



The KPMG Review **Quarterly News**

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KPMG Algeria

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1) Investing and Operating in Algeria: Summary of Recent Developments

Several changes, whether legislative, regulatory or other, have been implemented recently in various fields (corporate, trade, tax etc.). Such measures pose new principles, or conditions for investment or more generally, operations in Algeria. They are aimed at various fields and have been adopted in a number of ways - through prime ministerial instructions, instructions issued by the Ministry of Commerce or the Bank of Algeria or finance laws. These new measures or principles in some cases appear to be an attempt by the Algerian government to address currency exports issues and ensure that foreign investment actually benefits Algeria.

This newsletter will focus on and analyze, where appropriate, the issues arising from these measures.

Measures will be arbitrarily distinguished between those related to investment and those related to foreign trade.

Investment-related Measures

Instructions of the Prime Minister

Four instructions were issued by the Prime Minister, between 20 and 22 December. They contain various measures relating to both investments and foreign trade. Those related to investment will be discussed here and those related to foreign trade in the second part.

The first measure is the provision that all foreign investment should necessarily entail an Algerian-owned majority shareholding.

The majority of government-owned share capital should be divided among several owners and the foreign partner would be the primary shareholder in terms of market share in the capital. The scope of the provision extends to all sectors of activity, including the finance and energy sectors. In addition, the funds required for the investment, outside of the initial share capital, should be mobilized on the local financial market and the project should reach a positive foreign currency balance for Algeria, during its realization.

It is not clear in the instructions, if this measure would apply to all investors or only to those receiving benefits, such as ANDI benefits, or to those operating in partnership with publicly-owned companies or in specific strategic areas. ANDI, in any case seems to be working on the basis that no advantage will be given to companies which are not constituted in accordance with the instruction, whether as a result of a creation or extension (which would mean a retroactive application of the measure for companies already established and wishing to claim benefits).

These instructions also contain specific ANDI provisions. Thus, any project involving foreign investment or foreign participation should be submitted to the National Investment Council (CNI) for consideration and advisement. Investment projects initiated by nationals alone and in excess of 500 million dinars are exclusively ruled upon by the CNI. In addition, the amounts equivalent to the benefits, tax, customs and other benefits in cases entailing ANDI benefits, will be deducted from the profits eligible for transfer outside Algeria. Finally, the period of 72 hours established for consideration of applications for benefits under the general scheme will be abolished. The issue of ANDI's responsibility is further clarified: it is held accountable to the law for cases of fraud concerning advantages if negligence is established in court.

These measures are considered applicable by ANDI. Decisions issued after 25 December 2008 and which do not comply with these provisions are deemed null and void. It seems in fact that ANDI has, for the moment, suspended the study of new cases of applications for benefits pending clarification of the new measures.

Effective Date of the Measures

In legal terms, these instructions do not supersede or bear the same weight as a law. Therefore, they are not sufficient to change the laws and regulations on investment. A number of other measures described later expressly entail the elaboration of texts, in particular regulatory texts and specifically decrees. However, this is not the case for measures on foreign investment and ANDI. To date, no legislation has been published. If further clarifications are not issued quickly, this could lead to practical difficulties if authorities consider these texts applicable, or in any case, await further details before making decisions. Investors, however, will be referring to laws and regulations, including order 01-03 of 2001 on the investment development, still legally in effect to date.

The Instruction issued by the Bank of Algeria

Instruction n ° 01-09 of 15 February 2009 on the dossier submitted in support of the request for the transfer of income and disposal assets from foreign investments, defines the content of the dossier concerning the transfer of profits, dividends, bonuses, attendance fees and the net proceeds of the transfer or liquidation of foreign investments.

In the case of transfers of profits on dividends or bonuses, the dossier must include:

- A copy of the trade register and certified articles of association;
- The documents justifying external inputs duly noted;
- Copy of the minutes of the General Assembly duly signed by the bodies authorized to rule on the allocation of profits for the year;
- A report of the distribution of income allocated to beneficiaries in accordance with the decision of the General Assembly approved by the Chairman of the Board or the Director;
- The auditor's report attesting to the veracity and compliance of accounts and reserves. For the latter, the auditor must indicate whether they entail an impending reservation;
- Copy of balance sheet and income statements for the year, certified by the auditor;
- Discharging tax certificate or tax services;
- A copy of the statistical reports as defined by the instruction n ° 09-05 of 28 August 2005 the Bank of Algeria.

