accordingly, we will first address the minimum capital required for a digital bank and then the specific conditions governing that capital.

### **First: Minimum capital of the digital bank**

As a general rule, the monetary and banking council alone is competent to determine the minimum capital of banks, whether conventional or digital<sup>11</sup>. Accordingly, Bank of Algeria

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<sup>9</sup>- McKinsey & Company. (2022). The future of digital banking, at: <https://dzpay.digital> , on 02-10-2025, 13:00

<sup>10</sup>- Amazon Web Services. (2023). AWS architecture for financial services <https://owasp.org/www-staff/operating-plan/2024/project>

<sup>11</sup>- Article 64 of the aforementioned Law No. 23-09.

Regulation No. 24-04 was issued, which sets the minimum capital for banks and financial institutions<sup>12</sup>. It provides that banks and financial institutions must at all times hold a minimum capital (or allocation) — the same amount applies to branches of foreign banks and financial institutions — determined as follows:

- a) Bank: twenty billion Algerian dinars (20,000,000,000 DZD)
- b) Investment bank: twenty billion Algerian dinars (20,000,000,000 DZD)
- c) Digital bank: ten billion Algerian dinars (10,000,000,000 DZD)
- d) Financial institution: six billion five hundred million Algerian dinars (6,500,000,000 DZD)<sup>13</sup>

Notably, monetary and banking law differs from the generally applicable minimum capital requirements for joint-stock companies due to the unique nature of banking activities. Banking institutions are characterised by substantial capital requirements, as capital plays a key role in banking operations. Thus, the minimum capital requirement for a digital bank is ten billion Algerian dinars.

**Secondly**, specific requirements apply to the capital of digital banks. The legislator has imposed strict rules on banks and financial institutions, particularly with regard to capital, as it is a sensitive and operative element in the extension of bank credit. Accordingly, the following conditions apply to banks' capital:

- a) Cash contributions only, with justification: Bank capital must be provided in cash<sup>14</sup>. This differs from the provisions applicable to joint-stock companies under commercial law, whose capital may comprise both cash and in-kind contributions<sup>15</sup>. In addition, the source of the cash contributions intended for investment in the establishment of the bank must be justified<sup>16</sup>.
- b) Capital must be fully paid up on incorporation. The bank's capital may not be divided into instalments, whereby cash contributions are paid in several instalments, as is sometimes permitted when forming joint-stock companies under commercial law (for example, payment of one quarter initially, followed by the remainder in one or more instalments). Monetary and banking law requires that cash contributions be paid in full and not in instalments, so the situation is entirely different. Article 7(d) of Instruction 02-25 stipulates that a certificate of full payment of capital must be issued by a notary<sup>17</sup>.

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<sup>12</sup>- Ruling No. 24-02 dated 25 Rajab 1445 corresponding to 6 February 2024 concerning the minimum capital of banks and financial institutions operating in Algeria, Official Gazette No. 18 dated 13 March 2024.

<sup>13</sup>- Article 02 of Ruling No. 24-02 mentioned above.

<sup>14</sup>- Article 96 of Law No. 23-09, and Article 03 of Ruling No. 24-04 mentioned above.

<sup>15</sup>-Nadiya Fadil, *Corporations in Algerian Law*, 2nd ed., Diwan of University Publications, Algiers, 2008, p.145.

<sup>16</sup>- Article 99, paragraph 2 of the aforementioned Law No. 23-09.

<sup>17</sup>- Instruction No. 25-02 mentioned above.

## **Section Two: Requirements Concerning Natural Persons**

In addition to the requirements applicable to the bank as a legal entity, the legislator imposed conditions relating to natural persons who are founders, managers or shareholders of a digital bank. This section is therefore divided into two subsections: the first addresses the general requirements applicable to all partners, while the second focuses on the specific qualitative requirements applicable to each category.

### **Subsection I: General Common Requirements**

Based on the provisions of Law No. 23-09, Regulation No. 24-04 and Instruction No. 25-02, which emphasise the necessity of probity and integrity among individuals participating in banking activities and the requirement to demonstrate that they are not subject to statutory disqualifications, this subsection analyses those requirements as follows:

#### **1. Demonstration of absence of legal disqualifications**

All persons involved in establishing banks—particularly digital banks—whether as founders, shareholders or managers, must demonstrate that they are not subject to any legal disqualification that would prevent them from engaging in banking activity. Algerian law therefore requires these individuals to have a clean criminal record and to be free of prior convictions, reflecting the particular nature of the banking profession, which is based on credit and trust.

