

The legal system of electronic clearing النظام القانوني للمقاصة الإلكترونية.

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Abstract:

The study aims to determine the legal framework of electronic clearing and its legal nature with knowledge of the system that conducts electronic clearing.

Through the study, it was concluded that the system No. 05-06 dated December 15, 2005 related to the clearing of sukuk and other payment instruments for the general public organized electronic clearing, and the Algerian system for interbank distance clearing, in short Atki, which is operated by the bank preclearance center, was allocated to it.

Keywords: Electronic clearing-Atki-banks-advance clearing center

الملخص:

تهدف الدراسة إلى تحديد الإطار القانوني للمقاصة الإلكترونية وطبيعتها القانونية مع معرفة النظام الذي يسير المقاصة الإلكترونية.

من خلال الدراسة تم التوصل إلى أن نظام رقم 06-05 المؤرخ في 15 ديسمبر 2005 المتعلق بمقاصة الصكوك وأدوات الدفع الخاصة بالجمهور العريض الأخرى هو الذي نظم المقاصة الإلكترونية، وتم تخصيص له نظام الجزائر للمقاصة المسافية ما بين البنوك وبالاختصار أتكي الذي يسيره مركز المقاصة المسبقة المصرفية.

الكلمات المفتاحية: المقاصة الإلكترونية- أتكي- البنوك- مركز المقاصة المسبقة

Introduction:

Set-off is a performance tool that leads to the extinguishment of two corresponding obligations, a creditor, a debtor, an exchange of positions, and a lower amount, as well as a security tool because a creditor that meets

its debt is ahead of other debtors, even encumbered creditors and concessionaires. Given the importance of set-off in civil transactions, which should have benefited from commercial transactions, especially in the banking sector, the latter was characterized by credit, speed, and confidence, with several risks surrounding it, which led to the legislator's intervention to establish a legal framework on set-off, since the first legislation provided for was Regulation No. 97-03 of 17 November 1997 on the clearing house (abolished), but with the evolution of the banking sector, especially in the area of payment instruments, there was a need for sophisticated systems based on an electronic pillar, where Algerian legislators adopted, under Regulation No. 05-06 of 15 December 2005, on the clearing of instruments and payment tools for other broader audiences, electronic clearing. What is the regulatory framework for electronic clearing or, rather, how does the Algerian legislator regulate electronic clearing?

In response to the previous problem, we have adopted the appropriate analytical approach to the nature of the topic because we are studying the legal regulation of electronic clearing in accordance with Algerian legislation, first by addressing its concepts and specificities and then studying the procedures and safeguards for its implementation. The first section contains the concept, characteristics, and legal nature of electronic clearing.

The second section will address the mechanism of electronic clearing and the safeguards relating to its implementation.

Concept and characteristics of electronic set-off The banking sector is one of the most affected sectors by technology and electronic backstopping. Therefore, electronic payment tools have emerged, including electronic clearing. To learn about this innovative technology, it is necessary to study its definition and indicate its legal nature while addressing its characteristics.

1. Legal and Jurisprudential Rooting of Offset.

Before delving into banking offset, it was necessary to address ordinary offset in accordance with general rules while studying the emergence of banking offset.

1.1 The Concept of Ordinary Offset.

Algerian civil law addressed offset similar to some Arab legislations, defining it within Article 297, and jurisprudence also addressed ordinary offset.

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1.1.1 Legal Definition of Offset.

Civil Law No. 75-58 defines offset in a general manner within Article 297/01, stating that "the debtor has the right of offset between what is due to him towards the creditor, even if there is a disagreement due to debts, if the subject of each is determined or equivalent in type and quality, and it is established, free from dispute, and due for payment, valid for claiming through the judiciary." ¹From the definition, it is noted that the Algerian legislator considered offset as a right for the debtor to adhere to what is due to him in the face of the creditor.

The above article was literally taken from Egyptian Civil Law No. 131-1948 dated July 16, 1948 within Article 362².

