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The legal system of digital banks in the Algerian legislation

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Abstract:

This article aims to study the legal system of digital banks through the Algerian monetary and banking law, which for the first time established the framework for the creation of this type of modern bank, as well as the recent Algerian banking system 24-04. The activities of digital banks are subject to prior authorisation and accreditation, in accordance with the same general conditions applicable to traditional banks, as well as specific conditions depending on the nature of the bank.

A digital bank must have its administrative headquarters in Algeria and carry out its activities exclusively in the digital environment. It must also host its digital platform in Algeria. The establishment of branches of foreign digital banks is not allowed. Digital banks are authorised to provide all banking services and operations offered by traditional banks.

Keywords: Digital bank, electronic bank, electronic banking operations, Algerian bank, banking law.

Introduction:

Banks and financial institutions are undergoing a profound transformation from the tangible physical world to the virtual world. The methods of acquiring goods and services and the ways in which they are paid for are constantly evolving as a result of advances in the technological means underlying payment and settlement processes. It is therefore essential that the law keeps pace with these developments, regulating and framing them to ensure that the various banking operations take place within a secure legal environment. This would strike a balance between innovation and prudential control, allowing all parties to understand their rights and obligations in these banking operations.

In Algeria, after considerable hesitation, Law 23-09 on the monetary and banking system has recognised digital banks and digital currencies¹, with the recent publication of detailed provisions in System 24-04 on the specific conditions for the authorisation and recognition

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of the activities of digital banks. This development is expected to widely open the field for these modern banks, extend the reach of electronic banking operations and promote the use of digital payment methods.

The establishment of digital banks in Algeria represents both a challenge and an opportunity, as the state seeks to keep pace with digital transformations by modernising the legal and institutional framework of the banking sector, digitising banking activities and establishing a framework for intangible exchanges with banks, financial institutions and payment service providers².

Despite the first steps taken with the issuance of this law, the subject requires in-depth study to identify the various legal aspects related to the establishment and management of digital banks in Algeria, particularly in light of the challenges related to cybersecurity and data protection.

In order to answer this question, we have studied and analysed various relevant legal texts and divided this study into two main discussions:

Discussion One:

Digital Banks: The Newcomer to Banking Activities in Algeria

Discussion Two: Legal Conditions for the Establishment of Digital Banks in Algeria

Chapter One Digital Banks: The Newcomer to Banking in Algeria With the rapid changes taking place globally in the fields of financial technology and information and communication technology, digital banks have become a strategic option that contributes to improving banking services and increasing financial inclusion. With the global proliferation of these banks and the start of their local regulation, it has become essential to give them a legal framework by defining their concept and the banking activities they carry out under Algerian law.

Section One:

The concept of digital banks

Defining the concept of digital banks is of great legal importance due to the novelty of this type of bank and the difficulty of defining its nature in the context of the emergence of non-banking institutions that provide some banking or financial services to their clients electronically via the Internet. In addition, many traditional banks with physical branches also provide some banking services to their customers remotely and electronically.

Subsection One: Digital Bank vs. Electronic Bank

Given the novelty of the term “digital bank”, we will define both digital banks and electronic banks as described in Algerian law, and then address related terminology.

First: The legal definition of digital banks

The term “digital bank” was first used in Algerian law with the enactment of the Monetary and Banking Law 23-09, but it was not defined. The digital bank is defined in System No. 24-04 on the specific conditions for the authorisation of the establishment and operation of banking activities as follows “Any bank that provides banking services and products

exclusively through digital channels, platforms or support, relying on information and communication technology and financial technology in the exercise of its activities”³. Although the term “digital” can be translated into French as “Numérique” or “Digitale”, the Bank of Algeria used the term “La banque digitale” in the French version of System 24-04, in line with developments in this area.

On the other hand, the Egyptian law defines digital banks as: “banks that provide banking services through digital channels or platforms using modern technological techniques”⁴.

It is noteworthy that the definition in System 24-04 is very similar to the Egyptian legislator’s definition; however, the Algerian system uses the term “exclusively”, which means that a digital bank in this context is one that provides banking services and products only through digital channels, platforms or support. Thus, traditional banks that offer all or some banking services through digital platforms do not fall under this definition. This concept is further confirmed by Article 07 of the same regime, which states: “A digital bank may not open branches other than those designated as ‘digital’ and fully automated.” We can therefore say that a digital bank, according to the Algerian system, is a bank that operates entirely online or, in a narrow sense, an Internet bank⁵.

We did not find a definition of digital or electronic banks in European or French law, as the legal texts governing banks and financial institutions do not distinguish between traditional and digital banks in terms of establishment conditions or activities, despite the adoption of numerous European directives regulating the provision of electronic banking and financial services⁶.