Consequently, the Algerian legislator requires the Monetary and Banking Council to verify that these individuals enjoy all civil and political rights, and are not involved in criminal acts, especially those related to commercial law<sup>18</sup>. Article 87 of Law No. 23-09 prohibits individuals who have been convicted of offences such as embezzlement, theft, fraud, issuing a cheque without sufficient funds, breach of trust, bankruptcy-related offences, currency crimes or violations of company law from becoming founders of a bank or financial institution<sup>19</sup>.

#### **Second: Justification of the probity of persons and their guarantors**

All shareholders, founders, and managers must continuously meet the requirements of probity, integrity, and honesty both prior to their appointment and during the exercise of their duties. The chairpersons and members of boards of directors, as well as supervisory bodies, must verify these qualities by all legally available means, both before and after granting authorization — i.e., the necessity of exercising both *ex ante* and *ex post* supervision over banking activity.

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<sup>18</sup>- Sheikh Mohamed Zakaria, Conditions for Joining the Banking Profession in Algerian Legislation, *Al-Ustadh wal-Bahith Journal for Legal and Political Studies*, Vol. 7, No. 1, 2022, p. 410.

<sup>19</sup>- Article 87 of the aforementioned Law No. 23-09.

## **Subsection II: Specific requirements applicable to each category**

We will address the requirements applicable respectively to founders, then to shareholders, and finally to managers.

### **1. Founders of the digital bank**

A founder of a digital bank is any person who participates directly or indirectly in the incorporation procedures and undertakes to assume the responsibilities arising from the project<sup>20</sup>. Given the importance of founders in banks, particularly for the successful completion of the establishment project, the legislator requires that they satisfy special conditions in addition to the general requirements of probity and the absence of legal disqualifications. These conditions are as follows:

(a) Full legal capacity: Due to the responsibilities that a founder assumes, which cannot be taken on by a minor or an individual with limited legal capacity, founders of banks and financial institutions must have full legal capacity.

(b) Financial soundness and justification of the source of funds: Founders must have adequate financial resources. This requirement is dictated by the substantial initial capital needed to establish a bank (10 billion DZD). Article 4(e) of Regulation No. 24-01 refers to ‘the founders, their provision of funds, the nature of the contributions and the provision of capital, and how these align with the chosen business model’. Accordingly, founders must make contributions in a manner consistent with the chosen activity.

Furthermore, the legislator obliges licence applicants to justify their status as providers of funds and the source of those funds, i.e. they must prove the origin of the money supplied by themselves or their guarantors. This represents *ex ante* control of the provenance of funds, verifying their legitimacy and combatting money laundering offences.

c) Professional, managerial and digital competence: The law requires founders to possess an adequate degree of professional and technical competence, particularly in banking. They must demonstrate their ability to meet the substantive and formal conditions when drafting the incorporation project, define the bank’s internal general policy, align it with applicable legal provisions and provide the necessary technological and human infrastructure and expertise.

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<sup>20</sup>- Article 02 of Ruling No. 92-05 dated 22 March 1992 relating to the conditions required of founders of financial banks, their managers and representatives (repealed).

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c) Professional, managerial and digital competence: The law requires founders to possess an adequate degree of professional and technical competence, particularly in banking<sup>22</sup>. They must demonstrate their ability to meet the substantive and formal conditions when drafting the incorporation project, define the bank’s internal general policy, align it with applicable legal provisions and provide the necessary technological and human infrastructure and expertise.

### **Second: Shareholders in the digital bank**

Those participating in the establishment of a digital bank must submit a business plan and evidence of financial capacity. They must also justify their status as providers of funds and demonstrate the probity of those funds.

Among the shareholders, there must also be a bank that is subject to Algerian law, has experience in online banking services, and holds at least 30% of the capital of the digital bank under formation. No individual shareholding (including stakes held by related parties) may exceed this percentage<sup>23</sup>. Additionally, the legislator requires principal shareholders to disclose their profiles, standing, financial capacity, experience and level of knowledge of the banking and financial sector.

