



Guide To Investing in Algeria

Supplementary Finance Law for 2009 – update



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The supplementary Finance law for 2009 has significantly changed investment conditions in Algeria. These changes concern both the conditions for establishment of both foreign and domestic investment, tax and accounting measures with regard to foreign trade. This note serves as a complement to update our guide and include the new measures.

This should, by no means serve as a complete analysis but rather a summary of the supplementary finance law (hereinafter the "SFL") measures published in Official Gazette No. 44, dated July 26, 2009¹. It does not replace the provisions of chapters in the guide but highlights the new provisions or amendments to be taken into consideration while referring to chapters of the guide impacted by SFL 2009.

1. Chapter 2 - Foreign Investment in Algeria

Pages 51 to 66 of the Guide

SFL amends and supplements Ordinance No. 01-03 of August 20, 2001 regarding investment development as modified and supplemented (hereinafter "**Ordinance**"), with regards to foreign and domestic share ownership, transfer payments (abroad) and potential investment-related incentives.

It is worth recalling the definition of investment given by Article 2 of the Ordinance. Under this section, which remains in force, investment² is:

- "The acquisition of assets within the framework of creation of new business, expansion of production capacity, rehabilitation or restructuring;
- Participation in the capital of a company in the form of contributions in cash or in kind;
- Business resumption or recovery as part of a partial or full privatization."

1.1 Measures relating to share ownership

- Foreign share ownership in investments

Foreign investments in the economic activities of producing goods and services are subject to a declaration of investment prior to their implementation with ANDI.

Foreign investment can be achieved through a partnership with resident national shareholders representing at least 51% of the capital. National ownership may comprise several partners.

Any proposed foreign direct or partnership investment project with foreign capital must be submitted for examination by the National Investment Board (CNI). Thus, all foreign investment whether eligible or not for tax incentives, must first be reviewed by the CNI.

Foreign investments in partnership with public economic enterprises must comply with these new provisions which are also applicable in the case of the opening of their capital to foreign ownership.

¹ Ordinance No. 09-01 of July 22, 2009 on the supplementary finance law for 2009.

² See also the Guide, Chapter 2, Section 2.1.1, page 51, which remains unchanged.



The state and economic public enterprises (EPEs) now have, under Article 62 of the SFL, a right of first refusal on all share transfers by foreign shareholders or in favor of foreign shareholders. This article refers to the right of first refusal under the code of registration (section 118) which gives the registration administration, to the Treasury, a right of first refusal on disposals of property, business assets or client bases, real estate rights, leases or lease commitments, if it considers that the sale price is insufficient. In this case, it should offer to pay the rights holders the amount of the award plus 10%. Article 62 of the SFL stipulates that regulations could be issued to further clarify the future arrangements for implementing this provision.

These measures are applicable to the entry into force of the SFL. They do not include any obligation of compliance for existing investments.

A note issued by the National Trade Registry (CNRC) dated September 23, 2009 and addressed to local CNRC offices clarifies the types of legal forms of these investments by excluding from registration at the Trade Registry, production activities for goods and services provided by foreign individuals, groups (*groupements*) or branches (*succursales*) of foreign companies established without capital. The newly registered company must:

- include a 51% share capital with an Algerian partner;
- have an authorization issued by the CNI and be declared with ANDI.
- *Foreign shareholding.*

Article 58 of the SFL further details the Ordinance with section 4a. It states that "foreign trade activities may only be performed by individuals or legal entities in a partnership whose resident national shareholding is equal to at least 30% of the share capital".

This measure applies "only to (the afore-mentioned) corporations engaged in import activities of goods purchased for resale and which are created from the date of entry into force of the SFL", in other words from July 28, 2009³.

Executive Decree No. 09-181 of May 12, 2009, establishing the conditions for importing raw materials, products and goods purchased for resale by companies whose members or shareholders are foreigners was amended by Executive Decree No. 09-296, dated September 2, 2009 and published in Official Gazette No. 51, September 6, 2009, and in particular Article 2 in its provisions introduces the concept of residence as a qualifying criterion for partners eligible in establishing these corporations, which was not included in the original version.

