

STARTUPS IN ALGERIA - TOWARDS THE PROMOTION OF THE ECONOMIC DEVELOPMENT MOVEMENT AS AN ALTERNATIVE TO WEALTH CREATION WITHOUT DEPENDING ON ECONOMIC RENTS

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ABSTRACT

The Algerian legislator sought to establish a legal framework for emerging enterprises whose managers aim to create and market new technologies with the intention of promoting the economic development and encouraging investment and innovation in the field of information and communication technology.

For this, he first started by embodying a committee specialized in granting the label of an emerging enterprise or Startup, with the introduction of provisions that simplify the requirements and conditions for establishing a simple Joint-Stock Company with the label of a Startup. For the first time ever, the legislator added a number of amendments to the Labor Law and the Basic Law of Public Function in order to give the employee the possibility to invest in the private sector and establish his own enterprise. In addition, regarding the university student, the legislator gave him a chance to prepare a new form of graduation dissertation project about the creation of startup. In this case, this student can therefore benefit from financial support and funding. This would certainly make the university student a creator of new job positions, which will surely help to reduce the unemployment rate.

The present study aims to carry out an analytical interpretation of the different recent legal texts in order to frame them within the Algerian law.

Keywords: *Startups; Commercial law; Labor law; Public servant; Commission; Graduation thesis.*

Introduction

Over the past few years, an alternative economic policy has been adopted by Algeria for the purpose of achieving economic development and progress, creating a space that

supports and promotes creativity and innovation, thus allowing diversification of the economy in an environment that keeps pace with the development and investment dynamics that ought to be achieved as an alternative to

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wealth creation without depending on economic rents.

In order to achieve that objective, Algeria has recently adopted a new government policy that aims to set up mechanisms that can contribute to create a Startup Company, in accordance with the institutional, legal and regulatory frameworks. For this, Algeria has first started by creating the *Ministry of Small Enterprises, Emerging Enterprises and Knowledge Economy*. The above initiative helped to change the country's visions that aim to move from a restricted economy to a creative economy that is founded on new ideas and projects which would certainly contribute to economic development¹.

In addition, the Algerian government has also put in place a National Committee that can grant the label of an emerging enterprise, an innovative project, and business incubators, in accordance with the Executive Decree 20-254².

After that, in the year 2022, an amendment to the Commercial Law was issued to include the creation of the simple Joint-Stock Company, while linking the requirements of its creation to obtaining the label of an emerging enterprise or Startup³. Further, a courageous step was also taken by the legislator by making an amendment to the Labor Law through which the employee can have the possibility to take a leave without pay in order to create his own startup enterprise⁴, which was followed by an amendment to the Basic Law for Public Employment⁵, in addition to an Executive Decree that specifies the measures to do that⁶.

Furthermore, in order to bridge the gap between the higher education output and labor

market in Algeria, the Ministry of Higher Education and Scientific Research issued Decision 1275 in which it specifies the modalities for preparing a graduation project dissertation to get a University Degree on startups by students of Higher Education Institutions. It is worth indicating that the Minister of Higher Education has set the goal for the creation of one million emerging enterprises or startups, in order to make the student create a job position and not look for a job.

The problematic addressed in this study is linked to the following question:

What is the content of legal frameworks that were established by the legislator in order to promote the startups and achieve their objectives?

This study intends to review the content of the legal texts that frame these emerging enterprises and to clarify the requirements thereof as well.

Furthermore, in this study, it was deemed necessary to rely on the descriptive and analytical approaches in order to identify the concepts and analyze the legal texts relevant to this study.

First: The National Committee for granting the label "Startup", business incubators, and an innovative project

A startup (or start-up) is generally defined as a company that is typically in the early stages of its development. This term consists of two parts. First, *START* which refers to the idea of launching or initiating, and second, *UP* that refers to the concept of strong growth. This

¹ Makhancha Amina: Startups in Algeria - The Conceptual and Legal Framework, Sawt al-Qanun Magazine, Volume VIII, Issue 1 (2021), p.769.

² Executive Decree 20-254 of September 15, 2020. It includes the establishment of the National Committee for granting the label of a startup, an innovative project, and a business incubator. It also defines its tasks, formation, and functioning - Official Gazette 55, issued on September 21, 2020.

³ Law 22-09 of May 5, 2022. It amends and supplements the Ordinance 75-59 of September 26, 1975 and includes the Commercial Code 32, issued on May 14, 2022.

⁴ Law No. 16-22 of July 20, 2022. It relates to labor relations and supplements Law 11-90 of April 21, 1990, Official Gazette No. 49, of July 20, 2022.