As for Iraqi civil legislation, it states within Article 408, "Offset is the dropping of a debt owed by a person to his opponent against a debt owed by that person to his opponent."³

1.1.1 Jurisprudential Definition of Offset.

"Offset is the meeting of the creditor and the debtor, regarding the same debt in the same person, leading to the extinction of the debt by the unity of obligation, to the extent it has been taken, as it is a means leading to the extinction of opposing debts in mutual debts between two parties, each of whom is a creditor to the other and a debtor to each other, to the extent of the lesser of them."⁴

By addressing offset according to general rules, it is found to differ from banking offset, so the legislator created a special system for it, which is due to the specificity of banking operations.

1.2 Emergence of Banking Offset

The first law that explicitly referred to the system of banking offset was Law 90-10 dated April 14, 1990, which included the Banking Law (repealed) ⁵ Article 89 of this law stipulated the establishment and regulation of offset by the Central Bank to carry out all means of written and electronic settlement. To explain, implement, and regulate the process

¹ Decree No. 75-58, dated 20 Ramadan 1395 corresponding to 26 September 1975, which includes the amended and supplementary Civil Law, Official Gazette No. 101, dated 19 December 1975.

² Decree No. 131-1948, dated 9 Ramadan 1367 corresponding to 16 July 1948, which includes the Egyptian Civil Law, Official Gazette, No. 108 repeated, dated 20 Ramadan 1395 corresponding to 26 July 1948.

³ Law No. 40/1950, which includes the Iraqi Civil Law, Official Gazette No. 3015, dated August 9, 1951.

⁴ Belhadj El Arabi, Provisions of Obligations in the Algerian Civil Law, Dar Huma, Second Edition, Algeria, 2015, p. 591.

⁵ Law 90-10 dated 19 Ramadan 1410 corresponding to April 14, 1990 regarding cash and loans, issue number 16 dated April 18, 1990.

of banking offset, Regulation No. 97-03 dated November 17, 1997 was issued regarding the offset chamber ¹(repealed).

Article 18 of the aforementioned regulation defined offset operations as "the total daily exchange operations between the Bank of Algeria and its members, and among these latter in favor of account holders recorded in their registers, including written or electronic means of payment, including checks and other commercial instruments due daily from some members to other members, as well as transfers." Offset operations must be carried out compulsorily at the offset chamber located at the Bank of Algeria, and the latter is considered responsible for the chamber.

Due to the development of the banking system, especially regarding payment methods, this led to the adoption of highly advanced systems to carry out payment operations and settle banking transactions. This gave rise to what is known as electronic offset, referred to in Regulation No. 05-06 dated December 15, 2005, concerning the offset of bonds and other instruments of payment for the general public². This system introduced a new system called the Interbank System for Settlements for the general public, known as the Interbank Clearing System (ATCI).

This system is managed by the Preceding Banking Offset Center, defined as a joint-stock company and a subsidiary of the Bank of Algeria.

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2 Definition of electronic clearing.

Defined by the Algerian legislature in the Supplement to the Law No. 05-06 of 15 December 2005 on the Clearing of Instruments and Payment Tools for the Other Public ³ as an "Algerian system of public reimbursement related to an automated and non-physical system of payment orders paid through clearing". The legislator called it the Algiers Interbank Clearing System, in short, Atki (ATCI) .⁴

Jurisprudence defines it as a system that enables participating banks and their branches to automatically exchange payment orders among

¹- Regulation No. 97-03 dated 17 Rajab 1418 corresponding to November 17, 1997 regarding the Chamber of Arbitration, Official Gazette, issue number 17 dated.

²- Regulation No. 05-06, dated 13 Dhu 'qa 1426, corresponding to 15 December 2005, on the clearing of instruments and payment instruments for other broader audiences, Official Gazette No. 26, dated 26 April 2006

³ -Regulation No. 05-06, dated 13 Dhu 'qa 1426, corresponding to 15 December 2005, on the clearing of instruments and payment instruments for other broader audiences, Official Gazette No. 26, dated 26 April 2006.

