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Issues in Acquiring Merchant Status for Natural Persons Between Practicing Commercial Activities and Registration in the Commercial Register.

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Abstract:

The merchant is a central figure in commercial law, as this field applies to both merchants and commercial activities. The latter forms the basis of the merchant's activity, defined as anyone engaged in commercial work as a regular profession. Although the Algerian legislator has intervened to define and set the conditions and elements required for merchant status, it has not fully succeeded. This is due to the contradictions and inconsistencies within the various provisions of Ordinance N° 75-59, which constitutes the Algerian Commercial Code, making this intervention quite limited. This situation calls for further analysis of the true conditions for acquiring merchant status by examining relevant laws on the topic.

Keywords: Merchant, Professional Practice, Commercial Register, Commercial Activities, Registration.

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INTRODUCTION:

Commercial law is predominantly classified as a segment of private law, encompassing a set of juridical norms that govern two distinct categories: one pertaining to commercial operations and the other to individuals designated as traders.

In an attempt to delineate the concept of a merchant, the Algerian legislator provided a tentative definition within Article 1 of Ordinance N° 75-59, a key component of the Commercial Code¹, despite the fact that the elucidation of legal terms generally falls within the purview of legal scholars. A merchant, as outlined, is subjected to a specialized legal regime, which diverges from that governing the general civil individual, due to their involvement in a spectrum of commercial undertakings. This distinction encompasses the merchant's subjection to insolvency proceedings, the admissibility standards of evidence in dedicated judicial forums, limitation periods, and expedited enforcement and notification procedures. **Such conditions, however, prompt an investigation into the specific criteria required for one to attain the status of a merchant. The Merchant and the Stability of General Conditions Amidst Contradictions in Algerian Commercial Law.**

This manuscript endeavors to scrutinize the notion of the merchant within the framework of Algerian commercial legislation, particularly in light of the inherent discrepancies between Order N° 75-59 (incorporating the Algerian Commercial Code) and a variety of supplementary statutory instruments. The primary objective is to establish a unified understanding by meticulously analyzing the provisions of Order N° 75-59, alongside the stipulations of Law N° 04-08 pertaining to the prerequisites for engaging in commercial activities², in addition to other pertinent legal enactments. Through a comparative examination, the paper seeks to elucidate the definition of the merchant, who occupies a pivotal role within commercial jurisprudence. This exploration employs both descriptive and analytical methodologies to assess the conditions requisite for acquiring merchant status (as discussed in Section One), followed by an examination of the discord

between these prerequisites and the resultant consequences of obtaining such status (outlined in Section Two).

The first Section: Criteria for Attaining the Status of a Trader

Article 1 of Ordinance N° 75-59 delineates that "a merchant encompasses any individual or corporate entity engaging in mercantile pursuits as a profession on a continuous basis, except where otherwise stipulated by statutory provisions." Accordingly, for an individual—whether a natural or juridical person—to be designated as a trader, they must undertake commercial endeavors on a regularized basis (constituting the initial requisite), coupled with possessing the requisite juridical competence as mandated by legal stipulations (the secondary criterion).

The first Requirement: Engagement in Commercial Endeavors as a Prerequisite for Attaining Trader Status

An individual, whether natural or juridical, does not attain the designation of trader solely by performing a singular mercantile task; rather, they must engage in such activities as a professional occupation (as outlined in the first subdivision). Moreover, these undertakings must specifically pertain to commercial operations (as discussed in the second subdivision).

The first subdivision: Conceptualizing the Practice of Commercial Endeavors

A professional occupation is characterized³ as the sustained engagement of an individual in mercantile pursuits, undertaken with the intention of establishing it as a livelihood, thereby fulfilling personal needs autonomously. This has also been articulated as the systematic and habitual involvement of an individual in commercial activities, wherein such activities serve as a primary means of subsistence⁴.