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<sup>21</sup>- Article 99 of the aforementioned Law No. 23-09.

<sup>22</sup>- Article 04 of Instruction No. 25-02 mentioned above.

<sup>23</sup>- Article 05 of Ruling No. 24-04 mentioned above.

### **Thirdly, managers of the digital bank**

A manager is defined as ‘any natural person who performs a managerial role in an institution — such as a general manager, director, or any responsible executive — who has the authority to commit the institution to actions such as disbursing funds, taking risks, or issuing payment orders abroad’<sup>24</sup>.

With respect to managers of digital banks, the legislator has imposed conditions as set out in Regulation No. 25-01 concerning the approval of managers of supervised institutions<sup>25</sup>, as well as those indicated in Article 87 of the aforementioned monetary and banking law. Additional specific requirements for digital banks include:

- a) There must be at least two managers who have resident status to facilitate the determination of the actual direction of the bank’s activities<sup>26</sup>.
- (b) The licence application file must include information enabling the knowledge of the managers regarding the risks associated with digital banking activity to be assessed<sup>27</sup>.
- c) Managers must be qualified to perform their functions, possessing the necessary professional and technical competence and managerial capacity. Experience in digital technologies is also required.

## **Chapter Two: Legal Procedures for Establishing a Digital Bank**

Like other types of banking institutions, the establishment of a digital bank is subject to a set of procedures prescribed by monetary and banking law. These procedures form the essential gateway for any party seeking to enter the banking sector. The legislator has delineated a precise path, beginning with the licensing stage (the first requirement) and culminating in the acquisition of formal accreditation (the second requirement).

### **Requirement One: The Licensing Procedure**

The Algerian legislator requires those wishing to create a digital bank to obtain a licence in advance. This step precedes the filing of the accreditation application. This is done by applying to the relevant supervisory authority responsible for issuing licences under Instruction No. 25-02 (specifically Articles 2, 4 and 5). The licence will only be issued once all the substantive

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<sup>24</sup>- Jallal Redha Mahmoud, Establishment of Banks and Financial Institutions in Algeria, *Journal of Research in Law and Political Sciences*, Vol. 03 No. 02, University of Mohamed Ben Ahmed, Oran 2, 2018, p. 87.

<sup>25</sup>- Ruling No. 25-01 dated 12 March 2025, defines the conditions for the approval of managers of supervised institutions, *Official Gazette* No. 23 dated 22 April 2025.

<sup>26</sup>- Article 98 of the aforementioned Law No. 23-09.

<sup>27</sup>- Article 09 of Ruling No. 24-04 mentioned above.

and formal conditions specified in Monetary and Banking Law No. 23-09 and the regulatory instruments promulgated by the Bank of Algeria have been met.

The procedure consists of submitting an application and a complete administrative dossier containing all necessary data and documents (Subsection I). Once that dossier has been examined and reviewed, a final decision on the licence — either approval or refusal — is issued (Subsection II).

### **Subsection I: How to Obtain the Licence**

The purpose of granting a licence is to complete the incorporation formalities, such as registering the bank or institution in the commercial register, after the Monetary and Banking Council has examined the formal and substantive conditions set out in the licence application file. By contrast, the purpose of accreditation is to permit the commencement of banking operations from the date the accreditation decision is published in the Official Gazette.

#### **1. Definition of the licence and its types**

First, we define the licensing procedure, then we describe its types.

**a) Definition of the licence:** A licence is a primary and essential prerequisite for establishing or modifying structures within the banking system. In monetary and banking law, the notion of a licence differs from administrative licensing. In the banking context, a licence merely authorises the establishment of a bank or financial institution (or the opening of a bank or financial institution branch), but does not permit the exercise of banking activity per se. According to Law No. 23-09 (Monetary and Banking Law), Article 89, a further accreditation procedure is required to commence banking activity.

**b) Types of licences:** licence for establishment and licence for amendment.

1) Licence for establishment (incorporation): This form of licence is also known as a ‘licence for establishment’ or ‘licence for incorporation’ because its purpose is to create a bank or financial institution, as applicable, in accordance with Articles 89 and 90 of Law No. 23-09 (Monetary and Banking Law).