Sections 5, 6 and 7 of the decree stipulating that existing companies must achieve compliance requirements and that prior to this, the trade register may not be modified, have been repealed.

Finally, concerning the principle of non-retroactivity, a note issued by the National Trade Registry, dated September 30, 2009 (No. 4305/2009) states that "it would now accept applications to modify the trade registers (primary and secondary) of companies that import raw materials, products and goods purchased for resale, whose partners or shareholders are foreigners". It clearly states that these provisions apply only to companies registered with the Trade Registry prior to the promulgation of the SFL.

³ Joint note from Finance and Trade ministries dated 12 August 2009.



It is worth noting that so far, the Ordinance, pursuant to Article 1, contained no provision relating to importing goods purchased for resale as trading activity is not considered a real investment. The introduction of the provision relating to importing companies with resale activities as being fundamental in the Ordinance is new, but which must, in our view, be construed as an exception meant only to highlight the different rules depending on the activity in question. Note further that Article 1 of the Ordinance was not amended.

Regarding the national shareholding in import companies, shareholders may be sought through public participation. To this end, a participative management company may be created to manage the acquisition of shares under the legal minimum of the possible public participation in the capital of foreign trade companies. This provision, unlike those presented above, has not been made in amending the Ordinance.

Finally, it should be noted that Executive Order No. 9-183 of 12 May 2009⁴ fixing the conditions for conducting activities auxiliary to maritime transport has come to repeal the application (EO No. 01-286 of September 24 2001) which deals with conditions for conducting activities of ship's agent, consignee of the cargo and ship broker. Based on Article 571-3 of the Maritime Code, the new decree includes activities under the heading "activities auxiliary to maritime transport". These activities are open to individuals and legal entities incorporated under Algerian law. Individuals of foreign nationality and legal entities belonging to individuals of foreign nationality must submit proof of statutory holdings of at least 40% of their capital by individuals of Algerian nationality.

We also recall that SFL contains specific provisions regarding the ownership of companies producing tobacco⁵.

- Measures relating to national shareholding

The Ordinance also covers national investments, thus the SFL also includes changes concerning them. Thus, investments made by resident nationals in partnership with public economic enterprises (EPEs) may be achieved through a minimum participation of these companies, not less than 34% of the capital. These provisions are also applicable in the case of the opening of their capital to resident national shareholders.

National ownership may exercise the option, with the council of state participation, to purchase shares held by the public economic enterprise upon the expiration of a period of 5 years.

1.2 Transfer payments abroad

The funding needed to carry out foreign investment, direct or in partnership, with the exception of share capital must be put in place, except in special cases, by use of local funding. A letter from the Directorate General of the Treasury, September 7, 2009, addressed to the Director General of the Association of Banks and Financial Institutions (ABEF), confirmed on the basis of this article, that only the participation of the foreign partner in the capital of the future entity may constitute the capital contribution. Unless exempted, the financing of projects carried out by an Algerian company must be mobilized in the local market.

⁴ Official Journal No. 31, dated May 24, 2009.

⁵ SFL, Art. 19 amending Article 298 of the Code of Indirect Taxes.



Based on the text of the Finance Act law and the afore-mentioned letter, financing is understood as "investment credit in the strictest sense of the word". It would seem that under these regulations, cash advances by foreign shareholders, meant to deal with operating costs and not investments, however, are still possible.

SFL now requires that foreign investment, whether direct or in partnership, have a foreign exchange surplus balance during the lifetime of the project. A regulation of the Bank of Algeria, Regulation 09-06 of October 18, 2009 on balance foreign exchange on foreign direct investments or partnership, includes details on application conditions⁶.

1.3. Tax incentives may be granted to investors

- Conditions

Regarding Algerian investments equal to or exceeding 500 million dinars, incentives granted under the general scheme are now subject to a mandatory decision of the National Investment Board (CNI).

