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Digitisation of the banking sector in Algeria: a study of the conditions for entry and exercise of digital banking activities.

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Abstract

This research paper examines the conditions for entering into and exercising digital banking activities under Algerian legislation, which considers them to be regulated activities.

The legislator has stipulated that obtaining authorisation is a prerequisite for establishing or incorporating digital banks. They have also made obtaining an accreditation decision a subsequent administrative requirement for the exercise of digital banking activities.

This study identifies the conditions that digital banks and their individuals must meet. We have also addressed the requirements governing applications for prior authorisation and accreditation. Furthermore, we have identified the banking operations that digital banks are permitted to carry out.

Keywords: Digital Bank, Authorisation, Accreditation, Banking Operations, Electronic Services.

Introduction:

In light of the rapid digital transformation taking place worldwide, technology has become a decisive factor in reshaping various economic sectors, including banking. Tremendous progress in information and communication technology has given rise to a new banking model: digital banks. Digital banks can be traced back to the 1990s, when some traditional banks started to offer electronic services alongside paper-based ones. However, at the beginning of the new millennium, digitally native banks began to emerge, such as First Direct Bank in the United Kingdom and ING Direct Bank in Canada. These were later followed by Revolut and Monzo, which adopted a fully digital operating model.

Algeria has not been isolated from this development; the country's banking sector has undergone changes reflected in the enactment of a new law: Law No. 23-09, also known as the Monetary and Banking Law[1]. This law introduced new concepts, including digital banks, which are defined as follows: 'Any bank that provides banking services and products exclusively through digital channels, platforms or supports, relying on modern technologies in the exercise of its activities[2].' Digital banks are therefore financial institutions that provide services entirely electronically, without the need for traditional branches.

They are gaining increasing importance due to their role in supporting national policies aimed at achieving financial inclusion, as well as the advantages they offer customers.

As a digital bank is part of the regulated banking sector, its establishment is subject to certain conditions specified by the Algerian legislator. Accordingly, this research paper addresses the issue of the conditions for entering into and exercising digital banking activities under Algerian legislation.

Due to the novelty of the subject and the need to address the research issue, a descriptive approach was adopted, examining the legal frameworks that regulate this subject. Furthermore, the technical nature of the subject under study necessitated an analytical approach to determine the extent to which the legal provisions governing digital banks are adequate or inadequate, through an analysis of the technical nature of the establishment of digital banks and their transactions.

To achieve the objectives of this study, it has been divided into two sections. The first section addresses the conditions for entering digital banking activities, examining the requirements for the institution and its individuals, and discussing the conditions for prior authorisation.

The second section examines the conditions for carrying out digital banking activities, addressing the requirements for accreditation of a digital bank and identifying the banking operations that a digital bank may carry out.

Finally, the study concludes with a summary of the most important findings and recommendations.

First section: Authorisation as a Prior Administrative Requirement for Entry into Digital Banking Activities

Digital banking activities are considered regulated activities, as the Algerian legislator has stipulated that an authorisation decision must be obtained prior to the establishment of digital banks. When defining the requirements for obtaining authorisation

to engage in digital banking activities, Algerian law distinguishes between requirements that must be met by the bank itself and its constituent individuals (First Subsection), and requirements that must be met in the authorisation application (Second Subsection).

First Subsection: Conditions to be met by the bank and the individuals constituting it

This subsection first addresses the conditions that the bank must meet in its capacity as a legal person. It then explains the conditions that the natural persons constituting the digital bank — namely its founders and managers — must meet.

First Part: Requirements to be met by the bank in its capacity as a legal person

The Algerian legislator has stipulated that a digital bank must be a joint-stock company, and has determined the minimum amount of share capital that its founders must provide.

First: The Legal Form of Digital Banks

Article 91 of the Monetary and Banking Law No. 23-09 states that: 'Banks and financial institutions must be established in the form of joint-stock companies...'

The Algerian legislator has therefore required all banks, including digital banks, to adopt this legal form as a general rule. This requirement may be attributed to the large scale of digital banks' projects, their close connection with the national economy and the numerous interests they involve.

This has led legislators in many countries, including Algeria, to regulate the establishment of these companies and supervise their activities. Consequently, these companies are subject to a legal framework imposed by the legislator through mandatory legal provisions from which no derogation is permitted[3].

A joint-stock company is a type of capital company whose capital is divided into shares that can be traded. Shareholders are only liable for losses up to the value of their shares or contributions to the capital[4].

As a company is a contract[5], its establishment requires the fulfilment of the general substantive conditions applicable to such contracts. These include consent, which must be sound and free from defects, and validly expressed by persons with commercial legal capacity. The company contract must also fulfil the requirements relating to the object and cause, and be drawn up in the form of an official instrument. Furthermore, the specific conditions relating to the company must be met: the company must have multiple partners; the partners must intend to form an association; the partners must contribute shares; in the case of banks, these contributions must be in cash; profits and losses must be shared; and the company must be registered in the Commercial Register.