2) Licence for amendment: This refers to amendments to a bank’s constitutional instruments, whether before or after accreditation. Particularly, changes concerning the bank’s object (its corporate purpose) or its capital must be submitted to the Monetary and Banking Council. The same applies to matters concerning the bank’s branches under Article 103 of Law No. 23-09 (Monetary and Banking Law).

## **Second: Licensing conditions**

To obtain a licence, an application must be submitted accompanied by a dossier in two copies, one of which must be digital, together with the elements required for an establishment licence under Regulation No. 24-01, and by an ancillary file specific to this category of banks as specified in Instruction No. 25-02<sup>28</sup>. Instruction No. 25-02 sets out the information and documents that the dossier must contain, which include the following elements:

- A concise project presentation, notably the project's vision and strategic objectives, growth, expansion and profitability prospects, contribution to financial inclusion and economic development, and a description of the services and products to be offered to customers.
- Draft articles of association and the identity/status of the founders and shareholders.
- A technical and economic feasibility study of the project.
- The information systems architecture, disclosure framework and IT infrastructure.
- The internal control framework and risk management system.
- The anti-money laundering, counter-terrorist financing and counter-proliferation financing framework and measures.
- The information security regime and cyber-security risk management.
- Measures and arrangements for incident management and business continuity.
- Personal data protection arrangements.

Article 9 of Regulation No. 24-04 stipulates that the licence application dossier must include information to enable an assessment of the managers' knowledge of the risks associated with the chosen digital business model<sup>29</sup>.

In addition to the dossier components and information listed above and required under Regulation No. 24-01 (which defines the conditions for granting licences to establish and accredit banks and financial institutions), the applicant must submit a supplementary file containing the following items pursuant to Article 8 of Regulation No. 24-04 and Article 5 of Instruction No. 02-25:

- A description of the information system architecture.
- The standards, policies, measures and arrangements to be implemented for information system security, along with the normative, legislative and regulatory references pertaining to information system security.

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<sup>28</sup>- Article 04 of Instruction 02-25 mentioned above.

<sup>29</sup>- Sultani Hamid, Digital Banks, Conditions for Licensing Their Establishment and Approval under Law 23-09, *Journal of Comparative Legal Studies*, Vol. 11 No. 01, Faculty of Law and Political Sciences, University of Ahmed Bougara Boumerdes (Algeria) 2025, pp. 201–202.

- The planned measures and arrangements to secure the information system and manage cybersecurity risks.

- Measures and arrangements for incident management and business continuity.

An integrated business plan is an essential condition for the licence<sup>30</sup>, as the Algerian legislator requires the licence applicant to submit a comprehensive business plan setting out the bank's various capacities and funding policies.

As digital banks do not rely on traditional branches to deliver services, but instead provide them via digital platforms and electronic networks, the business plan must be consistent with the technical characteristics of digital banking. This includes the availability of advanced information systems, computing hardware and software necessary to ensure the security of banking operations<sup>31</sup>.

### **Second branch: Decision to Grant or Refuse the Licence**

After examining whether the legal conditions for establishing a digital bank have been met, the Monetary and Banking Council decides whether to grant or refuse the licence application. Alternatively, it may refrain from responding to the application.

#### **First: Decision to Grant the Licence**

Granting the licence means accepting the application and notifying the relevant party, provided that the substantive and formal conditions specified in the digital bank's articles of incorporation have been met. It should be noted, however, that neither the Monetary and Banking Law nor the regulations in force at Banque d'Algérie set a specific time limit for the Council to deliberate on licence applications.

Furthermore, obtaining a licence does not equate to authorisation to commence and carry out banking activities. The bank that has obtained the licence must apply to the Governor of the Bank of Algeria for approval.

#### **Second: Decision to refuse the licence**

A reasoned decision to refuse the licence shall be issued due to the failure to meet one of the conditions set out in Law No. 23-09 or the regulations of Banque d'Algérie, or due to the absence of one of the elements of the file or the items included in the annexes to Instruction No. 25-02.

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<sup>30</sup>- Article 99 of the aforementioned Law No. 23-09.

<sup>31</sup>- Article 07 of Ruling No. 24-04 mentioned above.