The granting of incentives under the general scheme is, in all cases subject to a mandatory written undertaking by the beneficiary to give preference to products and services of Algerian origin. The rate of this preference is set by a regulatory text. In the same interest of promoting domestic production, the VAT exemption will now be granted only to acquisitions of Algerian origin. However, this advantage may still be granted when the absence of similar local production has been duly established.

The CNI has the authority to approve, for a period not exceeding five years, exemption from or reduction of duties, taxes or charges, including tax value, affecting the prices of goods produced by the investment that are part of emerging industrial activities. A statutory instrument will specify the conditions of implementation.

Finally, under an amendment stipulated in SFL in Article 9 of the Ordinance, companies that create over 100 jobs upon commencement of activities are granted an exemption period of 05 years for IBS or corporate tax (and not just of 03 years). This privilege, which aims to promote employment, is one of several other incentives, tax levies and customs.

Beyond these specific changes regarding conditions, non-compliance with new requirements in terms of share ownership prevent access to preferential tax schemes.

- Extension of the obligation to reinvest all exemptions granted under preferential schemes

Taxpayers who receive exemptions or reductions for all taxes, duties, levies and other tax benefits are now required to reinvest the profit share for all of these exemptions or reductions, and not only IBS, within four years from the year to which preferential treatment was applied (Art. 57 SFL). The investor may be exempted from this requirement by decision of the CNI.

The reinvestment must be made for each fiscal year or the sum of as many consecutive fiscal years. In the latter case, the period of 4 years is counted from the closing date of the first year. The requirements of the article apply to income generated in 2010, all consecutive years and income pending assignment from the date of enactment of SFL. Failure to respect this obligation entails the repayment of the taxes due in full and the application of a 30% penalty tax.

⁶ For more details, see our "News" No. 9.



2. Chapter 4 – Exercising commercial activities

Pages 90 to 94

Henceforth, all applications for trade register cancellations are subject to the presentation of a certificate of tax status issued by the relevant authorities (art. 39 SFL), which must be issued within 48 hours of the filing, regardless the tax status of the applicant. This certificate replaces the certification previously required prior to cancellation. This, however, does not exclude legal action against the applicant, should he be indebted to tax authorities.

3. Chapter 5 - Foreign Trade

Pages 95 to 103

In addition to the minimum Algerian share ownership requirement, now set at 30% for new companies created under regulations in force, other measures that may have an impact on foreign trade activities have been adopted in SFL.

3.1. Free trade in imports and exports

- Suspension of export of scrap non-ferrous metals

Article 84 of the 2007 Finance Law provided that the export of certain products, materials and goods, including ferrous and nonferrous metal scrap, leather and cork, was subject to standard specifications. After SFL, the export of nonferrous metals is suspended.

- Prohibition of foreign trade operations of operators without a Tax Identification Number

The bank clearance procedures and customs related to foreign trade operations require a tax identification number (NIF).

- Ban on import of second hand or used goods

Customs clearance for (public) consumption is now permitted only for new equipment, including construction machinery, raw materials and new spare parts or goods purchased for resale (Article 50, SFL amending the provisions of the first paragraph of Article 123⁷ of the 1994 Finance Law).

3.2 The accompanying documents

- Import operations and proxies

Under the SFL, the bank formalities related to import activity must be completed by the holder of trade register or the manager of the importing company. The presence of the owner is also required for border control formalities.

However, in the interest of implementing these provisions more easily, a joint memorandum issued by the Finance and Trade Ministries, dated August 12, 2009, allows legal representatives of corporations and statutory managers of LLCs and business owners to appoint an employee of the company to perform these procedures, banking formalities and those of ensuring the compliance of products entering the

⁷ Amended by the Finance Act 1995.



country. These employees must be reported to the CNAS and registered with the Trade Directorate of the relevant wilaya.

- Accredited companies and length of stay of goods

The customs administration may now use specialized and accredited companies to perform the control of goods before their shipment into the customs territory.

In addition, the maximum period during which goods are left on deposit has been reduced from 4 to 2 months.

4. Chapter 6 - Foreign exchange regulations

Pages 104 to 110

The changes relate specifically to the rules applicable to imports (Section 6.5 of the Guide – The imports system).