While digital banks are generally required to be established as joint-stock companies or companies limited by shares, the Algerian legislator has provided for the possibility of establishing digital banks in the form of a mutual company under Article 91 of Monetary and Banking Law No. 23-09, following a feasibility study conducted by the Monetary and Banking Council.

In contrast to the Algerian legislator, who requires founders of digital banks to adopt the form of a company limited by shares, the French legislator grants shareholders the option to establish a digital bank in the form of a general partnership, limited partnership, joint-stock company or partnership limited by shares. However, the latter form is difficult to envisage given the scale and specific nature of the project[6].

Secondly, the minimum share capital of digital banks.

Share capital refers to the minimum amount required for the establishment of digital banks[7]. It must consist exclusively of cash contributions provided by the bank's founders at the time of establishment and is divided into equal shares[8].

The Bank of Algeria[9] regulation has set the capital of digital banks at ten billion Algerian dinars (DZD 10,000,000,000)[10], compared to twenty billion Algerian dinars (DZD 20,000,000,000) for traditional banks[11].

Unlike the rules contained in the provisions of the Commercial Code relating to the subscription of the capital of a joint-stock company, which require the entire share capital to be subscribed and cash shares to be paid up to at least one quarter of their nominal value upon subscription, with the remaining amount to be paid in one or more instalments pursuant to a decision of the Board of Directors or Management Board within five years of the company's registration in the Commercial Register[12], Bank of Algeria Regulation No. 24-02 requires founders of digital banks to pay the minimum share capital allocated for establishment in full in cash before submitting an accreditation application, i.e. at the establishment stage.

This means that the entire amount must be fully and effectively available, and not subject to any other commitments during the establishment phase, i.e. before obtaining approval from the Bank of Algeria to commence operations.

This requirement ensures the stability of the digital bank and its ability to cope with potential financial risks while building trust with customers[13].

Although digital banks may benefit from lower operating costs than traditional banks, they are not exempt from minimum capital requirements, which provide financial security and demonstrate the bank's ability to absorb losses and reduce the risk of bankruptcy.

To ensure local supervision of financial operations and strengthen confidence in digital banks, Bank of Algeria Regulation No. 24-04 stipulates that an Algerian bank must be among the shareholders and hold at least 30% of the capital. This means that an Algerian bank with banking experience must be among the shareholders and hold at least 30% of the capital. Conversely, the same Bank of Algeria Regulation sets a ceiling on individual shareholdings, stipulating that no shareholder or entity affiliated with them may hold more than 30% of the capital. This measure is intended to promote financial diversity and safeguard the independence of decision-making processes[14].

In a bold new step towards developing the banking sector, the Algerian state has prohibited digital banks from operating as branches of foreign banks, as set out in the Bank of Algeria Regulation. This requirement demonstrates the authorities' commitment to safeguarding national sovereignty and maintaining control over the digital banking sector[15].

Conversely, the Bank of Algeria's regulatory framework is characterised by a digital-first approach, prohibiting digital banks from opening traditional physical branches except for digital agencies that operate entirely automatically. This approach is part of a broader vision to reduce banks' operating costs and strengthen reliance on technology to provide fast, accessible services[16].

Second Part: Conditions to be met by members constituting digital banks

Algerian law establishes specific conditions that must be met by members of digital banks, as well as specific conditions applicable to their managers. These will be addressed below, one by one.

First: Conditions applicable to the founders of digital banks

The founders of a digital bank are generally natural or legal persons who take the initiative to establish digital banks, undertake their financing, and prepare their accreditation application file for submission to the Bank of Algeria[17].

The founders are the first building block of a banking project. They are responsible for designing the organisational structure, developing the strategic plan and providing the necessary financial and technological resources to launch digital banking activities that comply with applicable legal and regulatory requirements.

The Algerian legislator has imposed a set of conditions on the founders of digital banks, particularly with regard to integrity and transparency[18]. Accordingly, a digital bank founder must not have a criminal conviction for offences involving dishonesty, corruption, money laundering or terrorist financing[19].

Furthermore, Article 4, Paragraph (c), Point 1, of Instruction No. 01/25[20], issued by the Bank of Algeria, requires founders of digital banks to provide information relating to their identity and status, including their corporate name, legal form, registered office address, commercial register number and tax identification number (in the case of legal persons), or their first name, surname, date and place of birth, nationality, address, national identification number and passport number (in the case of foreign natural persons)[21].

The same article also requires founders of digital banks to provide evidence of the origin of funds contributed as shares in the bank's capital. This enables the Central Bank's supervisory authorities to verify that the funds do not originate from criminal activities such as drug trafficking and prevents founders from using digital banks to launder money or finance terrorist groups[22].

The founders are also required to demonstrate professional competence. This means that the founder of a digital bank must possess an appropriate academic qualification in finance, economics, technology or law, and demonstrate experience in banking, finance or financial technologies (FINTECH)[23]. Professional competence is considered one of the criteria for selecting and evaluating projects submitted for accreditation.