The Secretary-General of the Monetary and Banking Council will then notify the relevant party of the refusal in accordance with the notification provisions and modalities set out in the Code of Civil and Administrative Procedure. This enables interested parties to challenge the refusal decision before the Administrative Court of Appeal within 60 days of the notification date<sup>32</sup>.

### **Third: The Monetary and Banking Council's Silence Regarding the Licence Application**

The Monetary and Banking Council may remain silent in response to licence applications. This may result from the law failing to specify a time limit for ruling on such applications. In particular, the absence of an express reply cannot be legally interpreted as implied approval. Accordingly, the Council's silence cannot be construed as acceptance, but rather as refusal.

This conclusion is supported by the general provisions of the Code of Civil and Administrative Procedure, which considers the silence of the administrative authority before which the matter has been brought as equivalent to a decision of refusal when it does not respond within two months. However, there is still a legal issue regarding how the period for determining the effect of the Council's silence should be calculated<sup>33</sup>.

## **Section Two: Granting of Authorisation**

After an initial licence has been issued, applicants may request authorisation to commence operations, i.e. to carry out the various licensed banking activities. Therefore, obtaining a licence alone does not confer on the legal entity the status of a bank or the ability to engage in banking activities. This section defines and sets out the conditions for authorisation (first subdivision) and the decision issued on an authorisation request, as well as the consequences of that decision (second subdivision).

### **Subdivision One: Procedures for Obtaining an Authorisation Decree**

It is beyond doubt that no bank — whether conventional or electronic — may undertake banking activities without prior authorisation. To this end, applicants must follow the procedures and meet the conditions for requesting authorisation. Therefore, we must first provide a definition of authorisation, followed by a statement of the conditions or procedures for obtaining that authorisation.

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<sup>32</sup>- Articles 67 and 95 of the aforementioned Law No. 23-09.

<sup>33</sup>- Article 830/2 of Law No. 08-09 dated 25 February 2008, containing the Code of Civil and Administrative Procedure, Official Gazette No. 21, issued 23 April 2008, amended and supplemented by Law 22-13 dated 13 Dhu al-Hijjah 1443 corresponding to 12 July 2022, Official Gazette No. 48, issued 18 Dhu al-Hijjah 1443 corresponding to 17 July 2022, which states: "... and in the event of administrative silence, the complainant benefits from a period of two (02) months to file his judicial appeal, which runs from the date of expiry of the said two (02) month period mentioned in the above paragraph ...".

## **1. Definition of authorisation**

The concept of authorisation will be addressed in two points: its definition and the authority empowered to grant authorisation.

**a) Definition of authorisation:** Authorisation is defined as ‘a unilateral administrative decision by which the administration acknowledges the existence of a particular entity and permits it to engage in a specified activity’. Authorisation confers upon the legal person the status of ‘bank’ and entitles it to carry out banking activities and operations<sup>34</sup>. Thus, it is the administrative permission required to commence the banking profession, which can only be obtained after the legal and regulatory conditions for entry into the profession have been satisfied.

**(b) The authority responsible for granting authorisation:** Authorisation is granted by the Governor of the Bank of Algeria, unlike licensing, which is granted by the Monetary and Banking Council<sup>35</sup>. This competence was enshrined by the legislator in Article 100, paragraph 4 of the Monetary and Banking Law, which provides: ‘Authorisation is granted by decree of the Governor and published in the Official Journal of the People’s Democratic Republic of Algeria.’ Instruction No. 02-25, Article 6 likewise stipulates that requests for authorisation must be submitted directly to the Governor of the Bank of Algeria and that the Governor must be notified of any amendments to the elements listed in the same article, whether before or after authorisation is granted. It is worth noting that the Governor of the Bank of Algeria concurrently serves as President of the Monetary and Banking Council.

## **Secondly: Procedures for obtaining authorisation**

The procedures for obtaining authorization follow, of course, the prior issuance of the licence and principally consist of submitting a request for authorization and a supporting dossier, accompanied by a set of documents to the Governor of the Bank of Algeria. The details are as follows.

**a) Submission of the authorization request:** The request for authorization must be submitted to the Governor of the Bank of Algeria within twelve (12) months of the date of grant of the licence, pursuant to Article 100 of the Monetary and Banking Law No. 23-09. The request must

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<sup>34</sup>- Sultani Hamid, previous reference, p. 202.