Secondly: Digital Bank and Phantom Bank

Fictitious Bank System No. 24-03 on the prevention of money laundering, terrorist financing and the financing of the proliferation of weapons of mass destruction defines a fictitious bank (“La banque fictive”) as: “a bank that is incorporated and licensed in a country but has no physical presence there and is not part of an organised financial group subject to consolidated and effective supervision”⁷.

On first reading of this definition, one might think that physical presence refers to having a branch or head office in the country. However, the System intends a different meaning.

To clarify the concept, the regime adds a definition of physical presence that states:

“Physical presence means having management and decision-making authority in the country. The mere presence of a local agent or employee does not constitute physical presence”.

Thus, according to the system, a fictitious bank is one that simultaneously meets both of the following conditions:

1. It has no management or decision-making authority or governing body in the country where it is incorporated and licensed, and the presence of a local agent representing the bank or employees working for that bank does not constitute physical presence.

2. It is not affiliated to a legally recognised bank or does not belong to a financial group subject to supervision in the country where it is established, on the assumption that this bank is in fact part of that financial group.

It should be noted that Law No. 06-01 of 2006 on the prevention and combating of corruption prohibits the creation of this type of bank (fictitious banks) on Algerian territory, but does not provide a clear definition, raising the question of whether it refers to electronic banks, digital banks, virtual banks or others⁸.

Third: Digital banks and related terminology

The term “digital bank” or “neobank” or “banque mobile” refers to banks and financial institutions that provide banking operations or services entirely through digital channels and modern technologies, without having physical branches on the ground. This term is relatively new compared to “e-banking”. Sometimes the term “mobile bank” is used to indicate that this electronic bank can only be accessed through a smartphone, while “neobank” can be accessed through either a smartphone or a computer⁹.

The term “e-banking” or “electronic banking” refers to financial transactions with the bank that customers can carry out remotely, from anywhere and at any time, using a computer, smartphone or other electronic device¹⁰.

The main characteristics and features of digital banks can be summarised as follows:

1. Customers carry out all banking operations provided by the digital bank remotely, as it does not have agencies or branches on the ground, thus saving time and effort for the customer. The contracts governing these banking operations are concluded remotely and are similar to contracts between absent parties.

2. Digital banks generally operate across borders, with customers from different countries. Banking, like e-commerce, is cross-border, which raises jurisdictional issues in disputes between the digital bank and the customer or beneficiary of the banking transaction.

3. Customers can carry out banking transactions and access their accounts at any time and from anywhere via the internet.

4. Fees, charges and costs for banking services are often lower in digital banks than in traditional banks¹¹.

5. Digital banks typically use advanced technologies, such as smartphone applications, and focus on the user experience by providing innovative, convenient and user-friendly interfaces¹².

6. Digital banks tend to offer innovative banking services and products that are not available from traditional banks, especially in the areas of payments and e-commerce.

Section Two: The activities of digital banks are based on the banking operations and services that the law allows them to provide to their customers electronically.

Digital banks licensed under Algerian law can carry out all banking operations that traditional banks with physical branches can carry out. Their activities are significantly broader than those permitted to traditional financial institutions with physical branches.

This is a significant development in the Algerian banking sector. Article 11 of System 24-04 states: “Digital banks may carry out all the operations provided for in articles 68 to 75 of law 23-09, in particular the receipt of funds from the public, credit operations, banking operations related to Islamic finance, as well as the provision of all payment methods to customers and the management of these methods.”

First: Electronic Deposit Banking Operations

Legal scholars consider the essence of a bank’s activity to be the acceptance of monetary deposits from the public, which distinguishes banks from other financial institutions¹³. It can therefore be said that digital banks authorised by Algerian law to accept deposits are indeed banks in the aforementioned legal sense. Any person who meets the requirements can open a deposit account with the bank remotely, after going through “know your customer” procedures that verify the customer’s identity. This can be done using artificial intelligence technologies, video techniques or data collected by the digital bank from official or unofficial sources.

Once the account is opened, the customer can deposit funds in various ways, such as through their electronic wallet, electronic bank transfers or international electronic remittances.

The main difficulty that depositors face in their accounts with digital banks is their inability to deposit cash, particularly in a country like Algeria where the informal economy is dominant and cash transactions are prevalent while banking transactions remain weak.

Customers are left with two options: either to deposit cash in their account with a traditional bank and then transfer it to the digital bank, or for digital banks to have agreements with traditional banks to deposit or transfer cash to customers’ accounts with digital banks.

Second: Electronic Loan Banking Operations

Some believe that individuals prefer to use e-banking loans for a number of valid reasons¹⁴, primarily because of the lower interest rates on these loans, especially from digital banks, compared to traditional loans from conventional banks. In addition, the fees associated with these electronic transactions are usually lower than those for regular transactions, and there are usually no costs or fees for processing loan applications, as digital banks spend less time and effort processing files and managing loan-related operations electronically.