⁴ - Algérie Télé-Compensation Inter-bank

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themselves. The final net settlement is processed and sent to the real-time gross settlement system.

It is also known as "a system by which written cheques are converted by data according to an agreed mechanism into an information programme dedicated to this system, so that such data are processed and cheque payments are subsequently settled electronically between banks, in order to abbreviate customary traditional clearing procedures, and to increase the speed of cheque collection commensurate with developments in the commercial environment".¹

Through previous definitions, we believe that electronic clearing is a technique for settling payment orders relating to instruments, bank transfers, commercial papers and bank cards, and is carried out by a sophisticated system called Atki (Algiers Interbank Clearing System).

2.2. legal nature of electronic clearing.

In order to learn about the legal adaptation of electronic clearing, several different opinions have emerged, including those who adapt it in accordance with general rules and others in accordance with commercial law and others consider it as an electronic means of payment.

2.2.1 Legal rooting of electronic clearing in accordance with general rules.

Some scholars felt that electronic clearing was adapted as an agency contract by entrusting the withdrawn bank to meet the value of the beneficiary's ² cheque through electronic clearing, by limiting its value to the beneficiary's account, depending on the status of the transfer; If we are in front of a transfer within one bank with two bank accounts for two different persons or either between two bank accounts for one person, then the agency is reflected in the power of attorney issued to the bank in order to credit the amount to the beneficiary's account.

In the case of two different accounts of one person in two different banks, each bank is a client's agent because the beneficiary is the same beneficiary³

¹-Qais Anizan al-Shirazi, Impact of the Regulation of the Relationship Between Banks Participating in the Electronic Cheque Clearing System on the Implementation of Their Obligations with Their Clients, A Detailed Study in Jordanian Law, Irbid Journal of Research and Studies, vol. 13, No. 01, Jordan, 2009, p. 262

² -Missirdi Syed Ahmed, Legal System of Clearing Banking Transactions - Comparative Study, Doctoral Thesis in Science, Faculty of Law and Political Science, Abu Bakr University, Belgaid Tlemsan, 1438H-1439H/2017-2018, p. 156

-Missirdi Syed Ahmed, *ibid.*, p. 158 ³

However, this trend has been criticized because an agency prepares a contract that there is no agreement between the withdrawn bank and the beneficiary bank. The bank's relationship with its customers is a bank account contract that each party has obligations. The relationship between the withdrawn bank and the beneficiary bank cannot be adapted as an agency, and this is therefore insufficient.

2.2.2. Legal rooting derived from commercial law.

A part of the doctrine attempted to adapt electronic clearing as a banking technique subject to the rules of commercial law and different from the general rules, where two theories emerged: the professor's theory. "Hamel" considers that electronic clearing is a process with several specificities, and takes place in three first stages, starting with an order from the drag to the bank for the benefit of the beneficiary¹, Then comes the second stage the bank pays the amount to the beneficiary by making its accounting restrictions However, the theory was criticized because electronic clearing was indivisible. s right arises only after the amount has been credited to its account.

The theory of Professor Van Ren, who considers that electronic set-off is governed by rules on banking art that do not exist in civil law, is that the obligation of the order derives primarily from the deposit contract or the opening of the account. One of the services provided by the bank to its customers is to carry out transfers and fulfill cheques.

2.2.3. Modern rooting of electronic clearing.

Article 58 of the Monetary and Banking Code refers to set-off as a means of payment. "The Bank of Algeria ensures the proper functioning and effectiveness of all its national payment systems.... The Bank of Algeria also ensures the integrity of the clearing systems and the settlement and delivery of financial instruments²." The article is included in chapter IV under the heading "Security of payment systems and means".