4.1 Extending the scope of banking domiciliation taxes on service imports

The new measure extends this tax to services imports. Therefore, it is payable for both imported goods and imported services and entail:

- 10 000 AD for any application to open a domiciliation dossier for an import transaction of goods or merchandise.
- 3% of the amount of clearance for imports of services.

Capital goods and raw materials that are not for resale are specifically excluded from this requirement, subject to prior underwriting of a commitment not to sell the property.

This fee does not exclude the requirement of a transfer certificate for services imports, pursuant to Article 10 of the 2009 Finance Law and under the terms of Tax Administration memo No. 119/MF/DGI / DGE/2009 dated 1 August, 2009.

The new fee must be paid prior to the transfer authorization request. For current contracts, it is required for payments that have occurred since the publication of the SFL.

4.2 Import operations and proxies

For this, the same requirements as those presented in Section 3.2 above are applicable also in the regulation of exchange and clearance procedure.

4.3 Banking domiciliation, compulsory prior to any import transaction

The formal domiciliation of any import operation is essential prior to the transaction, payment and customs clearance.

4.4 Documentary credit as the only means of payment for imports

Payments of imports must be made by documentary credit or letters of credit for all shipments made after August 4, 2009⁸.

⁸ Following clarification of a note from the Finance Ministry and the Bank of Algeria, dated August 4.



LCs must be opened with institutions accredited by Algerian banks. Because of the banking regulations, this mode of payment requires credit approval which may be granted at the discretion of the bank.

The requirement of credit and pre-clearance (see section 4.3 earlier) shall apply to imports of goods in excess of 100,000 DZD FOB, for private operators. Services imports, imports of property under that threshold or initiated by ministries or public administrations may still be paid by transfer⁹.

Imports made as part of investment projects in progress and whose contracts were domiciled before July 30, 2009, will be executed in the manner of payment originally established¹⁰.

Following these changes, a new note from the Bank of Algeria¹¹ specifies the conditions and exceptions under which the import invoices of goods and / or services may be paid by transfer. Note however, that import invoices of goods and / or services that are not paid 360 days after the date of customs clearance for goods and the billing date for services, irrespective of the mode of payment customarily applied may not give rise to transfer unless:

- the settlement period is explicitly stated in the contract or financial agreement and the declaration of external debt has been made in accordance with existing regulations;
- authorized by court decision.

5. Chapter 9 - The financial and banking system¹²

Pages 122-138

Regarding this area, it should be noted that Article 75 of the SFL provides that banks are allowed to grant loans to individuals for mortgages only. Other types of consumer credit are no longer allowed. It is expected that implementation condition will be specified by regulation.

6. Chapter 10 - The Algerian accounting system

Pages 137 to 182

The Finance Law contains several provisions that clarify the impact of the transition to the new accounting system (shown particularly in section 10.3 of the Guide).

6.1 Compliance with the New Financial Accounting System (NSCF)

Companies must comply with the definitions set by the new system provided that they are not inconsistent with the tax rules applicable to the tax base.

6.2 Percentage-of-completion method mandatory for long-term contracts

Regarding the long-term contracts, the measure calls for percentage-of-completion accounting. Under the SFL, "taxable income for long-term contracts that cover the manufacture of goods, services or a set of goods or services whose performance extends over at least two tax periods is calculated solely on percentage-of-completion basis, regardless of the contract type: fixed price contract or cost plus contract".

⁹ Clarified by a second note from the Finance Ministry and the Bank of Algeria, dated August 11, 2009.

¹⁰ Idem.

¹¹ Note of the Bank of Algeria, No. 180/DGC/2009 of October 13, 2009.

¹² More specifically, Section 9.7 of the Guide that is modified by this provision.



The SFL also imposes the requirement, under these provisions, of the appropriate management tools, system of calculating costs and internal controls for validating the percentage of completion and reviews following the progression, of estimates of product costs and income.

The measure aims to encourage construction companies to keep records of costs and exclude the provision for loss on termination of the right to deduct.