E-lending by digital banks is characterised by speed and the use of digital means in underwriting methods, where technology and artificial intelligence are used to assess credit risks. To mitigate the risks of digital lending, some digital banks limit lending operations to existing customers because of their prior knowledge.

Third: Electronic Banking Operations Related to Islamic Banking

The Monetary and Banking Law defines banking operations related to Islamic banking as: “All operations conducted by banks or Islamic windows that are in accordance with Islamic law.¹⁵” These operations are carried out by banks or financial institutions that are exclusively authorised to carry out these operations, which can be referred to as Islamic

banks. They can also be carried out through Islamic currency exchange windows exclusively dedicated to these operations within other banks and financial institutions.

The banking operations related to Islamic banking as defined by system number 20-02 include Murabaha, Musharaka, Mudaraba, Ijara, Salam, Istisna, Deposit Accounts and Investment Accounts¹⁶.

The law allows digital banks to conduct and market these operations, provided that they obtain a prior certificate of compliance with the principles of Islamic law issued by the Shariah Board for Islamic Finance and the approval of the Bank of Algeria¹⁷. These operations can be carried out by the digital bank through partnerships in the aforementioned formats, through electronic contracts concluded and executed remotely between the bank and the customer, without any direct contact between the two parties.

Fourth: Banking operations related to electronic payment methods

After years of hesitation, the Algerian legislator has finally recognised electronic payment methods and digital currency with the issuance of the latest Monetary and Banking Law. Article 2 of this law states that “currency may take a digital form, called the digital currency of the Central Bank (the Algerian digital dinar)”. To date, the Bank of Algeria has not issued any regulations governing the Algerian digital currency, setting out the criteria for its issuance, its management and the rights and obligations of the various parties involved.

The same law defines means of payment as “all instruments that enable any person to transfer funds, regardless of the underlying document or technical method used, including electronic currency”¹⁸. In this context, the Bank of Algeria recently issued a directive on electronic transfers¹⁹. However, this directive aimed to clarify certain provisions related to the prevention of money laundering, terrorist financing and the proliferation of weapons of mass destruction, and did not regulate the contractual relationships between the various parties.

Electronic payment methods in Algeria still need to be regulated, both in terms of rights and obligations and civil liability between the various parties involved in electronic payment transactions (the digital bank or electronic payment service provider, the payer, the beneficiary, the intermediary bank and other relevant parties). In addition, there is a need for rules on criminal liability arising from the misuse or fraudulent use of electronic payment instruments. Currently, the applicable provisions are those contained in the amendments to the Algerian Penal Code under the section dealing with violations of automated data processing systems²⁰.

Section Two: Restrictions on the activities of digital banks and precautionary conditions.

Decree 24-04 subjects the activities of digital banks in Algeria to specific restrictions and applies the same precautionary conditions as those applicable to traditional banks.

First: Restrictions on the activities of digital banks

Digital banks have no physical presence or branches on the ground; they conduct all banking transactions with their customers electronically and remotely, using digital platforms and channels. This includes everything from the conclusion of contracts governing the relationship between the digital bank and the customer to the provision of various banking services. Article 7 of Regulation 24-04 confirms this by stating: “A digital bank may not open agencies other than those designated as ‘digital’ that operate fully automatically”. Therefore, the digital bank provides banking services to its customers through its own automated networks or by using the networks of other banks, such as automated teller machines or electronic payment terminals at merchants²¹. Under Algerian law, the digital bank must have a physical headquarters in Algeria for administrative purposes and can be used to deal with customer complaints²². Egyptian law prohibits the establishment of branches for digital banks, while requiring the establishment of a main centre for Egyptian digital banks and a main office for foreign digital bank branches²³. Similarly, Saudi Arabian law requires applicants for a digital bank licence to designate a headquarters for the operation of the digital bank, and the digital bank established under Algerian law must host its operating platform and back-ups in Algeria²⁴. This is essential to protect the bank’s data, including financial transfers. This hosting will enable the digital bank to provide a continuously available, flexible and easily maintainable operating system in the event of emergencies, malfunctions or system failures. This condition is identical to the conditions for conducting electronic commerce as set out in Law No. 18-05 on electronic commerce, which requires the hosting of an electronic vendor’s website or page in Algeria with the extension “com.dz”²⁵.

In addition, Law 18-04 on the general rules governing postal and electronic communications states that it is the State’s responsibility to ensure the security of electronic communications networks, the continuity and regularity of services provided to the public and compliance with competition rules²⁶.

Second: Prohibition of Establishing a Digital Bank as a Branch of a Foreign Bank

One of the major changes introduced by the Algerian Money and Credit Law 90-10 and subsequent laws regulating banking activities, culminating in Law 23-09, was to open the door for private and foreign banks to invest in Algeria, leading to the establishment of many foreign bank branches in the country. However, Decree 24-04 contradicts this trend with regard to the activities of digital banks in Algeria, as it prohibits the establishment of digital banks in Algeria as branches of foreign banks.