Second: Conditions applicable to managers of digital banks

Managers of digital banks are individuals entrusted with the day-to-day management of the bank. They are legally and regulatorily responsible for managing operations and making administrative and financial decisions in accordance with the applicable legal and regulatory framework. This includes the Chief Executive Officer, Executive Director, members of the Board of Directors or Management Board, and the legal representative of the digital banking institution[24].

Managers in digital banks are responsible for strategic planning, internal control, risk management and ensuring compliance with national and international banking legislation while taking into account the specific characteristics of the digital environment.

According to Article 98 of Monetary and Banking Law No. 23-09, the management of digital banks must be entrusted to at least two individuals in the highest organisational positions. Furthermore, the two individuals appointed to management positions do not need to be Algerian nationals, but must be residents.

Appointment of any digital bank manager may only be approved after submission of a complete file to the Bank of Algeria Board, containing personal and professional information, as well as all documents proving the manager's integrity, competence and experience in the banking sector.

The manager must enjoy an excellent professional and ethical reputation and must not have been convicted of offences involving corruption, forgery or tax evasion, among others[25], nor have received disciplinary sanctions affecting their eligibility to perform management functions. Additionally, the manager must have experience in the banking sector.

Second subsection: Conditions to be met in the authorisation application

Individuals intending to set up a digital bank must submit an authorisation application to the Monetary and Banking Council, along with a file containing the information specified in Bank of Algeria Instruction No. 25-02 (First Part). Following examination of the file and investigation, the Council will reach a decision on whether to grant or refuse authorisation (Second Part).

First Part: Information required in the authorisation application file

The primary justification for prior administrative authorisation, and consequently its necessity, lies in the preservation of public order. It also serves a preventive purpose, as it enables verification of whether the legal conditions for establishing digital banks have been met. It also constitutes a supervisory instrument, enabling the Monetary and Banking Council to monitor and regulate activity.

The Dictionary of Terms in Arabic defines authorisation as follows: 'Permission to perform an act or engage in an activity, generally granted by the competent authority upon the request of an individual.'

The DALLOZ Dictionary of Legal Terms defines authorisation as follows: 'A procedure that enables the administration to exercise strict control over certain activities, which must be expressly approved by the relevant authorities.' The conditions required for approval are generally stringent, enabling the relevant administrative authority to maintain continuous supervision.'

According to this definition, the administrative authorisation system is preventive in nature, restricting the freedom to engage in an activity until an approval decision has been issued by the relevant administrative authority[26].

Accordingly, authorisation to establish a digital bank constitutes prior permission granted by the Monetary and Banking Council in the form of a unilateral administrative decision based on an application submitted by the individuals constituting the digital bank. This application must be accompanied by a file containing a set of legally required information.

In order to obtain authorisation to establish a digital bank, it is evident that the members constituting the bank must submit an application to the relevant administrative authority (the President of the Monetary and Banking Council)[27], accompanied by two copies of the file, one of which must be in digital format. This file must contain all the information and documents required by Article 4 of Bank of Algeria Regulation No. 24-01[28].

The authorisation application file must include a brief presentation of the project, covering the vision and strategic objectives defined by the project founders. It should also highlight the main motivations behind establishing the bank, particularly those relating to:

- growth potential and expected profitability;

- Contribution to economic growth and sustainable development;

- The importance accorded to financial inclusion.

The project presentation must also include a brief description of the proposed services and products, as well as the target customers.

Conversely, the authorisation application file must include a draft of the Articles of Association, which should cover the following in particular:

- The company's name and legal form;

- The corporate purpose, nature of the activity and related operations;

- The address of the registered office;

- The share capital, its structure, the number of shares held by each shareholder, the nature of the special rights attached to each class of issued shares and the distribution of voting rights.

- The rights and responsibilities of shareholders and managers.

- The principal managers at the time of establishment;

- The members of the deliberative body, the statutory duration of their terms of office and the powers vested in them;

- The identity of at least two statutory auditors.

The file must also specify the status of the founding shareholders who provided the funds, as well as the beneficial owners and the source of the funds. It must also include a technical and economic feasibility study relating to the project to be undertaken, as well as a brief description of the specific systems in accordance with the applicable regulatory frameworks:

- The information and disclosure system;

- The internal control and risk management system;

- The accounting system;

- The prudential system.

The system for preventing and combatting money laundering, terrorist financing and the financing of the proliferation of weapons of mass destruction.

Finally, the policy on confidentiality and the protection of data, funds and valuables.

Based on the findings of the investigation and the examination of the authorisation application file, a decision to grant or refuse authorisation to establish the digital bank shall be issued, as will be explained below[29].

Second part: Outcomes of the Decision on the Application for Authorisation to Establish a Digital Bank

When members of the digital bank submit an application to the President of the Monetary and Banking Council for authorisation to establish the digital bank, the President proceeds to examine the application file, verify that all the specified conditions are fulfilled, and conduct any necessary investigations.

As a general rule, the competent administrative authority granting authorisation must respond to the application within a timeframe specified by law, typically calculated from the date of submission. However, it is noteworthy that the Algerian legislator has not specified a time limit for the Monetary and Banking Council's response to an application for authorisation to establish a digital bank[30].