In his work, Professor Al-Abidi "Al-Azhar" conceptualized professional commercial activity as "the purposeful orientation of human endeavor toward the execution of commercial operations in a methodical and uninterrupted fashion, carried out independently, with the individual relying upon it as a source of income and profit⁵".

Drawing from these interpretations, it becomes evident that engaging in commercial professions—through which an individual attains the status of a trader—is predicated upon two essential conditions:

Firstly: Sustained and Uninterrupted Commercial Engagement:

A professional vocation necessitates that an individual engages in commercial enterprises with constancy and continuity⁶, using these endeavors as a consistent means of livelihood. This principle is substantiated in Article 19 of Law N° 04-08, which categorizes stable commercial operations—those carried out routinely within any establishment—as constituting mercantile activity. Conversely, sporadic participation in commercial endeavors does not qualify an individual for the designation of trader.

Therefore, for an activity to be deemed a professional pursuit, it must be conducted with regularity and permanence, establishing a clear boundary between "occupation" and "habit." The latter refers to the recurrent execution of a task, but without the requisite formalization and consistency that would elevate it to the level of a professional vocation. Occasional or infrequent involvement in commerce falls short of the continuity and regularity required to confer upon an individual the status of a merchant, as habitual participation in commercial activity is considered inferior to the demands of a professional commercial occupation⁷.

Secondly: Autonomy in Commercial Engagement as a Fundamental Requirement

The concept of independence denotes that an individual engages in mercantile undertakings under their own designation and for their own benefit, with the authority to make pivotal decisions pertaining to their business operations and assuming full responsibility for the consequences—whether resulting in profit or loss⁸. Consequently, an individual who engages in commercial transactions on behalf of another party, without assuming the inherent risks, does not attain the designation of merchant⁹. This principle is reinforced through Article 7 of the

Commercial Code, which clarifies that a spouse of a merchant does not acquire trader status merely by engaging in commercial activities within the framework of the spouse's business, unless they operate a separate commercial venture. Similarly, the first paragraph of Article 8 of the same legal text mandates that a female merchant must personally manage the activities relevant to her commercial needs. Additionally, Article 38 of Law N° 04-08 reiterates that only individuals registered in the commercial registry are authorized to carry out mercantile activities¹⁰. While commerce is typically conducted publicly, there may be situations where a person engages in mercantile endeavors covertly, utilizing a third party for reasons such as holding a public office or possessing a criminal history (e.g., convicted felon as per Article 8 of Law N° 04-08, and not rehabilitated). A legal conundrum arises in such cases regarding the true identity of the trader.

Some scholars posit that the hidden individual is the true merchant, given that the commercial activity is conducted for their benefit and with their capital, thereby bearing the responsibility for the effects of transactions conducted by the outward individual¹¹. Conversely, other legal experts argue that the visible person should be recognized as the merchant, to safeguard the legitimate reliance of third parties and to maintain the integrity of commercial transactions. A third group contends that both the visible and hidden individuals share the responsibility, as both are instrumental in the commercial undertakings.

Ultimately, it is the prevailing legal stance that both the apparent and the hidden parties should be considered as merchants, provided the hidden party is the actual investor, conducting commerce at their own risk and utilizing their own funds. In such cases, the apparent trader is equally classified as a merchant due to their visible participation in third-party transactions, thus acquiring the rights and obligations of a trader. Should the apparent trader face bankruptcy, this status is justified by their direct interaction with external parties, fostering the protection of the trust placed in them. This view

dominates the legal interpretation, where both parties acquire trader status, though they remain subject to the corresponding obligations without securing the associated privileges.

In this regard, Algerian legislation affirms that the hidden party is subject to the obligations of a trader, though without acquiring the associated rights, as a penalty. Article 9, paragraph 3 of Law N° 04-08 asserts that any transaction performed by a person in a state of incompatibility carries full legal weight for third parties acting in good faith, yet the individual retains no entitlement to benefit from the transaction. Such persons are also liable to sanctions for fraudulent bankruptcy under Article 382 of the Commercial Code if they secretly conduct business under a third party's name or a fictitious entity.