Article 4 of Decree 24-04 states: “It is not permitted to establish a digital bank in the form of a branch of a foreign bank.” The real reason for this prohibition remains unclear, but it is certain that this restriction could have a negative impact on the attractiveness of foreign investment in the Algerian banking sector, as well as on the lack of competition in this vital sector. Such a ban could also lead to the weakening and underdevelopment of the

technological infrastructure of digital banks in Algeria due to insufficient or non-existent technology transfer, resulting in inferior services in a rapidly evolving digital environment. Furthermore, this ban could deprive Algerian customers of the benefits of advanced digital banking solutions. Foreign digital banks undoubtedly have accumulated expertise in this area, which could lead customers to seek better services from foreign digital banks, which could mean that Algerians' data and funds would be beyond local control, as is currently the case prior to the launch of digital banking activities, leaving them dependent on unofficial external solutions.

Third: Precautionary Conditions Applied to Digital Banks

Digital banks established in accordance with Algerian law are subject to the same rules and precautionary conditions that apply to traditional banks, as they carry out the same banking operations²⁷. These conditions mainly include the minimum liquidity ratio²⁸, solvency transactions, safety cushions, the risk distribution ratio for loans, and the deposit insurance system²⁹.

In addition to the aforementioned precautionary conditions, Regulation 24-04 mandates that digital banks adhere to additional requirements:³⁰

1. The deposits of any single customer and related parties must not exceed 1% of the total deposits of the digital bank. This ceiling is applied one year after the start of the bank's operations.
2. Digital banks are prohibited from granting loans to large enterprises, but they are permitted to provide loans to small and medium-sized enterprises.

These two conditions may be waived for the digital bank five years after the start of its activities, provided it has increased its capital to no less than 150% of the minimum capital requirement for digital banks, and subject to obtaining a license from the Bank of Algeria.

Chapter Two: Legal Conditions for Establishing Digital Banks

The activities of digital banks are subject to a number of legal conditions laid down by the Algerian Monetary and Banking Law and the related regulations issued by the Bank of Algeria. Some of these conditions are the same as those required of traditional banks, financial institutions and branches of foreign banks operating in Algeria, as defined in Regulation 24-01, while others are specific to digital banks, as defined in Regulation 24-04. These conditions include both formal and substantive requirements.

Section One: Formal Conditions

The following discusses the legal form, capital requirements, and the conditions related to the founders and managers of the digital bank as defined by Algerian law.

Subsection One: Legal Form of the Digital Bank

According to the Algerian Monetary and Banking Law, banks are established as joint-stock companies and can also be established as cooperatives³¹. Thus, Algerian law requires digital banks to be established primarily as joint-stock companies, as this form represents

the optimal legal structure for capital companies due to its superior ability to raise the necessary funds compared to other types of companies.

It is noteworthy that the same law allows the establishment of payment service providers, independent intermediaries and bureaux de change in the form of simple joint-stock companies or limited liability companies, in addition to the joint-stock company structure. This indicates that the Algerian legislator has been strict with regard to the legal form of digital banks, while being more lenient with regard to other banking entities. Furthermore, natural persons are excluded from the possibility of establishing digital banks due to the nature of their activities and the potential risk they pose to public economic order. According to the Algerian Monetary and Banking Law, banks are established as joint-stock companies and can also be established as cooperatives. Thus, Algerian law requires digital banks to be established primarily as joint-stock companies, as this form represents the optimal legal structure for capital companies due to its superior ability to raise the necessary funds compared to other types of companies.

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Subsection Two: Capital Requirements The capital requirements for the establishment of digital banks include the minimum capital, which must be justified and fully paid in cash.

First: Minimum capital

The Algerian Commercial Code stipulates³² that the minimum capital for a joint-stock company is at least five (05) million Algerian dinars if it publicly solicits savings, and at least one million dinars if it does not solicit savings. However, the legislator has deviated from this general rule in the field of the establishment of banks and financial institutions for several reasons, the most important of which is the ability of banks and financial institutions to finance investment projects. In this context³³, Decree 24-02 sets the minimum capital for banks at twenty billion (20,000,000,000 DZD) Algerian dinars and ten billion (10,000,000,000 DZD) for digital banks.

Second, the company's capital must be fully paid up in cash

Article 96 of Law 23-09 stipulates that the capital of banks and financial institutions must be fully paid up in cash at the time of incorporation, mirroring the wording of the now repealed Decree 03-11. This is a departure from the general principle that allows joint stock companies to solicit public savings at the time of incorporation, where at least a quarter of the share value must be paid upon subscription and before the start of operations³⁴. The

legislator thus deprived digital banks of this privilege and required them to provide the required capital in full and in cash, not in kind.

Third: The Capital Must Be Justified

Article 99 of Law 23-09 states: “In any case, the source of these funds must be justified.” This condition is necessary to prevent the establishment of banks and financial institutions from being a means to launder money and to ensure that the bank’s capital, or part of it, does not originate from suspicious sources or criminal proceeds.