This creates a legal gap that could have a negative impact on investment in the banking sector. Failing to specify a timeframe for reviewing and responding to authorisation applications could create numerous difficulties and obstacles for members of the digital bank. It may also have an adverse effect on the proper functioning of the relevant administrative authority.

Furthermore, the absence of a legally specified timeframe for processing authorisation applications may create uncertainty for individuals or entities seeking to establish a digital bank, as it becomes challenging to ascertain the timeframe after which the administration may be deemed to have remained silent[31].

Failing to specify legal time limits relating to the examination of authorisation applications contravenes the provisions of Executive Decree No. 97-40[32], which stipulate that time limits for examining authorisation application files, as well as the available appeal procedures in the event of refusal, must be determined by a regulatory instrument.

Conversely, the current legislative provisions do not specify the procedures that applicants must follow in the event of an absence of response to their authorisation application, whether approval or refusal. This may lead to the arbitrary exercise of authority[33].

The current legal provisions also reveal a legal gap regarding the Monetary and Banking Council's authority to refuse authorisation, as the laws, regulations and instructions contain no provisions addressing this matter[34]. They also lack provisions governing appeal procedures in the event of refusal. This legal gap may infringe the rights of applicants seeking to establish a digital bank[35].

Assuming that the Monetary and Banking Council approves the granting of authorisation to establish a digital bank, does this decision confer upon the bank's members the right to commence digital banking activities? This is the question that will be addressed below.

Second Section: Accreditation as a subsequent administrative requirement for the exercise of digital banking activities

Although the general rule is that commercial activities may be carried out freely, this freedom is not absolute. Such activities must comply with the laws and regulations governing regulated activities and professions.

As digital banking activities are considered regulated activities, Algerian law requires applicants who have obtained authorisation to establish a digital bank to submit an application for the bank's accreditation to the Governor of the Bank of Algeria (see First Subsection below), in order to be permitted to commence their activities (see Second Subsection below).

First Subsection: Requirements Governing an Application for the Accreditation of a Digital Bank

Bank of Algeria Instruction No. 01-25 specifies the steps to be followed when submitting an application for bank accreditation, which must be accompanied by an examination-ready file (First Part). The application for the accreditation of a digital bank is then either approved or refused (Second Part).

First part: Components of the Application File for the Accreditation of a Digital Bank

Before examining the components of the application file for the accreditation of a digital bank, it is worth considering the meaning of 'accreditation'.

The French Dictionary of Legal Terms defines it as follows:

« Generally speaking, accreditation is an approval or authorisation to which a project is subject and which presupposes, on the part of the person to whom it must be requested, a discretionary power of appreciation[36].

According to this definition, accreditation is an approval subject to the discretionary authority of the competent body for the purpose of commencing an activity.

In Algeria, accreditation has sometimes been considered a requirement for commencing an activity, as is the case with digital banking, and in other instances it has not been considered a requirement, but rather recognition that the necessary competence to exercise the activity is available.

Regarding digital banking activities, Bank of Algeria Instruction No. 01-25 stipulates that founders of a digital bank who have obtained authorisation to establish the bank must submit an accreditation application to the Governor of the Bank of Algeria

within twelve months of notification of the authorisation decision. The purpose of this is to obtain approval to commence exercising its activities.

The founders of the digital bank must attach a file consisting of two copies to their application, one of which must be in digital format. This file must contain the documents specified in Article 6 of Bank of Algeria Instruction No. 01-25.

- The original copy of the articles of association, drawn up by means of a notarised instrument; or

- A certified true copy of the articles of association of the parent company, where the application concerns a branch of a foreign bank or financial institution.

- The Commercial Register;

- A declaration of tax existence issued by the tax collection office having jurisdiction over the location of the digital bank's registered office;

- A certificate confirming full payment of share capital, or the equivalent allocated amount in the case of a branch of a foreign bank or financial institution. This certificate must be drawn up before a notary and accompanied by bank evidence confirming payment of the amount due.

- A foreign currency transfer certificate for non-resident shareholders;

An original copy of the report prepared by the contribution auditors must be provided where contributions in kind exist. This report must indicate the corresponding value of these contributions in relation to the portion of the share capital exceeding the minimum required capital.

A notarised record of the constituent general assembly meeting, particularly including the appointment of members of the deliberative body.

- A notarised record of the deliberative body's meeting, including the election of the chairperson and the appointment of the chief executive officer and their deputies, or the chairperson and members of the management board, as applicable.

- A notarised record of the deliberative body of the parent company, including the appointment of at least two persons entrusted with managing the activities of the foreign bank or financial institution's branch.

- The title deed or lease agreement relating to the head office of the bank or financial institution or the branch of the foreign bank or financial institution, indicating the address and telephone/fax number.

- The identity details of the appointed statutory auditors.