⁵ Law 22-22 of December 18, 2022. It supplements the Ordinance 06-06 of July 15, 2006, and includes the general Organic Law of the Public Office, Official Gazette 85 issued on December 19, 2022.

⁶ Executive Decree 23-93 of March 05, 2023. This law establishes the conditions and modalities for employees to go on leave to create a start-up, Gazette 15, issued on March 12, 2023.

denomination was first used immediately after the Second World War, with the advent of venture capital firms.

As for the dictionary Larousse, it defines the term *Startup* as that young innovative and creative enterprise in the field of information and communication technology (ICT) whose mission is to create and market new technologies⁷.

At the jurisprudential level, this term refers to a company that is supposed to grow rapidly, which gives it the characteristic of emergence and creation. It should be noted that this title is not given because it is a newly established company or because it operates in the field of technology⁸.

A Startup was also identified as a prominent new business project that primarily aims to develop a viable business model in order to meet some specific market needs or to solve a specific customer problem⁹.

On the legal level, the Algerian legislator did not define the startup, but he did fixe the criteria for considering it as such. He did that so it can acquire the label from the qualified National Committee.

It is worth emphasizing that the legislator established this Committee in accordance with the previously mentioned Executive Decree 20-254, and placed it under the chairmanship of the Minister in charge of Emerging Enterprises or his representative. The National Committee includes the following members:

- A representative of the Minister in charge of startup companies,
- A representative of the Minister of Finance,
- A representative of the Minister of Higher Education and Scientific Research,
- A representative of the Minister in charge of Post and Telecommunications,
- A representative of the Minister of Industry,

- A representative of the Minister of Agriculture,
- A representative of the Minister of Fisheries and Fish Productions,
- A representative of the Minister of Digitization and Statistics,
- A representative of the Minister of Energy Transition and Renewable Energies¹⁰.

Furthermore, the legislator specified, in Article 11 of the same decree, the criteria for obtaining the label of an emerging enterprise or startup. These are mainly:

- The age of the enterprise should not exceed eight years,
- The enterprise business model must be based on products, services, business models, or any innovative idea,
- The annual business revenue should not exceed the amount determined by the National Committee,
- The company's capital ought to be owned by at least 50%. It must be owned by natural persons, certified investment funds, or by other institutions that hold the label of a Startup,
- The growth potential of the enterprise ought to be sufficiently large,
- The number of employees should not exceed 250 workers.

Once the aforementioned conditions are met by the enterprise, an application can then be submitted to the Committee through the online portal for emerging companies in order to get the label "*Startup*". This application is supplemented with the following documents:

- A copy of the Trade Register, and the Tax and Statistical Identification Card,
- A copy of the Company Statutes,

⁷ Definition adapted from Chellouche Boualem: The Legal Framework for Emerging Enterprises (startups) in Algeria, Journal of Knowledge Issues, Volume 02, Issue 02, June 2022, p. 66.

⁸ <http://www.paulgraham.com/growth.html>, consulted on March 31, 2023.

⁹ Al-Shambri Ahmed Abdel-Rahman, Sorour Ali Ibrahim, Business Incubators: Concepts and Applications in Knowledge Economy - Dar Al-Ijada, Riyadh, 2014, p. 23.

¹⁰ Article 03 of the aforementioned Executive Decree 20-254.

- The certificate of registration in the National Social Security Fund for Non-Salaried Employees,
- A copy of the financial statements for the current year,
- Detailed business plan of the enterprise,
- The scientific and technical qualifications and experience of employees of the company,
- And, if necessary, any intellectual property document and any prize or reward obtained¹¹.

Each application submitted to obtain the label of a startup shall be answered within a maximum period of thirty days starting from the date of its submission. It is important to know that any delay in submitting part of the required documents stops the deadline. Further, the applicant is then expected to submit the missing documents within fifteen days from the date of his notification by the Committee, otherwise his application will automatically be rejected.

Nevertheless, in the event that the application is rejected, the Committee must justify the rejection decision and a *notification* is automatically transmitted electronically to the applicant so that he may exercise his right to appeal by submitting a justified application. He shall then be notified of the final response electronically within thirty days as well, starting from the date of filing his application.

The label *Startup* is then granted for a period of four years, and can be renewed once, in accordance with the same conditions. The granting decisions are published in the National Electronic Portal for Startups¹².