Fourth: Contribution from a Bank Subject to Algerian Law

Regulation 24-04 requires that among the founders of the digital bank, there must be a bank subject to Algerian law that has experience in online banking services. This bank must own no less than 30% of the digital bank’s capital, with a majority stake. This means that no individual shareholding of any other shareholders or their related parties can reach this percentage³⁵.

The implications of this condition are as significant as those of the previous requirement concerning the prohibition of foreign digital banks from opening branches in Algeria. The effects on investment in the banking sector may be comparable to the substantial impacts resulting from the 51/49 rule in Algerian investment law, which continue to be felt today³⁶.

What incentive does a foreign investor have to participate in establishing a digital bank with a minority stake, and consequently a minority voice in the general assembly or managing board, alongside an Algerian investor who holds the majority stake and is the operator? Furthermore, while major global digital banks are exploring new experiences and facing significant challenges in this rapidly evolving financial technology sector, where is the Algerian bank that possesses expertise in online banking services, considering that the regulations governing digital banking activities in Algeria were only recently issued?

It is noteworthy that the aforementioned licensing and registration regulations for Egyptian digital banks included a requirement that “among the shareholders, there must be a financial institution whose ownership stake represents the majority among the shareholders and their related parties and is not less than 30% of the capital”³⁷. These rules mandated the presence of a financial institution with a track record in similar activities as the largest shareholder of the digital bank, but did not require it to be Egyptian or subject to Egyptian law. In addition, these regulations allowed for the establishment of a digital bank in Egypt as a branch of a foreign bank.

Subsection Three: Conditions Related to the Founders and Managers of the Digital Bank

Although the digital bank operates entirely online, it still has founders and managers like any commercial company. Algerian law subjects the founders and managers of the digital bank to the same conditions applicable to the founders and managers of traditional banks, with some specificities that we will clarify below.

First: Founders of the Digital Bank

Although joint-stock companies are capital companies where the personal identity of shareholders is generally not taken into account, in the banking sector, the law deviates from this principle. The identity of the founders or shareholders is considered significant. Founders are defined as “natural persons and representatives of legal entities who participate directly or indirectly in any activity aimed at establishing a banking or financial institution.³⁸”

Anyone convicted of a felony or certain misdemeanors, such as embezzlement, betrayal, fraud, issuing a check without sufficient funds, breach of trust, bankruptcy, or violations related to currency and capital movement legislation, is prohibited from being a founder of a bank or financial institution, or from being a member of its board of directors, manager, or executive. This prohibition also applies to those convicted by a foreign judicial authority whose ruling has the force of *res judicata*, which constitutes a felony or misdemeanor under Article 87 of the monetary and banking law in Algeria³⁹.

Regulation 24-04, which sets the conditions for licensing the establishment and accreditation of a bank or financial institution, requires that the application for the establishment of a bank or digital bank include a range of elements and data concerning the quality and integrity of the shareholders and their potential guarantors, as well as the main shareholders, their financial capabilities, and their experience and competencies in the banking and financial field in general. It is also necessary to provide assistance in the form of an agreement among the shareholders.

Second: Managers of the Digital Bank

A manager is defined as “any natural person who has a managerial role in the institution, such as the general manager, a director, or any responsible executive who has the authority to make decisions on behalf of the institution regarding the disbursement of funds, risk-taking, or orders for payments abroad.⁴⁰”

The monetary and banking law prohibits managers, similar to founders who have been convicted of the aforementioned felonies or misdemeanors, from managing or operating the bank or financial institution. The number of managers must not be less than two, who are responsible for determining the actual directions of the banks and financial institutions and bear the burdens of their management.

Article 08 of Regulation 24-04, as well as Instruction No. 11-2007 defining the conditions for the establishment of banks, financial institutions, and branches of foreign banks and financial institutions, requires managers to obtain personal approval from the Governor of the Bank of Algeria before being appointed to their positions. The relevant managers subject to this requirement include:

- Members of the Board of Directors or members of the Supervisory Board, as applicable,
- The Chairperson of the Board of Directors, and at least one person with senior responsibility,

- Members of the Executive Board, including the manager, in cases where the bank has a Supervisory Board.

The aforementioned instruction stipulates that to obtain the approval of the Governor of the Bank of Algeria, a file must be submitted for each manager containing information that demonstrates their qualifications, professional experience, and integrity.

Section Two: Conditions Related to the Licensing and Accreditation of the Digital Bank

Algerian law requires digital banks to obtain both a licence and accreditation before commencing operations, with accreditation conditional on the prior acquisition of a licence. As the digital bank carries out all banking operations comparable to those of traditional banks, Algerian law subjects digital banks to the same conditions for obtaining licences and accreditation applicable to traditional banks, along with some additional conditions due to the unique nature of digital banks.