Bank of Algeria Instruction No. 01-25 also stipulates that the application file for the accreditation of a digital bank must be accompanied by a separate file containing applications for the accreditation of the relevant managers, to ensure the effective management, supervision and direction of the activities of the digital bank to be established.

The application for accreditation of the digital bank, together with the applications for accreditation of its managers, must be submitted to the Governor of the Bank of Algeria. Following examination of the file, the Governor shall issue a decision granting or refusing accreditation[37].

Second Subsection: Outcomes of the Examination of an Application for the Accreditation of a Digital Bank

The application for the accreditation of a digital bank, together with the documents and supporting materials comprising the application file, is subject to examination. The relevant departments of the Bank of Algeria also conduct an on-site inspection of the premises where the digital bank intends to carry out its activities, in order to verify the availability of the human and material resources necessary for the concerned digital bank to commence its activities[38]. The departments responsible for conducting the inspection then prepare an inspection report, which is submitted to the Governor of the Bank of Algeria, who is the competent authority for ruling on the accreditation application.

Notably, Algerian law does not specify the time limits for examining accreditation application files and issuing decisions on them. This gives the Governor of the Bank of Algeria considerable discretion over whether to grant or refuse accreditation within the timeframe he deems appropriate[39].

Furthermore, Algerian law does not address situations in which the Governor of the Bank of Algeria remains silent, i.e. when no decision is issued either approving or rejecting the accreditation application[40]. However, if the application fulfils all the conditions prescribed by applicable legislation and regulations and the Bank of Algeria's inspection report is positive, the Governor issues a decision to grant accreditation to the digital bank. The Secretary-General of the Monetary and Banking Council then notifies the bank's founders of the accreditation decision, which takes effect from the date of notification. The accreditation decision is subsequently published in the Official Gazette of the People's Democratic Republic of Algeria[41], thereby granting the bank's founders the right to commence their activities.

It should be noted in this part of the study that the accreditation decision may be withdrawn by the Monetary and Banking Council in the following cases:

At the bank's request;

Ex officio, where:

The conditions to which the accreditation is subject are no longer fulfilled;

- the accreditation has not been used for a period of twelve (12) months.

The activity covered by the accreditation has been suspended for six months[42].

Algerian law does not address the decision to refuse accreditation. Such a refusal would arise if the accreditation application does not satisfy the prescribed conditions, or if the inspection findings are negative. In such cases, the application would undoubtedly be rejected. However, the absence of an explicit decision to refuse accreditation means that the person concerned cannot challenge the decision, since no decision has been issued.

The pressing question that arises in this regard is: what operations may a digital bank carry out after obtaining accreditation?

Second requirement: Banking activities of a digital bank

Article 68 of the Monetary and Banking Law No. 23-09 states the following:

'Banking operations include receiving funds from the public, providing credit, and carrying out banking operations relating to Islamic banking. They also include making all means of payment available to customers and managing such means.'

The general wording of this provision suggests that the operations carried out by digital banks are similar to those carried out by traditional banks. This is confirmed by Article 11 of Bank of Algeria Regulation No. 24-04, as will be explained below.

First Subsection: Bank Deposits

Linguistically, the word 'deposit' is derived from the verb 'to deposit' and means placing an item in the custody of someone other than its owner for safekeeping. Therefore, it refers to placing an item with another person for a specified period, on the understanding that the latter undertakes to return the same item upon request[43].

In legal terminology, the definition of a deposit under general law is as follows: 'A contract whereby the depositor delivers movable property to the depositary, who undertakes to preserve it for a certain period and return it in kind.[44]'

A bank deposit is defined in Article 69 of Monetary and Banking Law No. 23-09 as follows: 'Funds received from the public, i.e. funds received from third parties that can be used by the recipient, provided they are repaid.[45]'

Accordingly, a bank deposit consists of funds deposited by customers with a bank, which retains the right to dispose of these funds. In other words, a deposit is a contract between the depositor and the bank, authorising the bank to use the deposit in a manner consistent with its activities while obliging it to repay the deposited amount, together with the stipulated interest, upon request or upon maturity. In general, banking operations, particularly deposit operations, are subject to banking secrecy, since the value of a deposit may reveal the depositor's financial position. This constitutes one of their private matters and they do not consent to it being disclosed[46].

It should be noted that the Algerian legislator has stipulated that the deposits of a single customer and their related parties must not exceed 1% of the bank's total deposits. This ceiling applies one year after the bank commences its activities[47]. Digital banks are exempt from this requirement after five years from the commencement of their activities, provided they obtain authorisation from the Bank of Algeria and increase their capital to at least 150% of the minimum required for a digital bank[48].

Deposits are classified according to their nature as demand deposits, term deposits, savings deposits, notice deposits and frozen deposits[49].

Second subsection: Granting Loans

While deposits constitute the main source of funds for banks in general and digital banks in particular[50], loans represent the primary use of these funds. Lending to customers is the main service provided by banks and their primary source of profitability[51].

Dr Abdelhamid Al-Shawarbi defined a bank loan as follows:[52] 'An agreement whereby the bank undertakes to make funds available to the customer[53], or to another person designated by that customer[54], for a specified or unspecified period and up to a certain monetary amount, in return for repayment upon maturity[55].'