It is also significant to note that the concept of professional occupation, as a condition for acquiring merchant status, applies primarily to natural persons. For juridical persons (i.e., corporations), this notion is more difficult to implement, as their commercial identity is derived from their legal form. The commercial nature of companies is intrinsically linked to their structure or objectives, whereby partnerships, limited liability companies, joint-stock companies, and simplified joint-stock companies are all classified as commercial entities by virtue of their organizational design¹².

The second subdivision: The Object of the Profession

Article 1 of the Commercial Code stipulates that "a merchant is any individual or juridical entity that engages in mercantile activities as their habitual profession." This provision establishes that, in order to attain the status of a merchant, an individual or legal entity must be involved in activities that fall within the scope of commercial operations. Consequently, not all endeavors an individual undertakes will confer trader status; only those specifically classified as commercial activities will fulfill this requirement¹³.

Upon examining Articles 2, 3, and 4 of the Commercial Code, one observes a detailed delineation of mercantile operations. Article 2 elaborates on commercial activities categorized by their subject matter, while Article 3 addresses

them by their structural form, wherein the Algerian legislator delineates five distinct and exclusive categories. Meanwhile, Article 4 discusses commercial endeavors in terms of collaborative ventures.

Specifically, Article 2 defines a spectrum of commercial operations based on their subject, some of which are standalone in nature, while others are manifested through a corporate structure. Although the forms of corporations cited by the Algerian legislator are provided as illustrative rather than exhaustive, this does not present a substantial concern, as legal scholars have established the requisite conditions for an activity to qualify as a commercial enterprise¹⁴. These include prior systematic organization, with the requisite allocation of both material and human resources, in addition to the requirement of repetition, which entails two components: professional engagement and speculative intention.

Thus, it may be initially concluded that an individual engaged in any of the activities outlined in Article 2 would, in principle, be granted trader status, as these activities are deemed core mercantile undertakings.

Shifting focus to Article 3 of the Commercial Code, which categorizes commercial activities by their form, a critical issue emerges regarding the criteria under which these activities qualify as professions, thereby granting the designation of a trader. Simply engaging in a repetitive activity on a regular basis, without the intent to derive profit or rely on it as a primary means of livelihood, does not suffice to bestow trader status upon the individual involved¹⁵.

Thus, engaging in mercantile activities based on form does not necessarily confer trader status upon an individual, and even in instances where it does, it is not invariably through professional involvement. The habitual acceptance of bills, even when practiced with regularity and consistency, does not grant trader status, as such actions are not oriented toward speculative profit; a bill merely functions as a payment instrument and is inherently subordinated to a primary commercial endeavor¹⁶. Similarly, commercial corporations attain mercantile status

either through their subject matter, provided it aligns with the activities enumerated in Article 2 of the Commercial Code, or through their structural form, as delineated in Article 544 of the Commercial Code, even when their subject matter pertains to civil matters. Furthermore, concerning partners, trader status is only conferred upon a partner who assumes the role of a general partner, as seen in general partnerships, simple limited partnerships, and joint-stock limited partnerships, where the inherent structure of these entities necessitates the presence of at least one general partner¹⁷.

In this context, only the general partners are granted mercantile status, but not by virtue of professional involvement. Rather, this designation arises from the distinctive characteristics of these entities, which impose unlimited liability on general partners, encompassing both personal and corporate assets. As a result, the general partner is susceptible to bankruptcy proceedings. In general, an individual does not attain the merchant title solely by virtue of being a partner in a commercial entity, except in exceptional cases previously delineated, and without engaging in any actual commercial activity.