Regarding attendance fees, the following are required:

- copy of the minutes of the General Assembly during which attendance fees were set;

- list of the directors present duly signed by the relevant service of the company;
- list of directors' fees set by the administrator;
- certificate of tax services.

The transfer of shares of the proceeds from sale or liquidation of non-residents, in whole or in part is executed through an accredited intermediary up to the actual value, net of tax, of assets sold upon submission of the following documents:

- copy of minutes of the Shareholders' or partners' General Assembly duly signed by the authorized bodies that ruled on the sale or liquidation in whole or in part, to be transferred;
- copy of the official deed attesting to the sale or liquidation;
- the final closing balance in the event of complete liquidation/dissolution;
- the special report of the auditor;
- clearance tax certificate or a certificate from tax services;
- a copy of the statistical reports on the current or latest financial year in the event of complete liquidation, as defined by instruction n ° 09-05 of 28 August 2005 of the Bank of Algeria.

Finally, the instruction prohibits the transfer of advance payments on profits or dividends to any shareholder, and confirms that resale activities are not eligible for transfer unless significant investment efforts are made.

Tax Measures Relating to Investment

The supplementary budget law for 2008 includes an obligation to reinvest tax-exempted profits (that benefit from investment support, such as those granted by ANDI). Companies that receive such benefits must reinvest profits, within four years. Tax administration has specified that the reinvested funds must match the sum of the exempted taxes and not the sum of profits subject to exemption. Thus, if a company providing services makes a profit of 100 that is tax-exempt, it must reinvest 25, i.e. the amount of unpaid tax, not 100.

The 2009 Finance Act includes several measures that affect foreign investors or foreign companies that are executing contracts in Algeria.

New sanctions were imposed by the 2009 Finance Act for companies that receive tax benefits, including ANDI benefits. Unpaid taxes, duties and excises become immediately payable (plus a 25% penalty) if investments subject to benefits were not achieved or have not complied with required conditions. Sanctions and penalties will also apply to taxpayers found guilty of fraud, after benefits were granted by court decision with force of res judicata (art. 194 bis of the Direct Taxation Law, hereafter CID). These coercive measures are intended to ensure that recipients of ANDI benefits meet their obligations and extend the scope of sanctions to all duties and taxes covered by the exemption decision. The ordinance on Investment (art.194 bis CID) contributes to the harmonization of tax legislation.

Capital gains on sale of shares or shares created by non-resident individuals or legal entities, give rise to taxation through individual income tax (IRG) or corporate profits taxes (IBS) as appropriate. The tax rate is 20%, with no subsequent tax declarations and in accordance with Article 256 of the Registration Code, 1/5th of the price is paid up to the notary.

A "Branch Tax" has been introduced in Algerian law. Article 46.9 of the CID, introduced by the 2009 Finance Act provides that the profits transferred to a non-resident foreign company by its branch established in Algeria or any other professional installation for tax purposes "are considered distributed profits". The tax due is applied at a rate of 15%, excluding any applicable tax treaties. No distinction appears to have been made between the branch, stable institutions and the subsidiary in tax terms, excluding IBS tax instalments, which are 0.5% of sums collected each month instead of 30% of the tax paid the previous year, and the ANDI, for which branches and permanent establishments are not eligible.

The principle of the scheme previously applied to profit transfers, was meant to prevent branches and permanent establishments from transferring the profit made in dinars.

Questions arise from this new provision and clarification of its rules of application would be necessary. Neither have the methods for calculating this tax nor the methods of collection concerning contracts involving both foreign currency and dinars been specified. It would pose a problem to apply a withholding tax on transfer of profits when the profit as such will not be transferred.