Professor G. Petit-Dutaillis defined a bank loan as follows: 'The granting of credit through the provision of a sum of money by the bank. This is based on mutual trust between lender and borrower, and the loan is repayable upon maturity while taking the borrower's financial circumstances and ability to repay into consideration."[56].

The shortcoming of these two definitions is that they do not refer to the interest charged by the bank in return for granting the loan, or to the guarantees provided by the customer in exchange for obtaining it.

In general, bank loans are defined as follows: "Services provided to customers whereby individuals, institutions and enterprises in society are supplied with the funds they need, provided that the debtor undertakes to repay those funds, together with the interest, commissions and expenses due thereon, either in a single payment or in instalments on specified dates. This operation is supported by the provision of a set of guarantees ensuring that the bank can recover its funds without incurring any loss should the customer cease making repayments. This meaning encompasses what is known as credit facilities and includes the concept of credit or advances, to the extent that any one of these terms may be sufficient to denote the meaning of bank loans[57]."

According to the Algerian legislation, a bank loan is defined as follows: '... any transaction for consideration whereby a person makes, or undertakes to make, funds available to another person, or assumes an obligation for the benefit of the latter by signature, such as an endorsement, suretyship or guarantee'[58].

The Algerian legislator has also classified factoring and leasing operations accompanied by a purchase option, particularly financial leasing, as credit operations[59].

However, digital banks are prohibited from granting loans to large enterprises during the first five years from the commencement of their activities, with the exception of loans granted to small and medium-sized enterprises as defined by the current legislation that subsequently become large enterprises[60]. After five years from the commencement of their activities, digital banks are exempt from this prohibition, provided they obtain authorisation from the Bank of Algeria and increase their capital to at least 150% of the minimum capital required for digital banks[61].

Third subsection: Islamic Banking Operations

Islamic banks are defined in the agreements establishing the International Union of Islamic Banks as follows: 'Banks and institutions whose founding law and articles of association expressly stipulate compliance with the principles of Islamic Sharia, and which prohibit dealings in interest, whether by receiving or paying it.[62]'

Most definitions of Islamic banks, whether contained in the laws governing them or adopted by legal scholars, have followed this approach. One doctrinal definition is that provided by Professor Youssef Kamal Mohamed in his book The Jurisprudence of Monetary Economics, where he defines Islamic banks as follows: 'A financial institution that collects savings and channels them into investment through participation-based mechanisms, using methods free from interest rates, by means of partnership, mudarabah, trading, and direct investment, while providing all banking services through banking instruments in return for a fee, in a manner that may ensure equity, development, and stability[63].' This definition focuses on the financing instruments employed by Islamic banks.

On the other hand, in his book Monetary and Banking Economics, Professor Sahnoun Mahmoud defined them as follows: 'A financial institution that provides financial services and conducts financing and investment activities in various fields in accordance with the rules and provisions of Islamic Sharia. The aim is to promote Islamic values, principles and ethics in financial transactions, contribute to social and economic development and employ funds to help ensure a good and dignified life for the Islamic nation[64].'

Unlike the preceding definition, this definition focuses on the developmental role of Islamic banks.

As for the legal concept, Islamic banking is defined under Algerian legislation as follows: '... any banking operation that does not entail the collection or payment of interest...'[65].

It is also defined as: '... any operation carried out by banks or Islamic banking windows that complies with the provisions of Islamic Sharia.'[66].

Accordingly, as defined in these two definitions, Islamic banking is based on two fundamental principles: the prohibition of dealing in interest (riba), and participation in banking operations.

It should be noted that, in Algeria, a bank or financial institution must submit an application file to the Bank of Algeria in order to obtain prior authorisation to market Islamic banking products. In particular, the file must include:

- a certificate of compliance with the provisions of Islamic Sharia, issued by the National Sharia Fatwa Authority for the Islamic Financial Industry;

- a product description sheet;

- the opinion of the bank's or financial institution's compliance control officer. Furthermore, any bank or financial institution wishing to market Islamic banking products must ensure the administrative and financial independence of its 'Islamic Finance Window' from its other activities[67].

It may therefore be said that Islamic banking operations encompass all banking transactions in which interest is excluded and replaced by a system of participation. These transactions rely on investment, trade, project establishment, manufacturing and other methods. This differs from commercial banks, whose activities are limited to acting as intermediaries between lenders and borrowers in return for an interest rate. In other words, they 'engage in credit transactions and trade in debts'[68].

Fourth subsection: Making Payment Instruments Available to and Managing Customers

The Algerian banking legislator has defined payment instruments as follows: '... all instruments that enable any person to transfer funds, regardless of the instrument or technical method used, including electronic money.[69]'

According to this definition, payment instruments encompass all instruments that enable individuals to transfer funds regardless of the medium or technical method used, and irrespective of the form of the instrument employed. These instruments may be paper-based, such as cheques, promissory notes or bills of exchange; book-entry-based, such as bank transfers; or electronic, such as bank cards[70]. Payment instruments are therefore defined as: 'An instrument that is socially accepted for the purpose of facilitating transactions involving the exchange of goods and services, as well as the settlement of debts.' Alongside money, payment instruments include commercial and credit instruments that their holders put into

circulation when carrying out their activities[71].