Finally, the companies of real estate will be released following the method of accounting for income and expenses of operations in advance (Art. 4, LFC).

6.3 Recognition of low-value long-term assets

To simplify the accounting and tax recognition of low value assets and thereby reduce management and monitoring-related constraints for depreciable assets, low value items of whose pre-tax amount does not exceed 30 000 DZD may be recognized as deductible expenses for the year of their commitment and property acquired free of charge are recorded as assets at fair value.

Moreover, the reference to the use made by Article 141-3 CIDT, in terms of depreciation, has been amended, as the provision now refers to now uses "included in regulations".

6.4 Amortization of preliminary expenses

Tax laws do not provide for a specific tax treatment for preliminary expenses. This was however addressed by the previous accounting system, which stipulated their amortization within a maximum of five (05) years while the new GAAP provides for their immediate amortization.

To avoid pushing the burden of all preliminary expenses pending amortization at 31/12/2009 entirely on the year 2010, SFL maintains the original amortization plan for this item. In other words, the preliminary costs recognized prior to the entry into effect of the financial accounting system, are deductible from taxable income in accordance with the initial amortization structure.

6.5 Taxation of capital gains from long-term-asset revaluation

Any gain resulting from the revaluation of assets from the time the SFL comes into effect shall be brought forward under taxable income for a maximum period of five years.

The supplement of depreciation generated from the revaluations will be reported to the result of the year.

7. Chapter 11 - The tax system

Pages 189 to 231

Other significant SFL measures more specifically concern taxation and are summarized below.

The points below do not include all the new SFL measures. It should be noted that in addition to these points, several measures are aimed specifically at encouraging tourism.

7.1 Measures concerning corporate profit and corporate group taxes

- Corporate profit taxes - definitions of activities with an IBS tax rate of 19% or 25%

With this measure, the corporate tax scheme gains a little more precision with the formal definition of activities taxed at the two rates.



Activities taxed at 19%:

- Building and public works activities. Activities registered as such in the trade registry and giving rise to the payment of sector-specific social security contributions.

- Tourism activities or the management of resorts and spas. Activities organized by travel agencies, however, do not fall into this category, which benefits from a 19% IBS rate.

- *Groups of companies*

The 2008 SFL revised the IBS rate by business activity and established the following:

- 19% for the production of goods, construction, public works and tourism;
- 25% for trading activities and services.

Where the activities carried out by member companies of the group have different IBS rates, profits resulting from the consolidation are subject to the 19% tax rate, where revenues benefiting from this rate are preponderant. Otherwise, the consolidation of profits is authorized according to the category of revenue.

Consolidation of profits, or consolidation of the accounts, is taken to be the ensemble of balance sheet accounts, not the mathematical addition of the income of the companies in the group.

Thus, when the consolidated turnover rate under IBS at 19% exceeds 50%, this rate applies to the consolidated taxable income.

Otherwise, to avoid penalizing the consolidation scheme, the 2009 SFL provides for the simultaneous application of two rates of IBS for each type of turnover.

In the absence of a specific application rate, for mixed activities, each of the two rates (19% and 25%) is applied to half of the taxable profit.

The 2007 Finance Law introduced VAT and TAP exemptions for transactions between member companies and, in order to avoid multiple taxation on transactions within the same group of companies.

Taxpayers consolidating their accounts at the parent company in accordance with Article 138a of Tax Code may now deduct VAT on goods and services purchased by or for their various companies that are part of the group under the same conditions.

This measure authorizes the VAT consolidation at the parent company to allow recovery of the tax by avoiding the creation of structural deductions.

7.2 Overview of incentives granted to companies

- *Maintaining the amount of capital gains from revaluation in the capital of the company*

The provisions of Article 45 of the 2006 Finance Law (amended and supplemented in particular by Article 56 of the 2007 Finance Law) would provide for exemptions from tax on company profits, subject to their incorporation into the capital of the company, the gains from the revaluation of depreciable and non-depreciable property, plant and equipment on accounts closed as at 31 December, 2006.