System No. 05-06 defines electronic clearing through Atki as "an Algerian system of public reimbursement for an automated and non-physical system of payment orders paid through clearing".³

Through the preceding two articles, it is clear to us that electronic set-off is a means of payment and at the same time a mechanism for settling and

¹ Ibid., p. 167

² -Act No. 23-09 of 03 Dhu 'jjah 1444 corresponding to 21 Juan 2023, containing monetary and banking law, No. 43, Official Gazette, 27 Juan 2023.

³ -The aforementioned Regulation No. 05-06..

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reimbursing payment orders for cheques, invoices, order bonds, bank transfers and bank card transactions.

In recent jurisprudence, electronic set-off has been tailored as a special clearing of an agreement. For the clearing of an agreement, there is both an agreement between the beneficiary and the beneficiary's bank to meet the value of the instrument or other means of payment, as well as a prior agreement between banks to meet instruments and other means of payment by clearing.

A special type, which is intended not to be open to the public, is limited to banks, public treasury and mail, and is also subject to conditions for electronic clearing.

The bank transfer process arising from electronic clearing procedures, where cash transfers are made from one account to another by the bank, is considered to be a means of transferring cash by way of credit.¹

From the foregoing, we believe that electronic clearing is not a special clearing of an agreement but another type relating to the clearing of interrelated debts because it is multilateral clearing. It disposes of the common will of banks, public treasury and mail to settle the value of current accounts and to record amounts in beneficiaries' accounts.

2.3. Electronic clearing characteristics.

After knowing that electronic clearing is a payment tool, the account balances of banks, postal institutions and public treasury are settled. However, this type of payment method has a range of characteristics. It is considered a double fulfillment tool and is subject to the principle of security confidentiality and settles debts in one operation, as well as other characteristics.

2.3.1. Electronic clearing tool double fulfillment.

Clearing in general and electronic clearing in particular is one of the means or tools for double fulfillment s debtor 'b' as a creditor and 'b' as a 'debtor as a creditor of a' a 'and in the event that the amount of the debt is different in both cases, the client of the set-off is made in the lower amount, which is consistent with the logic and nature of the set-off.

¹- Missirdi Syed Ahmed, *ibid.*, p. 170

2.3.2. Electronic clearing is subject to the principle of confidentiality and security.

One of the features of electronic clearing is security and confidentiality in the transfer of information and data of clearing parties, which is in line with the principle of confidentiality that characterizes banking transactions. The Bank encrypts the data sent, and article 48 of the previous Regulations affirms the commitment of participants in Atki to professional confidentiality, and that the electronic clearing system has information systems, Provide security in terms of documenting accurate details such as date of submission, amount and date of clearing.

2.3.3. Electronic clearing is a tool for the development of the banking sector.

The banking sector is one of the most affected by technological development, as evidenced by several transactions in the sector, such as electronic payment cards, e-cheque and e-cheque. The same is true of the bank clearing house previously located at the Bank of Algeria level. However, after the issuance of system No. 05-06, which abolished the clearing house and replaced it with a new system called the AlgInter-Bank Clearing System earing System.

This system is reflected positively in the banking sector by reducing the time taken for clearing, as well as the financial risks arising from clearing. This is thanks to the existence of a guarantee fund in which all participants, especially banks, participate. This new system also allows for the counting of clearing operations and the issuance of reports by the Bank of Algeria.

2.3.4. Reduce the phenomenon of return checks in clearing.

Returned cheques are the instruments rejected by the withdrawn party because of a formal or objective defect in the withdrawn cheque. In the past, at the level of sinking of set-off, cheques were rejected by delegates of banks' representatives because of inadequate instrument, lack of balance or inadequate balance, In electronic clearing, checks are checked before they are sent to Atki, thereby reducing the phenomenon of returned checks.

2.3.5. Debt settlement in one operation.

The electronic clearing system settles interconnected debts by one total transaction at a given time and is called the exchange day on which all cheques and other means of payment, valued at less than 1 million Algerian dinars, are offered and settled by Atki.

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2.3.6. Support banking security.