All fund transfers made to individuals or non-resident legal entities must now be declared to tax authorities (Article 182 ter of the CID, added by the 2009 Finance Act), prior to transfer. A certificate awarded by tax authorities should be attached to the dossier given to the commercial bank in charge of the transfer. Instructions of the tax administration (Instruction No. 61/MF/DG/09 of 21 January 2009 and the instruction n 43/MF/DGI/DGE/2009 of 21 March 2009) provide details about the proceedings and the application dossier:

Transfer requests are sent by the client or the paying party or any other party issuing the transfer order or transfer of money in return for contracts for works, and services undertaken in Algeria or for capital gains.

The documents required for the dossier differ according to whether it will be treated by the DGE (Directorate for Large Scale Companies) or the tax administration of the Wilaya, excluding the DGE.

If the dossier is treated by the DGE, the following are required:

- the transfer application form provided by the DGE, or downloaded from the DGE site duly completed;
- A power of attorney or letter of authority for persons designated for the deposit and withdrawal;
- Copies of contracts and amendments, which have not been submitted to the DGE;
- Copies of invoices domiciled with the bank or documents justifying the purpose of the transfer;
- Copy of the commitment not to sell when the import is on a purchase of equipment for the needs of the enterprise;
- Copy of the order of transfer of the client;
- Proof of payment of taxes, contracts constituting the purpose of the transfers (copies of the G50 tax form under which payments were made when contracts are subject to the standard regime or subject to deductions with the payment slip from the corporate tax (IBS) book provided by the tax authorities, dated and signed by the paying party, when contracts are subject to withholding tax);
- Copy of balance sheet duly certified by the tax administration;

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- Copy of the minutes of the GA, the articles of association, and the Trade Register;
- Auditor's report justifying the distribution of dividends;
- TAP Activity and Discharge assessment notice for companies under the standard regime.

If the dossier is treated by the tax administration service of the Wilaya, excluding the DGE, the following are required:

- The transfer application form provided by the DGE, or downloaded from the DGE site, duly completed;
- A power of attorney or letter of authority;
- Copies of contracts and amendments;
- Copies of invoices domiciled with the bank or documents justifying the purpose of the transfer;
- Copy of the commitment not to sell when the import is on a purchase of equipment for the needs of the enterprise;
- Copy of the order of transfer of the client;
- Proof of payment of taxes, contracts constituting the purpose of the transfers (copies of the G50 tax form under which payments were made when contracts are subject to the standard regime or subject to deductions with the payment slip from the corporate tax (IBS) book provided by the tax authorities, dated and signed by the paying party, when contracts are subject to withholding tax);
- Copy of balance sheet duly certified by the tax administration;
- Copy of minutes of the GA, the articles of association, and the Trade Register;
- Auditor's report justifying the distribution of dividends;
- Activity and TAP Discharge Assessment notice for companies under the standard regime;
- Updated C20 certificates (previously 930) issued by the relevant tax inspection service in charge of the observance of tax obligations;
- Copy of the NIF or NIS (tax ID number) card, as appropriate.

In both cases, the companies receiving the transferred funds and not exempt from reporting requirements under the Code of direct taxes, are required to go through the formalities related to the tax notices.

Measures Related to Imports

Measures on imports are included in both instructions issued by the Prime Minister and the Bank of Algeria.

Limitation and control of imports

New registrations for import companies with the National Trade Registry Center (CNRC) will be subject to the requirement of being established with a 30% minimum (and not a majority shareholding) participation of Algerian individuals or legal entities in their capital from 1 March, 2009.

The measure shall be applied retroactively; foreign companies already registered and operating in the imports business will be required to comply before 30 September 2009. According to prime ministerial instructions, these measures should have been the subject of a regulatory text before 31 January 2009. To date, however, nothing has been published. It should be noted that in practice, certain companies entirely owned by foreign capital were refused registration, when applications for registration codes included import for resale activities.

Beyond this measure, which focuses on the foreign investors interested in imports activities, it should be noted that it completes, other so-called "remediation and regulatory measures concerning foreign trade activity."

Production of Local Origin

This instruction on the production of local origin is a reminder and an injunction to enforce the provisions of Presidential Decree No. 02-250 of 24 July 2002 concerning the 15% preference margin granted to products originating in Algeria as part of public procurement.