For the sake of comparison, the Indonesian government adopted a number of strategies,

like achieving economic growth, reaching sustainable development goals, and promoting the digitization industry to achieve innovation and leadership, in order to effectively support these startups for solving their industry problems through technology¹³. However, no law has been issued to frame Startups in particular, because these are special enterprises that present some risks because they depend on digitization. Therefore, it would be highly recommended to ensure the protection of all digital transactions for both the company and the consumer¹⁴.

Likewise, the same problem may arise in Algeria. Indeed, the legal challenges posed by the nature of work of startups operating in the digital environment ought to be seriously addressed in order to protect the intellectual property rights. In addition, a specific basic law must be assigned to Startups.

Second: The developments of Law 22-09 which introduces the simple Joint-Stock Company with the label "Startup"

There was no specific legal form for Startups before the Commercial Law was amended by the Law 22-09. At that time, the Limited Liability Company (LLC) and the single-member Limited Liability Company were the most appropriate forms for this type of economic institutions because they were quite suitable for small projects.

However, with the issuance of the Law 22-09, the simple Joint-Stock Company (or shareholding company), which consisted of several natural or legal persons or one person, was created. The establishment of the Limited Liability Company and single-member Limited Liability Company was exclusively linked to obtaining the label of a *Startup*¹⁵.

¹¹ Article 12 of the aforementioned Executive Decree 20-254.

¹² Refer to Articles 13-14-15 of the aforementioned Executive Decree 20-254.

¹³ Gema Putri Ramadhani Minang, Gregoria Frederika Mandias, Muhammad Adnan Kushougi, Saskia P. Tjokro, Valentina Sinciera Winata, Rininta Bella Yunissa: Connecting Indonesian start-ups and

Dutch companies, *Angel Investment Network Indonesia (ANGIN)*, 2020.

¹⁴ Deli Bunga Saravistha and I Wayan Werasmana Sancaya: Juridic Aspects of Startup Company in the Era of the Industrial Revolution and the Trend of Digitalization of Trade - *Hukum Prasada Journal*, Vol. 9, No. 2, September 2022, p.127.

¹⁵ Article 03 of Law 22-09, previously mentioned.

In the provisions of the simple Joint-Stock Company, the legislator dropped the legal minimum number of partners. This number is seven for the Joint-Stock Company. He also did not require the minimum capital in order to simplify the procedures for its creation, and also to give the enterprise the possibility to provide work-sharing, not to mention the prohibition of its establishment by public resorting to savings and the prohibition of offering its shares on the Stock Exchange¹⁶.

Therefore, the legislator has limited the form of startups to the simple Limited Liability Company, whose provisions are different from those of the Limited Liability Company, which is predominantly of a formal nature.

Third: Amendments to the Labor Law and the Public Service Law to enable employees to create a startup

For the first time, Algeria has officially approved, within the framework of strengthening and promoting the establishment of private enterprises, including Startups, and also of facilitating the access to the world of entrepreneurship, especially for ambitious young people who are eager to impose themselves in the new economic dynamic that is primarily based on diversity. This new approach, which aims to encourage private initiatives and job creation, would enable workers and employees in public sector companies to benefit of an exceptional leave of one year so they can create their own private enterprise.

It is worth emphasizing that the issuance of the Law 22-16 came to amend the Law 90-11 that is related to the aforementioned labor relations. In the text of its second article, which supplement the provisions of Law 11-90, this law includes a set of articles. The most prominent of these articles are Articles 56bis and 56bis 1 which guarantee the worker's right to obtain an unpaid leave for a period of one year so he can have a chance to set up an enterprise once in his career path.

Furthermore, the worker may also have recourse to part-time work in order to create a private enterprise in compliance with the relevant legislation and regulation.

Moreover, the employee may also request an extension of a period of six months, in both cases, provided that he presents a valid justification.

It should also be noted that the work relationship ends once the worker has completely set up his enterprise or if he does not submit an application for reintegration within the specified deadlines.

The Labor Law Amendment was followed by another amendment that affected the Basic Law of Public Service under the Law 22-22, previously mentioned. This amendment, which includes the same content as the one of the Labor Law, was adopted in order to enable the employee to have a one year unpaid leave in order to create his own enterprise with the possibility to get an exceptional six-month extension.

The administration is empowered to transmit the application within a maximum deadline of one month, starting from the date of its filing. This may be done either:

- By acknowledging its immediate acceptance,
- By postponing its acceptance for a period of three months at most,
- By refusing it for the utmost necessity of service after taking the opinion of the competent Administrative Committee of equal members¹⁷.