The previous traditional or classical clearing was done at the clearing house level cheques and other means of payment were physically transferred and may expose them to loss or theft, All checks must be transferred to the Bank of Algeria clearing house. Now, thanks to the existence of electronic clearing and Atki's system, there is no need to transfer checks physically, Rather, it is transferred intangibly to Algeria's interbank clearing system, which settles balances through clearing.

Electronic clearing also reduces fraud and forgery, as there are security specifications for payment methods.

23.7 Electronic clearing is a warranty tool.

Clearing generally expresses an assurance tool, it is stated in the Sinhoori broker "As for set-off as a security device, this is also apparent from the fact that a creditor that satisfies its right from the debt owed to its debtor relates to this debt, which is solely incurred by the debtor's creditors, If it is an ordinary creditor in the judgement of the encumbered creditor or creditor with a privilege, its right shall be satisfied in advance of all of them; Debtor's debt in the judgement of the encumbered money allocated for the performance of his or her right and thus the set-off would provide the creditor with insurance, in this respect a security device ".¹

To confirm that electronic clearing is an assurance tool, the Guarantee Fund, which was established by the participants, is an account opened in the name of the Bank of Algeria Pre-Clearing Centre under the heading of the Guarantee Fund and financed by the participants' individual contributions.

The purpose of the Guarantee Fund is to cover the final balance of the set-off owed to one or several participants in the event that their account balances do not allow for the settlement of the clearing balances, with the participant or participants concerned refunding the amounts withdrawn from the Fund before midday of the day in which they were used².

3. Electronic clearing mechanism

Electronic clearing is a technical process subject to procedures stipulated by Regulation No. 05-06. Before addressing how electronic clearing is carried out, conditions relating to electronic clearing must be examined.

¹ -Abd al-Razak al-Sanhouri, Mediator in the Commentary on the New Civil Code, Part III, House of Arab Heritage, Beirut-Lebanon, 1958, p. 875

² - Article 05-06 of the aforementioned Regulations.

3..1 Electronic clearing conditions.

To carry out the electronic clearing process, there must be conditions stipulated in the previous Regulation No. 05-06, which can be divided into objective and formal conditions.

3.1.1. Substantive conditions

Substantive conditions, known as satisfaction, shop and reason, are insufficient to carry out electronic set-off. They require other conditions, which are specific to set-off.

3.1.1.2. General substantive conditions.

Satisfaction: As long as electronic set-off is a legal act, there must be a will that corresponds or corresponds to an acceptance and the will is free of defects. and demonstrates the parties' will to make the affirmative by the beneficiary, the author of the instrument in his name, who deposited it with the Bank; The latter shall be granted acceptance to settle this cheque with the withdrawn bank by submitting it for clearing. and also demonstrates the will of the parties involved in their involvement in the Atki system supervised by the Centre for Prior Bank Clearing, and the consent of the commandant The withdrawal shall appear by ordering the withdrawal and signature of the instrument. "

While the eligibility to be granted is the eligibility to open the current account because clearing is essentially linked to the settlement of bank or postal accounts, the practical reality shows that the most engaged persons are the traders' category. Therefore, commercial eligibility must be provided. Banks, the post and the public treasury are moral persons with eligibility.

Shop and reason: The electronic clearing place is a sum of money that includes the cheque or any other means of payment and the legislator requires that the amount of cash not exceed DA 01 million and while the amounts must be fully settled or not fully settled, there can be no partial satisfaction If the amount exceeds or equals 1 million Algerian dinars, it will be settled through the "Algeria Real Time Settlement" system. ¹

The reason for the bank's obligation to fulfil electronic clearing is the bank's acceptance of the receivable, i.e. settlement of clearing obligations through

¹ -The Inter-Bank Settlement System for Payment Orders through Bank or Postal Transfers of Large Sums or Expedited Payments Made by Participants in this System, article 02 of Regulation No. 05-04 of 19 Ramadan 1426 corresponding to 13 October 2005, which includes the System for Immediate Gross Adjustment of Large Sums and Accelerated Payments, No. 02, Official Gaz, dated 15 January, 2006.