Subsection One: Obtaining the License

The monetary and banking law stipulates that the Monetary and Banking Council grants licenses for the establishment of digital banks based on a file submitted to its president, which particularly includes the results of an investigation regarding the fulfillment of the conditions related to the founders and managers mentioned above⁴¹. The application file for obtaining a license to establish digital banks consists of two types: a general file containing the same documents required from traditional banks and a supplementary file specific to digital banks.

First: The General File for Traditional Banks

Regulation 24-01 states that the Monetary and Banking Council decides on the granting of the licence based on the description of the project submitted, the main motivations for selecting this investment and an assessment of its feasibility in terms of its potential realisation, overall profitability and impact on the economy. The activity programme must cover a period of five (05) years and include a planned technical, economic, financial and strategic study, as well as medium and long-term plans⁴².

Applicants for a licence to establish a digital bank must submit a descriptive document outlining the expected commitment of the digital bank's management to aspects related to the disclosure system, internal control mechanisms, risk management, accounting systems, precautionary systems, anti-money laundering and anti-terrorist financing measures, banking secrecy policy, and data and asset protection, together with a list of the bank's key managers.

Second: The Supplementary File Specific to Digital Banks

Due to the unique characteristics of digital banks, Regulation 24-04 requires the submission of a supplementary file specific to this type of bank, which includes information enabling the Council to assess the managers' knowledge of the risks associated with the digital activity model. The content of this file is to be determined by an instruction issued by the

Bank of Algeria. As this instruction has not yet been issued, we attempt to clarify the content of this file and the various necessary information based on some related Arab laws.

A. Strategic Information Technology and Cybersecurity Plan

This plan primarily includes the foundational elements of the information infrastructure, such as alternative main data centers, IT infrastructure and systems, cybersecurity technologies and controls to secure the infrastructure, systems, applications, and all information and data in their various states, including transmission, processing, storage, and backup, ensuring the confidentiality, integrity, and availability of data in compliance with the overall cybersecurity framework⁴³.

B. Customer Identification and Verification Procedures

Regulation No. 24-03 concerning the prevention of money laundering and terrorism financing outlines the procedures that banks and financial institutions must adhere to, implementing effective measures for customer identification and risk management. These measures primarily include the policy for accepting new customers, methods for verifying customer identity, ongoing due diligence based on risk patterns, and procedures for notifying the Financial Intelligence Unit⁴⁴. However, this regulation is directed towards traditional banks and financial institutions, making these procedures standard and not reflective of the practices followed in digital banks, which are fundamentally based on biometric authentication, electronic signatures, artificial intelligence, and behavior analysis.

C. Statement of Banking Services and Security Plans

The founders of the digital bank must provide a statement detailing the digital channels planned for customer access, the banking services and operations provided through these channels, the associated systems, and their security plans. This includes services offered via mobile phones, tablets, the internet, interactive digital call centers, and automated banking machines, whether traditional or interactive.

D. Statement of Electronic Payment Methods and Security Plans

The founders must detail the electronic payment methods used by the digital bank and the associated systems, particularly various electronic banking cards, e-wallets, electronic money, and electronic bank transfers⁴⁵.

After obtaining the license, the licensed institution has a period of 12 months to submit a request for accreditation for the digital bank, starting from the date of notification of the license. During this period, the founders will establish the joint-stock company under Algerian law named the electronic bank, obtain a commercial register, and prepare the accreditation file. This means that the license enables the founders to establish the digital bank, but it cannot commence operations until accreditation is obtained.

Granting the license to the founders of the electronic bank after reviewing the file is not automatic; the request may be denied, and the Council will issue a decision to reject the license. Article 95 of the monetary and banking law clarifies that appeals against the

decision to deny the license must be made before the Administrative Court of Appeal in Algiers, based on an administrative decision issued by the central administration.

Subsection Two: Obtaining Accreditation

Accreditation is a decision granted by the Governor of the Bank of Algeria and published in the official gazette, following approval from the Monetary and Banking Council, and after the digital bank fulfills all the establishment conditions specified by the monetary and banking law and various related regulations and instructions.

First: The File for Traditional Banks

Due to the absence of a detailed instruction from the Bank of Algeria regarding Regulation 24-04 and the detailed instruction for Regulation 24-01, we outline the key elements of the accreditation application file based on Article 12 of Instruction No. 11-2007, which states that the file accompanying the accreditation request directed to the Governor of the Bank of Algeria must include, in particular:

- The bank's articles of association,
- A copy of the commercial register,
- A tax registration certificate,
- A certificate of full minimum capital liberation,
- A deposit receipt for the amount in a bank account,
- Minutes from the election of the bank's managing bodies,
- Accreditation from the Governor of the Bank of Algeria for the members of the deliberative body and managers.