<sup>35</sup>- Article 07 of Instruction 25-02 mentioned above.

satisfy the establishment conditions set out therein and comply with the implementing regulations; it must also be accompanied by the documents and information required by law.

**b) Authorization dossier:** The applicant must attach to the authorization request a dossier in two (2) copies — one paper copy and one digital copy — containing all elements, components and documents required under Regulation No. 24-01 and Instruction No. 02-25. The dossier shall include the following items:

- 1) The original articles of association executed by notarial deed, and the commercial register.
- 2) The tax registration certificate issued by the tax authority competent for the address of the registered office.
- 3) A certificate of full payment of share capital issued by a notary and accompanied by a bank confirmation evidencing payment of the required amount, and, where applicable, a certificate of foreign-currency transfer for non-resident shareholders.
- 4) The notarized minutes of the deliberative body showing the election of its chair and the appointment of the general manager and deputies or the chair and members of the board of directors, as applicable.
- 5) The title deed or lease agreement for the premises to house the registered office of the digital bank, including the address and telephone/fax number, together with the identities of the appointed account signatories.
- 6) The above elements must be accompanied by a file containing the appointment requests for the managers designated to determine the actual direction of the activities of the entity to be established and to oversee and manage it<sup>36</sup>.
- 7) The applicant must attach an evaluation report prepared by an independent external firm, as provided in the second paragraph of Article 10 of Regulation No. 24-04 referred to above<sup>37</sup>.
- 8) The Bank of Algeria must be submitted an information form disclosing the identity and characteristics of the appointed external firm, using the template in Annex 03 of this Instruction. This form should briefly outline the firm's conditions for preparing the evaluation report, including their technical references, expertise, and the competence required to perform the assigned task. This form must be sent prior to any formal or contractual engagement with the firm<sup>38</sup>.

The applicant must ensure that the evaluation report contains the following assessment elements at minimum:

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<sup>36</sup>- Article 07 of the same source.

<sup>37</sup>- Article 08 of the same source.

<sup>38</sup>- Article 09 of the same source.

- Diagnosis of the technical and technological arrangements for information system security, including testing all components of the physical and digital infrastructure.
- Identification and assessment of risks and threats, highlighting potential vulnerabilities and their significance together with the degree of exposure to threats, especially in the following areas:
  - Cross-site scripting (XSS)
  - SQL injection
  - Cross-site request forgery (CSRF)
  - Application logic flaws
  - Memory management errors
  - Arbitrary command execution
  - Record insertion (local or remote)
- A security analysis of applications and auditing of software to identify critical components such as authentication and encryption mechanisms and user management<sup>39</sup>.

### **Subdivision Two: Outcomes of the Decision on an Authorization Request**

Pursuant to Article 102 of Monetary and Banking Law No. 23-09, the legislator vested the Governor of the Bank of Algeria with discretionary authority to issue the decision he deems appropriate, namely to grant authorization, to refuse authorization, or to withdraw authorization by a decision of the Monetary and Banking Council for specified reasons.

#### **1. Authorization decree**

Authorization is granted by decree of the Governor of the Bank of Algeria in his capacity as President of the Monetary and Banking Council, by which he certifies that the bank or financial institution under formation has satisfied the legally prescribed conditions. The decree is published in the Official Journal of the People's Democratic Republic of Algeria<sup>40</sup>. Article 102 of the same law provides: "The Governor shall keep up-to-date lists of banks, financial institutions, independent intermediaries, foreign-exchange offices and payment-service providers; these lists shall be published each year in the Official Journal of the People's Democratic Republic of Algeria, and any amendment shall be published in the same manner."

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<sup>39</sup>- Article 10 of Instruction 25-02 mentioned above.

<sup>40</sup>- Article 100 of the aforementioned Law No. 23-09.

## **2. Decision to Refuse Authorisation**

The Governor of the Bank of Algeria may issue a decision to refuse authorisation if the conditions set out above are not fulfilled. However, it should be noted that, unlike the provisions governing licensing, the Monetary and Banking Law and its implementing regulations do not expressly regulate the Governor's refusal of an authorisation request. The latter set out the circumstances for refusal, notification of refusal and the possibility of appeal. Therefore, there is a legal gap concerning the refusal of authorisation and the time limits for challenging it, particularly since the Governor may refuse if the proposed bank project does not demonstrate the necessary level of seriousness. By contrast, French law stipulates that any decision to refuse authorisation must be communicated to the applicant and that a refusal decision, like an approval decision, must be issued within twelve (12) months of receipt of the authorisation dossier<sup>41</sup>.