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the exchange of positions between banks. The bank submitting the instrument for settlement and fulfilment could in another process be the same for the rest of the banks.

2.2.1.2. Special substantive conditions

Having at least two bank accounts, clearing is not conceivable without a prior current account because electronic clearing applies to bank and postal accounts, Second, there must be at least two accounts for the order and one for the beneficiary, or rather several accounts. in order to be settled by clearing, for example, an order account in favour of the beneficiary and withdrawn is the National Popular Loans National Bank ", the beneficiary had an account with the Algerian National Bank that he had sought refuge in the latter bank in order to settle and credited the amount to his benefit.

The current account is required to be operational, not closed or closed, so that it can be settled through electronic clearing.¹

The existence of a creditor's balance: there must be a balance in the order account. No set-off can be made without a balance because electronic set-off presupposes the existence of balances with the order to withdraw. The absence or even inadequacy of the balance will result in criminal liability on the basis of the offence of issuing a cheque without balance.

Adherence to the rule of all or nothing: The rule of all or nothing means the full execution of electronic set-off on the instrument or any other means of payment leading to the complete expiration of the obligation, i.e. the settlement of the amount found in whole rather than in part.

In this regard, article 06 of Regulation 06-05 provides for the establishment of the Guarantee Fund, which covers inadequate balances for clearing.

3.2.2. Formal conditions.

The formal requirements for electronic clearing are two important conditions: qualification and involvement in Atki's system.

3.2.2.1. Adjective must be available.

According to article 07 of the previous regime, "Banks, Treasury and Algiers Post shall withdraw the instruments thereon. (Banks, Algiers Post, Treasury) or to which they have been sent slates and warrant bonds, may participate directly or through another participant in the clearing of such means of payment under this system. "Through this article, we consider that

¹ - Messiardi Syed Ahmed, *ibid.*, p. 190.

persons entitled to participate in electronic clearing are limited exclusively to banks, Algeria mail and public treasury.

What is noted in the preceding article is that they have not mentioned financial institutions even though they carry out banking operations, owing to the fact that financial institutions do not perform payment transactions, as stated in article 78 of the Monetary and Banking Code, "Financial institutions cannot receive funds from the public nor administer payment means or place them at the disposal of their customers".¹

3.2.2.2. Requirement to engage in ATKI

According to article 19 of the previous Regulation No. 05-06, the application for Prior Bank Clearing Centre is addressed. If the latter agrees, she must send a copy to the General Directorate of Network and Payment Systems of the Bank of Algeria.²

In the event of approval of the accession, an agreement shall be signed in which the rights and duties of the participants and the Centre for Prior Bank Clearing shall be established as the course of Atki's system.

To facilitate the participants' work, each participant has access to the guidance used for ATKI in order to streamline the procedures for electronic clearing.

Participants must choose status either direct participant or indirect participant³. The status may be changed by notifying the Prior Bank Clearing Centre, one month prior to the actual date of the change, with a copy to the General Directorate of Network and Payment Systems of the Bank of Algiers.

Each participant must delegate one or more members of his or her staff as the only addressees with ATKI and the Bank Advance Clearing Centre.⁴

3.2 Procedure Electronic clearing

According to article 24 et seq. of the previous regime, participants are sent to the Ataki Denar Value Transfer System. in the form of e-mails, in accordance with the standards for e-mails adopted by the Committee on the Standardization of Payment of Payment, Sealed images of the instruments, phrases and bonds are directed to the addressees' order to ATKI. and such images are not subject to any processing of the clearing system, This is done

¹ - Act No. 23-09 "On male safes".

² - The aforementioned Regulation No. 05-06.

³ - Article 20 of the aforementioned Regulations No. 05-06.

⁴ - Article 22 of the aforementioned Regulations No. 05-06.

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in accordance with the calendar and timings of exchanges called sessions. After receiving messages from participants, ATKI transfers them to the participants sent on the same date as the submission.