Whether by tender or private treaty, national and international markets regarding the purchase of office equipment and supplies for the operation of services, preference will be given to production of local origin within the limit of 15% of bids.

For the completion of works, services, studies and acquisition of equipment, priority will be given to the production of goods or services of Algerian origin, according to two criteria: for offers of goods and services at least equal in quality to offers from foreign bidders, preference will be given to domestic production and, the 15% preferential margin will apply to products and services of Algerian origin.

Measures from the Bank of Algeria

Measures established by the Bank of Algeria relate to the control of imports in Algeria.

Note No. 16/DGC/2009 of the Bank of Algeria aimed at banks and accredited financial intermediaries, is to control imports of goods paid by "documentary credit" or "documentary bill." The note refers specifically to the uniform customs and practice of the Chamber of Commerce (ICC) and is in compliance with the provisions of the International Chamber of Commerce. These customs and practices are covered in the brochure "URC 522 and UCP 600." The note has to be strictly enforced by the agencies authorized to handle foreign trade operations.

According to the note, for goods imports paid for by documentary settlement or documentary letter of credit, the phyto-sanitary certificate (for agri-food products), the certificate of quality control of the goods and the certificate of origin should be included among the usual constituents of the dossier. These documents must be issued by authorized agencies of the country of origin.

Given its immediate applicability, the note provides that the accredited agencies, in the case of documentary collections that are still being processed and that do not contain the documents referred to, withhold the submission of the drawee. Agencies are responsible for requiring their customers to ask their suppliers to provide the missing documents on time, failing which the cash must be returned to the remitting bank.

A meeting between the association of banks and financial institutions (ABEF) and the Bank of Algeria led to further clarifications:

Apart from the fact that the note does not include payments by free banking transfer, the most awaited clarification relates to the quality control certificate for goods. The Bank states that the "quality control certificate for goods" is a general

name. The certificate could conceivably be called a certificate of compliance, certificate of analysis, certificate of approval or any other equivalent. The purpose of this document is to certify the quality of the goods in relation to contractual stipulations of the basic contract documents. These documents must be provided by authorized agencies, different providers.

The agencies empowered to issue such certificates do so in accordance with the local laws of the exporting country.

Concerning its entry into force, it was further clarified that the note would not be applied retroactively. The date of shipment of the goods should be taken into account and the transport document has probative force (Bill of Lading, AWB, note) concerning documentary settlements. For payment by documentary letter of credit, the date the letter of credit was opened will be the reference date.

Imports shipped before 21 February 2009 and documentary credit in place before that date are not affected by the new obligations. However, if the shipment takes place after 21 February 2009 and these certificates are not provided, imports payments may not take place by documentary settlement. The supplier may still order the remitting bank (Bank of Algeria) to deliver the document to the importer without conditions. Imports may be settled and only after customs clearance and the order of importer, i.e. by free banking transfer.

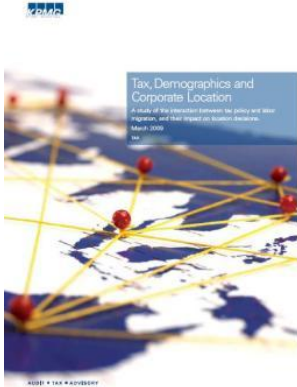
In other cases, the exporter and applicant for the documentary settlement may opt for the return of their goods.

Other Measures

As part of the operation of regulation and restructuring foreign trade and as of 15 March, the owners of companies operating in imports, with border inspections, may carry out the mandatory operations concerning compliance controls of imported products or may delegate this task to their duly authorized representatives in accordance with Article 3 of Executive Decree No. 05-467 of 10 December 2005, which lays down the conditions and procedures to ensure the compliance of imported products.

The notice, published on the website of the Ministry, reiterates the reasons for its action which contribute to fighting against fraud concerning the illegal use of trade registers by third parties. In the same note, the Ministry adds that commercial companies operating in imports shall be required, like other companies, to submit financial statements during the period 1 January to 31 July 2009 to local branches of the National Center of Trade Register (CNRC), and as such, company managers are urged to ensure strict compliance with this legal obligation as part of border control procedures.