## **3. Decision to withdraw authorisation**

Authorisation may be withdrawn by decision of the Monetary and Banking Council, outside the disciplinary powers conferred on the Banking Committee, for one of the reasons set out in Article 104 of the Monetary and Banking Law.

a) At the request of the bank, financial institution, independent intermediary, foreign-exchange office or payment service provider;

b) Automatically:

- If the conditions on which the authorisation depends cease to be satisfied.
- if the authorisation is not used for a period of twelve (12) months; or
- if the activity covered by the authorisation is suspended for six months.

It should finally be noted that affected parties may challenge a decision to withdraw authorisation before the Administrative Court of Appeal within sixty (60) days of the notification or publication date<sup>42</sup>.

## **Conclusion**

The particularity of the conditions and procedures for establishing digital banks is dictated by technological and economic imperatives, primarily the rapid technological evolution of economic and financial transactions at both domestic and international levels. This study yields the following findings and recommendations:

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<sup>41</sup>- NEAU-LEDUC Philippe, *Banking Law*, 3rd Edition, Dalloz, Paris, 2007, p. 30.

<sup>42</sup>- Article 67/6 of the aforementioned Law No. 23-09.

## **Findings**

- A digital bank is subject to the same formal and substantive conditions for establishment as a conventional bank, except for certain special provisions that characterize the formation of this type of bank due to its virtual nature. These special provisions are set out in Regulation No. 24-04 and Instruction No. 25-02 and are primarily as follows:

- Digital banks must be established as joint-stock companies with a capital of ten billion Algerian dinars, and they may not be formed as branches of foreign banks.

One of the shareholders of a digital bank must be a bank governed by Algerian law that has experience in providing online banking services. That bank must hold at least 30% of the share capital and no other shareholder may hold the same percentage.

The digital bank's registered office must be established in Algeria for administrative purposes and may also be used to handle customer complaints. The bank must create a digital platform and store copies of it in Algeria.

- The licensing dossier must include information enabling the knowledge and familiarity of the managers with the risks related to the authorised digital activity to be assessed.

Once the various substantive and formal conditions have been met, the establishment process begins with the application for a licence from the Monetary and Banking Council. Authorisation to commence banking activity is the final step in this process. Authorisation is conditional upon securing the technological infrastructure and demonstrating its effectiveness and capacity to carry out electronic banking activities safely and continuously.

- The review reveals several gaps in the regulation of establishment procedures, particularly regarding authorisation. Leaving the decision period open-ended and lacking rules governing refusal, tacit decisions and procedures and time limits for appeals constitutes a legal lacuna that the legislator should address promptly to provide stronger guarantees to prospective investors in this sector.

## **Second: Proposals**

1. Raise individuals' awareness of the importance of digitalization, electronic payments, and digital wallets.

2. Build a strong digital infrastructure capable of withstanding various cyber risks in the banking sector, by providing the latest security and protection programs against attacks and hacking.

3. Continuously update the legal texts governing the activities of digital banks.

4. Benefit from the experiences of leading countries in this field by establishing fruitful partnerships to transfer and strengthen digital technology.

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- Law No. 23-09 dated 21 June 2023 introducing the Monetary and Banking Law, J.O.R.A. No. 43 dated 27 June 2023.

#### **2) Regulatory texts**

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- Regulation No. 24-02, dated 25 Rajab 1445 (corresponding to 6 February 2024), relating to the minimum capital requirement for banks and financial institutions operating in Algeria (J.O.R.A. No. 18, dated 13 March 2024).
- Regulation No. 24-04, dated 10 Rabi' al-Thani 1446 (corresponding to 13 October 2024), relating to the special conditions for licensing, establishing and practising digital banking activity. J.O.R.A. No. 77, dated 19 November 2024.
- Regulation No. 25-01, dated 12 March 2025, defines the conditions for approving managers of institutions subject to it. J.O.R.A. No. 23, dated 22 April 2025.

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