The clearing process then takes place within a century's working days and the multilateral clearing of the total values processed has not been cancelled by the participant submitting the operations, nor has it been refused by the addressee within the statutory time limits.

After multilateral clearing, the system sends information to participants regarding their balances with an announcement of the end of the exchange day by the Centre for Advance Clearing, and the latter sends the clearing balances to the System for Immediate Gross Settlement of Large Sums and Expedited Payment (ARTSARETZ) for deduction.

In the event of a shortfall in the creditor's balance of the reconciliation account of one or several participants, the reconciliation of the set-off balance is deferred for a short period so that the participant or participants concerned can bring the necessary loans. When the settlement expires, the course of the Atki system sends to the General Directorate of Network and Payment Systems of the Bank of Algeria the necessary instructions to the debtor side to account for the guarantee fund, For the purpose of crediting to the settlement account of the participant or participants concerned. In the event that the previous settlement is unsuccessful here, we turn to the Arbitration Commission to find a solution and in the absence of a solution, the regime proceeds to reverse the set-off, according to article 39 of the previous regime.

Through the Bank of Algeria's annual report for the year 2021 on the electronic clearing system for payments to the wider public. In 2021, 251 exchange days were recorded, with the electronic clearing system handling the equivalent of 48.018 million transactions worth 17.980.117 billion dinars. The system processed an average daily volume of 0.191 million operations with a value equivalent to JD 71.634 billion. The instruments amounted to 7.642 million transactions and their electronic value was 15.203.428 billion dinars. Remittances amounted to 16.297 million and the financial value of 1375.465 billion dinars. Commercial papers amounted to 0.170 million, with a value of 312.111 billion dinars. Bank card transactions amounted to 23.867 million transactions worth 427.758 billion dinars ¹.

¹ - Annual Report 2021, Economic and Monetary Development of Algeria, Bank of Algeria, December 2022, p. 72, published on the website <https://www.bank-of-algeria.dz/wp-content/uploads/2023/02/rapport-ba-2021ar.pdf>

From the previous report, we note that transactions made by bank cards ranked first, accounting for approximately 50% of the volume of electronic clearing operations. The instruments (cheques) ranked first, exceeding 84% of the total financial values of electronic clearing.

For the settlement dates, article 31 of the former Regulations specifies that the settlement date shall be the date on which the set-off balances are sent in the instant gross adjustment system for large amounts and expedited payment for the purpose of settlement, the date shall be as follows:

- For transfers it is the day of submission.
- For bank card is the day of application.
- For instruments including bank instruments, two days after the day of submission
- For bonds (slates and bonds for an order) the day following the day of submission.
- For automated deduction is the day following the day of submission.

The cell intervenes at a fixed stop or imbalance for longer than the full clearing cycle of ATKI and in the case of repeated incapacity of one or more participants, and in the case of disputes recorded against participants.

In the event of a crisis, the Cell assists the Inter-Bank Clearing Centre by identifying the implications of the incident in the accounts and the need for clearing, as well as using all necessary means and resources to restore normal operational status at the earliest and, where necessary, a shortened solution to the flows that must be temporarily stopped could be implemented if this helps to promptly resume the normal functioning of the system.

Clearing accounts affected by the incident before and after the resumption of the system may also be adjusted where necessary, and in the event of one or more participant's incapacity, the elements allowing the Bank of Algeria to take decisions or decisions for its addressees are prepared.

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¹ - Article 05 of Learning No. 04-08 above.

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Clearing accounts affected by the incident before and after the resumption of the system may also be adjusted where necessary, and in the event of one or more participant's incapacity, the elements allowing the Bank of Algeria to take decisions or decisions for its addressees are prepared.¹

3.3.2 The Arbitration Commission.

Pursuant to article 39 of Regulation No. 05-06 referred to above, which provides for the establishment of the Arbitration Commission, the main objective of which is to find solutions to settle accounts through electronic clearing.