As digital banks provide banking services and products exclusively through digital channels, platforms or media, relying on modern technologies in the exercise of their activities, the payment instruments they make available to customers are electronic. This is consistent with the virtual nature of these banks[72].

In comparative law, electronic payment is defined as follows: 'A means that enables its holder to carry out direct remote payment transactions through public telecommunications networks'[73].

The Algerian legislation on electronic commerce addresses the definition of electronic payment instruments, defining them as follows: 'Any payment instrument authorised in accordance with the legislation in force which enables its holder to make payments either in person or remotely through an electronic system'[74].

When payment is made electronically, it is carried out through payment platforms designed specifically for this purpose. These platforms are established and operated exclusively by banks accredited by the Bank of Algeria and are connected to any type of electronic payment terminal via the public telecommunications network[75].

Under Algerian legislation, legally authorised payment instruments include electronic money and electronic bank transfers.

Firstly: Electronic money

Also referred to as digital currency, electronic cash, cyber money or digital cash, electronic money has been defined by some legal scholars as follows:

'Those units that are circulated through electronic means.'

However, this definition has been criticised for equating all electronic payment instruments (e.g. credit cards and electronic cheques) with electronic money itself. In other words, it adopts an overly broad definition of electronic money to the extent that it encompasses all electronic payment instruments[76].

The European Directive of 18 September 2000 defined it in Article 2(2) as follows: 'Monetary value stored electronically on an electronic device and issued at a value not less than the monetary consideration paid for its acquisition, and accepted as a means of payment by persons other than the issuer.[77]'

However, this definition has been criticised because it focuses on the technical aspects of electronic money to the exclusion of its legal aspects. The latter reflect the source and nature of the legal force enjoyed by this money in transactions[78].

Accordingly, we consider the following definition to be most appropriate for this type of money: 'Electronic units possessing financial value, accepted as a means of payment, stored and circulated electronically among users, and enjoying the force of final settlement.'[79].

In Algerian law, the term 'digital currency' was first used in Monetary and Banking Law No. 23-09. The legislator authorised currency to take digital form in the form of the Algerian digital dinar, the exclusive right to issue which is vested in the Bank of Algeria. However, the Algerian legislator has not addressed the concept of digital currency, nor have any implementing regulations governing its provisions been issued. Nevertheless, Article 4 of Monetary and Banking Law No. 23-09 stipulates that digital currency issued exclusively by the Bank of Algeria has legal tender status and unlimited discharging power.

Accordingly, under Algerian legislation, electronic money, or digital currency as it is referred to by the Algerian legislator, consists of electronic units with financial value that are classified as a means of payment stored electronically. The Bank of Algeria has the exclusive privilege of issuing such currency, which enjoys legal tender status and unlimited discharging power conferred upon it by law[80].

Second: electronic bank transfers.

Electronic bank transfers play a significant role in the operating systems of digital banks due to their importance in commercial transactions. This is evident not only in the fact that these banks use the internet to connect with one another to complete transfers, but also in the various means through which their customers connect with them to carry out electronic money transfers, such as ATM cash withdrawal cards, email and electronic cheques[81].

In general, a bank transfer is defined as the transfer of a specified amount from the account of a person known as the ordering party, pursuant to their written request. The amount is debited from that account and credited to the account of another person known as the beneficiary (who may be the ordering party or another person), whether at the same bank or another[82].

In light of this, it can be said that a bank transfer is an operation that can only be carried out with a bank's involvement. Regardless of the parties involved or the means used to execute it, this operation necessarily requires a bank's involvement. In this sense, a bank transfer differs from the exchange of data relating to the transfer: the former involves transferring a specified amount from one account to another, while the latter involves transmitting information about the transfer.

A bank transfer of funds therefore involves two entries: the first is a debit to the account of the person ordering the transfer and the second is a credit to the beneficiary's account[83].

The Algerian legislator adopted this approach in Articles 543 bis 19 and 543 bis 20. What draws our attention when examining these two provisions is that the legislator did not provide a definition of a bank transfer, merely specifying its components. A bank transfer order therefore contains:[84]

- the order issued by the account holder to the account-holding institution to transfer funds, monetary values or specified-value securities;

- identification of the account to be debited;

- identification of the account to which the transfer is to be made, and of its holder;

- the execution date;

- the signature of the person ordering the transfer.

An electronic bank transfer within the operating system of digital banks consists of transferring monetary payments from one bank account to another, together with the transmission of information relating to that transfer, pursuant to an order issued by the ordering party for the benefit of the beneficiary, via the internet.