Second: Evaluative Report on Various Elements of the Digital Bank and Its Technological Systems and Information Security

Regulation 24-04 stipulates that to obtain accreditation, the digital bank must submit, in addition to the previously mentioned file, a report prepared by an independent external office with verified references in this field. This report should include an evaluation of all elements of the essential infrastructure, technological systems, and information security, the effectiveness of these systems, and their capacity to support the activities of the digital bank securely and ensure business continuity. To date, the Bank of Algeria has not issued an instruction clarifying the content of this report.

Like the decision to grant the license, the legislator has not specified a timeframe for the Governor of the Bank of Algeria to review the file and grant accreditation. This could lead to delays in the start of the digital bank's operations after meeting all conditions, as it cannot commence operations until the accreditation is published in the official gazette. In contrast, the license is communicated to the digital bank but is not published. It is important to note that the digital bank is obligated to adhere only to the banking operations and services specified in the accreditation text.

The Algerian monetary and banking law does not provide for an appeal against the decision to deny accreditation, as if obtaining it is automatic and taken for granted upon prior

licensing. Nonetheless, a decision to deny accreditation remains a possibility, for example, in cases where the file is incomplete or does not meet all previously mentioned conditions, or for any other reason.

Subsection Three: Withdrawal of Accreditation According to Algerian law, digital banks that have obtained accreditation must conduct electronic banking activities exclusively through digital channels, platforms or supports, while fully complying with the various conditions governing the banking profession, as set forth in the Banking Law and related regulations, as well as the provisions of various relevant laws. Failure to do so may result in the revocation of this license. Article 104 of the Monetary and Banking Law outlines the circumstances under which the Monetary and Banking Council may decide to withdraw accreditation, including:

1. At the request of the bank or digital bank for any reason related to it.
2. Automatically, in the following cases:
 - If the conditions under which the accreditation was granted are no longer fulfilled.
 - If the accreditation is not used for 12 months.
 - If the activity of the accredited digital bank is suspended for 6 months.

In addition, there are disciplinary sanctions that the Banking Committee may impose on the digital bank that violates the legal and regulatory provisions related to banking activities, as stipulated in Article 126 of the Monetary and Banking Law, which may include the withdrawal of accreditation.

Conclusion:

The recognition of digital banks and digital currencies by the Algerian legislator is an important step towards modernizing the Algerian banking system and keeping pace with the latest developments in information and communication technology. It opens up vast opportunities for Algerian customers and consumers to perform various banking operations and benefit from banking products and services remotely, without the need to visit traditional bank branches.

The Bank of Algeria, through the issuance of Regulation 24-04, has sought to organize all aspects related to the specific conditions for the establishment, accreditation and operation of digital banks in Algeria. This includes defining the concept of a digital bank, the banking operations it performs, and the conditions related to shareholders and managers, as well as feasibility studies and the technical and economic analysis of the project, despite the absence of the implementing instruction for this regulation.

In conclusion, we can state the following:

- The prohibition on the establishment of branches of foreign digital banks in Algeria, as opposed to branches of traditional banks, may lead to the weakening of competition and the monopolisation of this activity by the public sector, similar to the traditional banking

sector, thus hindering the transfer of modern technology essential for the operation of these banks and resulting in substandard services.

- The requirement that a bank subject to Algerian law and experienced in online banking services must hold 30% of the capital of the electronic bank, without regard to other shareholders, may discourage foreign investment in this crucial aspect of the financial and banking sector and hinder the development of this type of bank.

- Algerian law still lacks many procedural methodologies related to the management and security of digital banks, particularly regarding the basic elements of the digital infrastructure, data storage and management methods, customer identification procedures, necessary technologies and cybersecurity controls to secure the infrastructure and its applications.

Ultimately, the growth and success of digital banking activities in Algeria, as well as their alignment with global developments in financial technology and information and communication, depend on the genuine willingness of the Algerian state to promote the success of these modern banks, as well as to generalise the use of electronic payment methods and move away from the informal economy.

Footnotes:

¹- Article 02, Article 64, Paragraph "c", Article 74, of Law No. 23-09, dated June 21, 2023, containing the Monetary and Banking Law, Official Gazette No. 43 dated June 27, 2023.

- Document presenting the reasons for the Monetary and Banking Law project before the National People's Assembly, available at the National People's Assembly website: <https://www.apn.dz/documentions-jod>.

- Article 02 of Regulation No. 24-04, dated October 13, 2024, concerning the specific conditions for licensing the establishment, accreditation, and operation of digital banking activities. Available at the Bank of Algeria website: <https://www.bank-of-algeria.dz/ar/>.

²- Article 01 of Egyptian Law No. 194 of 2020 concerning the Central Bank and the Banking System, Official Gazette No. 37 bis (W) on September 15, 2020.

³- Salih Bounafla, The Legal System of Electronic Banking Operations, Part One, Dar Al-Khaldounia, Algeria, 2021, p. 148.