The Committee is composed of one of the Deputy Governor-in-Chief and Director-General of the Network and Payment Systems of the Bank of Algeria, Director-General of Loan and Banking Regulation, Director-General of Payment Systems of the Bank of Algeria, Director-General of the Centre for Prior Clearing between Banks, legal expert.²

The Committee shall meet in the presence of all its members no later than three hours from the moment one or more participants were examined for inability to pay in Atki the General Directorate of Network and Systems of the Bank of Algeria, The course of the Artes system is to send a detailed report to the Chairman of the Committee with the possibility of calling representatives of banks that are unable to pay. This is in order to propose one of the following solutions:

- The possibility for a participant or participants unable to pay to provide the necessary loans at the end of the grace period granted to them.
- The possibility for a participant or participants who is unable to pay to find loans in the banks' intranet cash market.
- The ability of the participant or participants who are unable to repay the loan operations within the day in the Artes system.

¹ - Article 06 of the above-mentioned instruction No. 04-08.

² - Article 02 of Instruction No. 03-08 of 25 March 2008 establishing the Arbitration Commission issued by the Bank of Algeria.

- The possibility for a participant or participants unable to pay to respond to the conditions that enable them to benefit from the Bank of Algeria's last lender operations.
- The ability of the self-protection mechanism, when established, to settle the participating debtor's balance of set-off or more unable to pay.¹

If all previous solutions to cover debts fail to set off, other solutions are sought in the banking family. If no solution is found here, the committee decides to reverse the clearing process.²

From an Inter-Bank Risk and Crisis Cell Study Cell and the Arbitration Commission, we see that they came late compared to the previous 05-06 system, i.e. a three-year delay, which constituted a regulatory vacuum that would impede the electronic clearing procedure, but through the presence of the Cell and the Arbitration Commission they would promote and enshrine electronic clearing within the Algerian banking system.

Conclusion:

Finally, we conclude that electronic clearing is a mechanism for settling the interconnected debts of Algeria's system of interbank clearing and, in short, ATCI, which is a very sophisticated system adopted by the legislator under the Regulation No. 05-06 of 15 December 2005 on clearing instruments and payment tools for other broader audiences.

The previous regime was limited only to persons authorized to participate in that system, namely banks and Algerian mail, the public treasury, and was subject to certain conditions.

The topic of electronic clearing includes the settlement of payment orders for cheques, also called instruments in addition to commercial securities, bank transfers and bank cards, where transactions via bank cards and transfers occupy the first rank through the number of transactions, and in terms of financial value the instruments are in first place, which exceeds 84%.

This system is administered by the Atki Bank Clearing Centre or the so-called Pre-Clearing Centre, a subsidiary of the Bank of Algeria established in a shareholder company, whose capital is open to banks. The Centre or rather the clearing system supports the Guarantee Fund, which was established for the final coverage of the participants' balances.

¹ - Article 07 of the above-mentioned instruction No. 03-08.

² - Article 08 of the above-mentioned instruction No. 03-08.

The legal system of electronic clearing

The engineering of ATKI includes continuous payment orders between participants depending on the nature of the exchange day and the calculation phase of multilateral net positions, depending on each participant before the close of the exchange day and a casting phase to reconcile the net balances in the participants' accounts open in ARTS.

This technology is in line with the evolution of the banking sector with the emergence of electronic transactions such as electronic cheque, electronic payment and electronic transfer.

In order to resolve problems related to the implementation of electronic clearing, an inter-bank risk and crisis management cell and an arbitration panel were established. The former could intervene at a standstill or proven imbalance for longer than Atki's full clearing cycle and also assist the clearing centre, while the latter offered several solutions to participants who were unable to pay.

Suggestions:

- Increased the value of electronic clearing transfers to more than DA 01 million because the amount came under a system dated 2005, so the amount must be adjusted to the true value of the Algerian dinar.
- Encouraging the handling of commercial papers, especially by means of payment, in order to increase the number of electronic clearing operations.
- Familiarize Atki with highly sophisticated security systems to avoid banking risks and prevent money-laundering offences.

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