This definition makes it clear that the transfer involves four parties: the customer who orders the transfer; the electronic bank that executes the transfer by making the corresponding accounting entry; the bank that receives the transferred funds; and the beneficiary, i.e. the transferee. Where the transfer takes place between two accounts held at the same bank, however, only three parties are involved: the ordering party, the bank, and the beneficiary[85].

In light of the foregoing, it is clear that traditional bank transfers and electronic bank transfers are essentially the same, involving the transfer of a sum of money between two accounts held at the same or different banks. The difference lies in the means by which the parties to the transfer communicate with each other, from the issuance of the transfer order to its execution[86].

Fifth Subsection: Investment, Subscription, Purchase, Management, Custody and Sale of Securities and All Financial Products

Bank of Algeria Regulation No. 24-04 stipulates that digital banks may carry out the operations set out in Paragraph 3 of Article 79 of Law No. 23-09. By referring to Article 79 of the aforementioned law, it can be seen that it stipulates that banks in general — that is, both traditional and digital banks — may carry out operations relating to the investment, subscription, purchase, management, custody and sale of securities and all financial products.

Securities are generally financial assets issued by joint-stock companies or the state. They take two main forms: shares and bonds[87].

These securities are negotiable, meaning they can be traded among investors, thereby facilitating the movement and transfer of saved capital[88].

Securities are issued on the primary financial market, consisting mainly of banking institutions responsible for placing securities with investors. If they do not meet the listing requirements of the stock exchange, they are subsequently listed on the stock exchange or traded by mutual agreement[89].

The Algerian legislator has defined securities in the Commercial Code in almost identical terms, considering them to be: 'Negotiable instruments issued by joint-stock companies which are, or may be, listed on the stock exchange. These instruments confer identical rights according to their class and allow their holders to acquire, directly or indirectly, a specified share in the issuing company's capital or a general debt claim against its assets[90].'

Tradable securities are of two types:[91]

Shares: These are capital securities that represent a unit of measurement of the capital of a joint-stock company. A share is a title of ownership that grants shareholders rights relating to the company's assets.

- Bonds: A bond is a debt instrument that shows that a joint-stock company or the state owes money. It has a specified maturity date and its value is repaid when that period expires.

A bond yields a return in the form of interest, which may be fixed, progressive or variable. Interest is generally paid periodically on an annual basis, in accordance with the bond's purchase date.

Conclusion:

In light of the foregoing, it is clear that digital banks represent not just a technological transformation, but also a profound strategic shift, reflecting a change in the philosophy of providing banking services based on flexibility, speed, and efficiency. Digital banks have become a fundamental pillar in the reshaping of the banking sector in terms of infrastructure, business models, and the nature of the relationship between financial institutions and customers.

This research examined and analysed the conditions that digital banks must fulfil, bearing in mind that banking is a regulated activity. The study also identified the banking operations carried out by digital banks.

The study enabled us to reach a number of findings, which are presented below:

Specific conditions relating to its legal form and minimum capital must be fulfilled by the digital bank as a legal person.

Specific conditions must also be met by the founders and managers of the digital bank.

The application for authorisation to establish a digital bank must contain the required information.

The application for accreditation to exercise digital banking activities must contain specific information; if it does not, it shall be null and void.

Obtaining authorisation does not entitle the bank's founders to commence banking activities. Rather, it constitutes approval solely for the establishment or incorporation of the digital bank.

There is a significant legal gap in the regulation and determination of legal time limits for examining applications for authorisation and accreditation and for notifying authorisation and accreditation decisions. This also applies to the procedures and time limits for appealing against decisions to reject applications for authorisation or accreditation, and in cases where no response is issued.

Obtaining both authorisation and accreditation qualifies the bank to carry out banking operations.

The banking operations carried out by digital banks are the same as those performed by traditional banks.

The most important recommendation arising from this study is therefore the need to adopt comprehensive national strategies to promote digital transformation in the banking sector. These strategies should include developing advanced digital infrastructure, enhancing human competencies, strengthening cooperation between the public and private sectors, and eliminating the legal gaps affecting the banking legal framework with regard to provisions governing digital banks.

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[10] - Article 3(c) of the aforementioned Regulation.

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[13] - See Article 97 of Law No. 23-09.

[14] - See Article 5 of Bank of Algeria Regulation No. 24-04.

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[16] - See Article 7 of Bank of Algeria Regulation No. 24-04.

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[34] - In contrast, the repealed Regulation No. 06-02 granted the Monetary and Banking Council the authority to issue a decision to refuse authorisation.

[35] - Conversely, the repealed Ordinance No. 03-11, which contained the Law on Money and Credit, permitted the applicant, upon receiving notification of a refusal, to submit a new application after ten months had elapsed from the date of notification of the refusal. If the applicant was notified of a refusal for the second time, they could lodge an administrative appeal before the Council of State within sixty days of the publication or notification of the decision. Failure to do so would result in the appeal being rejected.

[36] - Hiba Hitem, previously cited, p. 116.

[37] - Ibid., p. 116.

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[58] - See Article 70(1) of Law No. 23-09, previously cited.

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[61] - See Article 12(2) of the same Regulation.

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