Regarding transactions associated with commercial establishments, encompassing actions such as sale, lease, or mortgage, it is important to note that a mortgage on a commercial entity functions merely as a collateral contract securing an outstanding debt. Consequently, the mortgagor does not intend to derive profit through this transaction, and, by its inherent nature, a mortgage does not generate income. Hence, an individual does not acquire trader status merely by engaging in the mortgaging of an establishment, even if such actions are recurrent.

An individual may attain the designation of merchant under Article 3 of the Commercial Code if their activities pertain to maritime commerce for profit or if they operate within the structural form of an agency, office, or commercial entity. This encompasses a range of commercial transactions, such as sales and leases, excluding mortgages.

Upon juxtaposing the commercial transactions enumerated in Articles 2 and 3 of the Algerian Commercial Code, it becomes apparent that the Algerian legislator has not adopted a coherent methodology in distinguishing between commercial transactions by subject matter and those by form, leading to an overlap and inconsistency. For example, Article 2 categorizes all insurance contracts and maritime commerce-related agreements as commercial transactions by subject, whereas Article 3 classifies any commercial contract linked to maritime and air commerce as a commercial transaction by form. This discrepancy raises an important query regarding the nature of contracts related to maritime commerce: Are these transactions considered commercial by subject or commercial by form? Resolving this question is vital for determining whether the individuals involved in such activities qualify as merchants, as the transactions in Article 2 are exemplary, permitting analogical reasoning, whereas those in Article 3 are exhaustive and must be applied restrictively, without extending interpretations.

The scope of what constitutes a commercial profession introduces another layer of complexity. The matter is not confined to the categorization of transactions by subject and form alone; the legislator has also introduced a third classification, namely, commercial transactions by accessory, further complicating the issue.

The Algerian legislator has classified accessory commercial acts as those contingent on both personal and objective criteria, as articulated in Article 4 of the Commercial Code. Initially, these acts are civil in nature but acquire a commercial character when performed by a merchant (personal criterion) and directly linked to their commercial enterprise (objective criterion). This classification also applies when the act pertains to obligations between merchants, whether arising voluntarily (from contract or unilateral intent) or involuntarily (from statutory law, quasi-contracts, or tortious actions).

The commercial nature of such acts is inherently tied to the profession of the individual performing them, as the profession imbues these acts with a mercantile quality, provided they pertain to the activities of the commercial enterprise or the needs of the business, as is the case with obligations arising between merchants.

With regard to accessory commercial acts and the establishment itself as an inherent mercantile pursuit, Article 1 of the Commercial Code defines a merchant as anyone engaged in a commercial act. Article 4 further elucidates this, describing a commercial act as one executed by a merchant for the purposes of their business or commercial establishment. This results in a circular definition, wherein the merchant is identified based on the commercial act, and conversely, the commercial act is defined based on the merchant. This creates a conceptual loop, making it difficult to provide a clear distinction between merchants and commercial acts, due to the inherent contradictions between Articles 1 and 4 of the Commercial Code.

This effectively excludes accessory commercial acts from the realm of commercial acts that could confer merchant status, as these acts are inherently civil in nature. It would be illogical to consider such acts as a criterion for obtaining merchant status, given that such a status is a prerequisite for categorizing an act as an accessory commercial act. Consequently, the acquisition of merchant status must precede the classification of an activity as an accessory commercial act¹⁸.

Thus, it can be deduced that the requirement of professional engagement, as a determinant for acquiring merchant status, is confined to commercial acts as outlined in Article 2 of the Algerian Commercial Code, along with certain specific acts identified in Article 3, as previously elaborated¹⁹.

The activity of the establishment must be lawful, as it pertains to matters of public order. If all criteria for professional practice are satisfied, yet the activity is unlawful, the individual will not attain merchant status, as exemplified by someone engaged in illicit trafficking, such as drug distribution.

Second Requirement: Commercial Competence

In order to attain merchant status, a natural person must possess the requisite commercial competence, as outlined by legal provisions, whether as an adult (first section) or as a minor (second section).