The aforementioned Executive Decree 23-93 specified the measures for that purpose. It indeed specified the conditions that must be met by the employee who wishes to obtain a leave in order to create an enterprise. These conditions are that the employee must:

- Be less than fifty-five full years of age at the date of filing the application,
- Prove five years' seniority as an employee,

¹⁶ See Articles 715 bis 134 et seq., updated by Law 09-22, previously mentioned

¹⁷ See 206 bis et seq., created by Law 22-22, previously mentioned

- Be committed to abide by the rules of fair competition and not to harm the administration of the company in which he is actually working.

It is noteworthy to specify that the legislator excluded in Article 04 of the same decree a number of employees who cannot benefit from that advantage. These are elements of:

- National security
- Civil protection
- Prison administration
- Customs administration
- Forest management
- Telecommunications security
- National telecommunications
- Diplomatic and consular offices.

With regard to the amendments to the Labor Law and Basic Law of Public Service, they represent the strategy that the country has launched in order to encourage investment in the private sector and also to help employees and workers to have easy access to the institutional and entrepreneurial world so they can have the opportunity to set up their own enterprises and achieve economic diversification by moving the national economy away from one single income source towards several sources from a larger number of sectors and markets .

Fourth: Bridging the gap between the labor market and the university output - A graduation project thesis on startups

The Algerian Ministry of Higher Education and Scientific Research issued the Decision 1275 that specifies the modalities for preparing a graduation project dissertation to get a University Degree on startups for students of Higher Education Institutions¹⁸. In this case, once the students have presented and discussed their projects in front of a Scientific Committee, they can receive a certificate and a diploma for a startup enterprise, in addition to getting the label of an innovative project pro-

vided that the management of university business incubators shall accompany these projects.

It is important to indicate that the above-mentioned decision aims to create a generation of student entrepreneurs who have the ability and desire to move towards innovative entrepreneurship and therefore establish startups that create wealth and job positions.

The decision also aims to find a technical, technological, or digital solution for stand-alone enterprises or independent enterprises in the form of a graduation dissertation so that the student can obtain a university degree on startups. The curriculum includes a set of training programs related to preparing business plans aimed at accompanying the students in their entrepreneurship mission. This would allow the students to prepare a graduation dissertation that can serve as a basis for their startup project.

Furthermore, Bachelor's, Master's and PhD students, engineering and architecture students, as well as veterinary science students, from various disciplines and faculties, are allowed to prepare a draft for a graduation dissertation to obtain a university degree on startups. In addition, students enrolled in such a venture receive training courses and field workshops on business models, electronic marketing, mining, finance and accounting.

Each student in the last year of his educational path, who can propose an idea that can be developed into a startup, can be accompanied by the business incubator of his university and present a graduation dissertation that allows him to obtain a university degree on startups. Further, students who are preparing a graduation thesis to get a university degree on startups may work in small teams consisting of small groups of students, i.e. from two to six students from different disciplines and colleges, in order to prepare a graduation project thesis and hence obtain a university degree on startups.

¹⁸ Decision 1275 of September 27, 2022. It specifies the modalities for preparing a graduation thesis for

startups and obtaining a university degree for students of Higher Education Institutions.

On the other hand, registered students can also prepare a graduation project thesis to obtain a university degree on startups in the form of a *Startup idea*. In this case, they present and discuss their projects before a Scientific Committee and Experts specialized in their field of expertise. This committee should include the supervisor, one member of the business incubator or the entrepreneurship house, and one representative of the economic and social partners. They then obtain a certificate of completion of university studies and a university degree on startups. This would allow him to get the label of an innovative enterprise or startup.

The distinguished projects are registered in a national competition in order to select the best startups. Then the best projects are valued with appropriate financial support from the Ministry of Higher Education and Scientific Research as well as from economic and social partners who are interested in the field¹⁹.

It should be noted that mechanisms for the implementation of the decision were established by the National Coordinating Committee for the follow-up of Innovation and University Business Incubators after the issuance of this decision. This committee gave details about a key point related to the educational aspect of the project. Then, several points related to the work team, which could include between 02 and 06 students from the same major or from different specializations, were reviewed through it. Note that any student can also prepare his own project if he shows the capacity to do so.

In the same context, the issue of supervising the thesis was also discussed. Here, the committee consists of one main supervisor or two main supervisors, who are specialized in the topic of the project if the idea requires the integration of two different disciplines, as well as an assistant supervisor who is specialized in aspects supporting the project. He must be one of

the instructors of the business incubator or entrepreneurship house.