The revaluation was permitted only for those assets on the balance sheet for the year 2006 (filed with the tax authorities before 1 April 2007) and between the issue date of Executive Order (i.e. 4 July 2007) and 31 December 2007.

The new provision freezes the amount of the company's capital gains from revaluation in the capital, in addition to the statutory minimum, to avoid speculative measures to reduce the share capital of the gain included, and therefore distribute it. If the company has benefited from the incentives linked to investment promotion, the legal minimum is equivalent to the initial capital of the company plus the revaluation surplus included in equity.

- Taxation of shares or capital stock of companies that benefited from revaluation and revalued assets

Disposals of shares or capital stock in companies that benefited from regulatory revaluations give rise to payment of an additional registration fee whose rate is set at 50%. The law is based on the amount of generated capital gains.

Disposals of re-valued assets are also subject to this law. This is based on the amount of capital gains from revaluation.

No time limit has been provided for the implementation of this measure.

- The exemptions granted to securities transactions payable from 1 January 2008 instead of 1 January 2009

The renewal of exemptions for indiciaire global taxes (IRG), corporate taxes (IBS) and registration fees under Article 46 of the 2009 Finance Act, for five (5) years, reported at 1 January 2008 instead of 1 January 2009 as provided by the Finance Act 2009.

7.3 Assumption by the foreign partner of the taxes in connection with the execution of a contract

Taxes, duties and taxes payable in connection with the execution of a contract and legally incumbent on the foreign partner cannot be borne by institutions, public bodies and companies incorporated under Algerian law.

The new provision applies to contracts concluded after the date of enactment of the SFL, provided that amendments to original contracts are considered new contracts. Therefore, they will be subject to the new provisions.

7.4 Other tax measures

- Taxes on recharges for prepaid mobile phones

The measure establishes a tax applicable to prepaid recharges. It is due monthly by the mobile operators regardless of the recharging method used.

The tax rate is 5%. It applies to the amount charged each month. The product is paid by operators to tax authorities with the relevant tax jurisdiction within the first twenty (20) days of the following month.

- Tax on trucks and cranes and higher tax rates for passenger vehicles and utility vans

For new vehicles whose engine capacity exceeds 2500 cm³, the tax is increased to 200 000 DZD for petrol engines and 300 000 DZD for diesel engines.



The vehicle tax is extended to trucks and cranes: 340 000 DZD for trucks and cranes from 8 to 22 tons, 500 000 DZD for equipment over 22 tons.

- Penalties for offences relating to customs clearance and commercial laws and regulations

The fight against fraud has led to the inclusion in the *Fichier National des Fraudeurs* (blacklist of fraud offenders) of serious offenders concerning banking and financial laws and regulations, including those related to transfer of funds and money laundering (Art. 30 SFL.) and in cases of overdue deposit accounts.

The penalties incurred for listed offenders are: non-eligibility for tax and customs incentives related to investment promotion, non-eligibility for incentives granted by tax authorities, and exclusion from public tenders and foreign trade operations (Art. 29 SFL).

Finally, the following measures should be noted:

- Obligation to pay a deposit for issuing occupation permits (art. 51 SFL).
- Restructuring charges fees related to private occupation of public roads and highways (Article 52 SFL).
- Change of the name of the Algerian Development Fund now called the *Fonds National d'Investissement – Banque Algérienne de Développement* ("National Investment Fund - Development Bank of Algeria") (art 55 SFL).
- Capital of National Investment Fund - Development Bank of Algeria set at 150 billion DZD (art. 56 SFL).
- Support for agricultural activity through measures of VAT exemption in respect of rent paid under the lease contracts on hardware and equipment manufactured in Algeria (art. 24 SFL).
- Tourism: measures mainly aim to promote this sector. The SFL requires the incorporation of companies in the tourism sector and capital increases are exempt from the registration fee (section 43 SFL).
- The benefits linked to tourist activities, hotels, spas, tourist restorations classified, travel and rental of tourist vehicles are subject to reduced VAT rate (art. 42 SFL).

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