2) Corporate Taxation, Location and Demographics



A study by KPMG International, entitled "Tax, Corporate Demographics and Location, A Study of the Interaction between Tax Policy and Labor Migration and their Impact on Location Decision", has been conducted among 260 decision makers representing multinationals operating in four continents. It aims to examine how the availability of skilled labor affects businesses in their choice of location abroad.

Key decision makers polled, from a wide range of international companies, were interviewed about their experience of the labor market in different countries, including Australia, China, Hong Kong, India, Japan, Singapore, South Africa, Spain, Switzerland, Great Britain and the United States.

The main conclusions of the study are:

- The quality of labor and the availability of tax policies and incentives for businesses can greatly influence the choice of business location.
- Direct tax incentives for business are an effective way of attracting companies to a country.
- Tax policies aimed at improving labor flows are useful, but generally less favored than direct incentives for business.
- Favorable immigration regimes are a major factor in attracting business.
- Favorable business conditions are generally thought to be more important than a well-qualified local workforce when considering a new business location.
- Businesses clearly welcome improved labor mobility, believing that foreign workers can bring specific valuable talent and skill sets, improve global understanding, and provide insight into new markets.
- In Europe, the business community and individual companies see themselves as the most responsible for attracting and retaining foreign talent. But elsewhere in the world, Government is expected to take a much greater role.
- Many companies are expecting a shift in the composition of the international labor pool over the next three years.
- Many countries are expecting to rely more heavily on Chinese workers, but this expectation cannot be reconciled with the demographic situation in China which indicates a slow down in the rate of population growth, and fewer people of working age. Companies may need to adapt their strategies to consider other sources of talent such as India, where demographic projections expect the working population to continue to grow for the next 40 years. For more information, an electronic version of this study is available at:

<http://www.kpmg.com/Global/IssuesAndInsights/ArticlesAndPublications/Pages/Tax-demographics-corporate-location.aspx>

3) Legislative News in Brief

The Convention between Algeria and the Federal Republic of Germany on double taxation and to prevent tax evasion and fraud with respect to taxes on income and on wealth

The Convention was ratified on 14 June 2008 entered into force on 23 December 2008 and has been in effect since 1 January 2009. It applies to the sums paid on 1 January or after 1 January of the calendar year following the year during which the Convention entered into force. The Convention also applies to taxes levied for periods beginning on 1 January or after 1 January of the calendar year following the year during which the Convention entered into force.

The Convention between Algeria and Switzerland on double taxation with respect to taxes on income and on wealth

The Convention, signed in Algiers on 3 June 2006, was ratified (Presidential Decree No. 08-427, issued on 28 December 2008).

The scope of the Convention covers income and wealth taxes collected on behalf of Contracting State, its political subdivisions or local authorities, irrespective of the collection system, and applies to persons who are residents of a Contracting State or of the two Contracting States.

Existing taxes to which the Convention applies include:

- With regard to the People's Democratic Republic of Algeria, the tax on overall income, corporate profits tax, mining profits taxes, taxes on business activity, property taxes, royalties and taxes on profits relating to exploration activities, research, exploitation and transportation of oil by pipeline.
- With regard to the Swiss Federal Council, federal, cantonal and communal taxes on income (total income, work product, return of capital, industrial and commercial profits, capital gains and other income) and capital (total assets, movable and immovable property, industrial and commercial wealth, capital and reserves and other elements of capital).

The main provisions of the tax treaty between Algeria and Switzerland are:

Regarding dividends, where the beneficial owner of dividends is a resident of the other Contracting State, the tax shall not exceed:

- 5% of the gross amount of dividends paid to a company which directly holds at least a 20% stake in the company paying the dividends.
- 15% of the gross amount of dividends in all other cases.

As regards interest, if the beneficial owner is a resident of the other Contracting State, the tax shall not exceed 10% of the gross amount of interest. The principle is applied in the paying State and considered as a tax credit in the other State.