⁴- Directive 2002/65/CE, dated September 23, 2002, concerning the distance marketing of financial services to consumers.

⁵- Directive 2009/110/CE of September 16, 2009, concerning access to the activity of electronic money institutions.

⁶- Directive (EU) 2015/2366, dated November 25, 2015, concerning payment services in the internal market.

⁷- Article 02, Paragraph (d) of Regulation No. 24-03, dated July 24, 2024, related to the prevention of money laundering, financing of terrorism, and the proliferation of weapons of mass destruction.

⁸- Article 59 of Law 06-01, dated February 20, 2006, concerning the prevention and combating of corruption, Official Gazette No. 14 dated February 20, 2006.

⁹- Sadik BENMADANI, Digitization of Banking and Financial Products, Oran Higher School of Economics, p. 59.

¹⁰- Munir Mohamed Al-Janbihe and Mamdouh Mohamed Al-Janbihe, Electronic Banks, Dar Al-Fikr Al-Jami'i, Alexandria, 2006, p. 9.

¹¹- Falah Hussein Thwein, Digital Banking and Easy Access to Finance, Dar Al-Kutub and Documents, Baghdad, 2024, p. 16.

¹²- Referenced above.

¹³- Ali Jamal Al-Din Awad, Banking Operations from a Legal Perspective, Legal Library, Enlarged Edition, Legal Library, Cairo, 1993, p. 9.

¹⁴- Salih Bounafla, The Legal System of Electronic Banking Operations, Previous Reference, p. 71.

¹⁵- Article 71 of Law 23-09, Previous Reference.

- ¹⁶- Article 04 of Regulation No. 20-02, dated March 15, 2020, defining banking operations related to Islamic banking and the rules for its practice by banks and financial institutions.
- ¹⁷- Article 73 of Law 23-09, Previous Reference.
- ¹⁸- Article 74, Previous Reference.
- ¹⁹- Instruction No. 2024-04 dated November 24, 2024, concerning electronic transfers.
- ²⁰- Articles from 394 bis to 394 bis 7 of the Algerian Penal Code, No. 66-156 dated July 8, 1966, as amended.
- ²¹- Article 06 of Regulation 24-04, Previous Reference.
- ²²- The Central Bank of Egypt, Rules for Licensing and Registering Digital Banks and Supervising Them, issued on July 11, 2023, p. 6.
- ²³- Falah Hussein Thwein, Previous Reference, p. 44.
- ²⁴- Article 06 of Regulation 24-04, Previous Reference.
- ²⁵- Article 08 of Law 18-05, dated May 10, 2018, concerning electronic commerce, Official Gazette No. 28 dated May 16, 2018.
- ²⁶- Article 04 of Law 18-04, dated May 10, 2018, defining general rules related to postal and electronic communications, Official Gazette No. 27 dated May 13, 2018.
- ²⁷- Regulation No. 2011-04, dated May 24, 2011, containing the definition, measurement, and oversight of liquidity risk.
- ²⁸- Regulation No. 2014-01, dated February 16, 2014, concerning solvency transactions applied to banks and financial institutions.
- ²⁹- Regulation No. 2020-03, dated March 15, 2020, concerning the deposit insurance system.
- ³⁰- Article 12 of Regulation 24-04, Previous Reference.
- ³¹- Article 91 of Law 23-09, Previous Reference.
- ³²- Article 549 of Law No. 75-59, dated September 26, 1975, containing the Commercial Law, as amended.
- ³³- Regulation No. 24-02, dated February 6, 2024, concerning the minimum capital for banks and financial institutions operating in Algeria.
- ³⁴- Article 596 of the Commercial Law, Previous Reference.
- ³⁵- Article 5 of Regulation 24-04, Previous Reference.
- ³⁶- Paragraph 02 of Article 4 bis 01 states: "Foreign investments can only be made within the framework of a partnership where the national resident contribution represents at least 51% of the social capital. The resident contribution refers to the collection of several partners." Order 09-01 dated July 22, 2009, containing the supplementary finance law for the year 2009, Official Gazette No. 44 dated July 26, 2009.
- ³⁷- The Central Bank of Egypt, Previous Reference, p. 8.
- ³⁸- Article 02 of Regulation 92-05, dated March 22, 1992, concerning the conditions that must be met by the founders of banks and financial institutions, their managers and representatives.
- ³⁹- Article 87 of Law 23-09, Previous Reference.
- ⁴⁰- Article 02 of Regulation 92-05, Previous Reference.
- ⁴¹- Article 89 of Law 23-09, Previous Reference.
- ⁴²- Article 4 of Regulation 24-01, Previous Reference.
- ⁴³- Clause 3-1-10, The Central Bank of Egypt, Previous Reference.
- ⁴⁴- Article 9 of Regulation 24-03, Previous Reference.
- ⁴⁵- Clause 3-1-12, The Central Bank of Egypt, Previous Reference.