The thesis is prepared and presented either in the form of a graduation dissertation, according to the agreed methods, with a separate appendix for BMC, in addition to the technical specifications of the project of about 30 pages, or in the form of a detailed business plan that includes the technical and economic study of the project, and the feasibility study as well.

The evaluation criteria are:

- Clarity and soundness of the basic idea: 20%,
- Innovative aspects of the project: 25 %,
- Health of BMC's business model: 30 %,
- Reaching the initial prototype: 25 %.

A percentage of 100 % indicates that this is an innovative project that can only be presented for discussion once a license from the Technology Support and Innovation Center is obtained, and after getting a deposit number from the protection authorities in the case where the project brings some improvement to an existing product or provides a new invention.

It should also be noted that the basic certificate pattern, i.e. Bachelor, Master, and Doctorate, is still retained. In addition, a sub-certificate for startups is also delivered, with all the training courses mentioned, beside an appendix to the certificate that explains the student's formation in the graduation project for startups.

The sub-certificate must be approved by the Dean of the College, the Director of the Incubator, and the Rector of the University²⁰.

It was also specified that the training courses should be conducted for students according to a preset program. In addition, awareness campaigns should also be carried out through scientific days and open doors, as well as mass media, in order to spread the spirit

¹⁹ See Articles 02-03-04-05 of Resolution 1275, previously mentioned.

²⁰ Mechanisms for the Implementation of Draft Resolution 1275 - Startup Certificate / Patent Certifi-

cate, National Coordinating Committee for the Follow-up of Innovation and University Business Incubators, Ministry of Higher Education and Scientific Research, Algeria.

of entrepreneurship in students and encourage them to take initiative to choose this new style of graduation thesis.

It is worth mentioning that one of the mechanisms put in place by the Coordinating Committee was that the Directors of Higher Education Institutions ought to establish Technology Support and Innovation Centers and conclude agreements between the university and the Algerian National Institute of Industrial Property (Institut National Algérien de la Propriété Industrielle - INAPI). Utmost importance should be given to these agreements due to their important position in the new strategy of the sector, because it is the only and main means for patent registration and for the protection of innovative ideas from students and researchers.

Probably, financing is the most important point that concerns the project owner. Indeed, the Committee reviewed it through the activation of the agreements signed between the Ministry of Higher Education and Scientific Research, the Ministry of Knowledge Economy, Startups and Small Enterprises, in order to press the funding agencies, i.e. the Startup Fund and the National Agency for the Promotion and Development of Entrepreneurship, to commit to taking the students' projects as a priority in the financing process.

It is also noteworthy that projects with a low rate of innovation are directed to the National Agency for the Promotion and Development of Entrepreneurship.

Conclusion

In the past few years, Algeria has been seeking to strengthen and diversify its economy. In order to achieve this goal, the country decided to encourage the creation of startups. For this, it was deemed necessary for the Algerian government to develop an adequate and robust environmental system that encourages the establishment of these companies, besides finding a sufficient number of appropriate tools that can be used to create and support them. This would make these enterprises the locomotive that leads the transition of the economy from a rentier system to a model that relies on other productive sectors and on knowledge economy.

Most of the economies of the countries throughout the world rely on emerging enterprises or startups in order to ensure sustainable development. These companies constitute one of the indispensable engines of economic development in view of the innovations and solutions they provide based on technology and science. Algeria is among the countries that have recently given great importance to startups. It has provided the legal framework that would stimulate investment in this sector, both by supporting young people with innovative projects, and also by permitting workers and employees to take an exceptional leave to establish their own enterprises, and by adopting the graduation dissertation pattern for start-up projects in order to spread the spirit of entrepreneurship in students and researchers and make them create job positions and not look for work.

Based on the above statements, one may therefore make the following recommendations:

- Develop a regulatory framework that defines the basic law for startups,
- Encourage startups to unite in the form of local or national associations and establish cooperation networks so they can merge their efforts,
- Prompt and support private individuals to invest in the fund in order to sustain and develop the economic system for startups,
- Carry out promotional courses and campaigns for various new financing mechanisms, as well as support and accompaniment strategies,
- Train research professors in various disciplines to supervise graduation theses for startup projects,
- Take incentive financial measures in order to urge and encourage public and private dealers to resort to innovative solutions offered by emerging enterprises,
- Encourage and support the establishment of cooperative relations between Algerian startups and their foreign counterparts.
- Introduce an annual national competition for the "Best Startup" in order to encourage innovation and smart solutions with the

aim of improving and modernizing neighborhood public facilities.

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