Regarding royalties, if the beneficial owner of the royalties is a resident of the other Contracting State, the tax shall not exceed 10% of gross royalties. It is applied in the paying State and considered as a tax credit in the other State.

Regulations on Collection of Special Waste

Executive Decree No. 09-19 relating to the collection of special waste, published on 20 January 2009, regulates the activity of collecting waste and requires that individuals or legal entities carrying such an activity obtain a license issued by decision of Minister for the environment. The validity of the license is five years and renewable. Individuals or legal entities already exercising the activity on the date of publication of the decree have a year to comply with its provisions.

Concerning rights and obligations, "the collector is required, in order to exercise its activity, to take out an insurance policy covering third party liability for any resulting damage incurred through their activities."

All collectors must keep a numbered and initialled collection record. This register is made available to departments for environmental control with the relevant territorial jurisdiction.

All collectors are required, annually, to submit to the departments for environmental control with the relevant territorial jurisdiction a statement describing its collection activities. The collector is responsible for its activity and in protecting the environment.

Regulations concerning the Profession of Real Estate Agent

Executive Decree No. 09-18 published in the Official Journal of 25 January 2009 (Official Gazette No. 6) regulates real estate agent practices.

The activity shall be exclusive of any other gainful employment. It is subject to prior approval and registration with the Commercial Registry.

The approval is issued by the Housing Minister. Under the requirements, and principally, either for individuals or legal entities, the legislature determines the practices in the real estate profession and real estate managers must possess a diploma in the legal, economic, business, accounting, real estate or technical fields and have three consecutive years' experience in a job, function or activity directly related to real estate and provided this experience did not cease at least three years prior to the filing date.

Regarding the real estate broker, a graduate degree in the business, accounting, real estate or technical fields is required, as it is for real estate agents and three consecutive years' professional experience in real estate. Finally, brokers must provide proof of adequate financial guarantees by way of a permanent and uninterrupted guarantee bond, specifically for the security of its commitments vis-à-vis customers and an insurance contract against the financial consequences of professional liability. Active estate agents have six months to comply with new legislation.

All public real estate operators and agents, and ANIREF (National Agency for the intermediation and regulation of land) are excluded from the scope of the Decree.

Standard Status for Mutual-type Insurance Companies

Executive Decree No. 09-13 of 11 January 2009 sets the standard status for mutual-type insurance companies. The company possesses a company with legal status, is non-commercial and formed between members. These may be individuals or legal entities. The General Assembly is composed of all members up to date on their contributions.

Qualitative and Professional Criteria of Managing Heads of Capital Investment Companies

The decree of 27 December 2008 establishes the qualitative and professional criteria the heads of capital investment companies. The managing heads include the Chairman and members of the Board of Directors, the CEO and senior managers who have the power to make commitments concerning the disbursement of funds, risk-taking or authorizations.

The Chairman of the Board of Directors, the CEO and senior managers must have a university degree and professional experience of at least eight years in the fields of banking, finance, business economics, financial analysis or risk management. The Board of Directors must, have a university degree and a minimum experience of five years in the economic, financial, commercial or legal fields.

Frequency and type of information required concerning manpower and recruitment needs for and statistics provided by employers, municipalities and private investment agencies accredited by the National Agency for Employment

Executive Decree of 22 February 2009 defining the frequency and type of information concerning manpower needs as well as statistical data transmitted to the national employment agency by employers, municipalities and accredited private investment agencies, is a decree in application of the provisions of Articles 19 and 21 of Law No. 04-19 of 25 December 2004 relating to the placement of workers and employment monitoring.



Public and private employers are required to transmit to the Wilaya branch of the national employment agency with territorial jurisdiction the information on their labor needs and all recruitment. This information should be submitted quarterly, no later than one month before the quarter concerned, for labor requirements and monthly, no later than ten days after the end of the month concerned, for recruitment by employers.

Employers are obliged to inform the agency of any changes in the information that has been given and the reasons for these changes.

Concerning information on planned recruitment, they include the industry, socio-professional categories, age, nature and number of jobs, the type of employment contract and information regarding employer. For recruitment, the information relates to the industry, socio-professional categories, age, gender, nature and number of jobs performed and information on the employer.

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