First Section: The Competence of an Adult to Attain Merchant Status

Commercial competence denotes the capacity of an individual to acquire rights, assume obligations, and perform legal actions. Since commerce is a domain entailing both profit and risk, the Algerian legislator intervened to establish a legal threshold for assuming the consequences of participating in such activities.

Should an individual lack the necessary commercial competence, they cannot be regarded as a merchant, even if they engage in commercial operations as a profession²⁰. It is crucial to distinguish between the absence of commercial competence and the prohibition of engaging in trade. An individual may possess the legal capacity to participate in commerce yet be legally restricted from doing so. This applies to categories such as public servants, medical professionals, and legal practitioners²¹. However, if these individuals partake in commercial endeavors, their activities are legally classified as commercial, and they are bound by the full spectrum of obligations incumbent upon merchants, designed to safeguard the rights of third parties engaging with them. Despite this, they may face disciplinary sanctions for infringing upon the prohibitions specific to their respective professions²², or may be subject to prosecution for criminal or quasi-criminal offenses, as delineated in Article 8 of Law N° 08/04, provided they have not been rehabilitated.

The Algerian legislator does not explicitly define commercial competence within the provisions of the Commercial Code, necessitating recourse to the broader legal framework provided by the Civil Code. In accordance with Article 40 of the Civil Code, an individual attains the status of legal adulthood upon reaching the age of 19, at which point they

are deemed fully competent to make autonomous decisions, provided they have not been subjected to guardianship.

Consequently, any individual who has attained the age of 19, regardless of gender, and who has not encountered any legal incapacities, is qualified to engage in commercial activities.

Disqualifications of Legal Capacity are primarily delineated as insanity and idiocy, conditions that entirely negate a person's legal ability to act²³. Consequently, any legal actions undertaken by individuals who are deemed insane or idiotic are regarded as void ab initio. Furthermore, conditions such as prodigality and recklessness constitute partial disqualifications of capacity²⁴.

Additionally, individuals with dual sensory impairments—such as being both deaf and mute, blind and deaf, or blind and mute—who are unable to effectively express their intentions, may be assigned a judicial assistant by the court. This assistant's role is to aid the individual in performing actions that align with their interests. Any transaction carried out by a person under such judicial assistance, in the absence of their designated assistant, is subject to annulment²⁵.

It is important to acknowledge that an individual may be fully competent yet still face prohibitions from engaging in commercial activity, thereby preventing them from acquiring merchant status²⁶. These prohibitions can arise from a judicial decree, such as in the case of individuals who have been declared bankrupt and have not undergone rehabilitation, or those convicted of specific crimes enumerated in Article 149 of the Commercial Code, particularly those involving certain commercial activities. Furthermore, individuals who have been convicted of specific felonies or misdemeanors, as outlined in Article 8 of Law N° 04-08, related to the conditions for engaging in commercial activities, face similar restrictions.

It is crucial to emphasize that the aforementioned provisions pertain specifically to domestic adults, particularly Algerian nationals. In the context of the capacity of foreign nationals, Article 10(1) of the Civil Code stipulates that the capacity of individuals is governed by the jurisdiction of their

nationality. Therefore, the law governing the legal maturity, capacity limitations, and the validity of actions executed by minors or those deemed incapacitated is determined by the national legislation of the individual's country of origin. Consequently, in matters concerning commercial capacity, foreigners are not subject to Algerian law but are instead regulated by the jurisprudence of their respective national legal systems²⁷.

However, an exception to this general principle is articulated in the second paragraph of Article 10 of the same legislative instrument. In certain instances, Algerian law supersedes the foreign law, mandating that the individual must meet the Algerian criteria of being 19 years of age, fully mentally competent, and not subjected to any form of guardianship. This exception applies when the contracting party, unaware of the foreign individual's incapacity under their national legal framework, is blindsided by a concealed defect that is not immediately apparent. This exception has been judicially endorsed by French jurisprudence, most notably in the landmark "Lizardi" case, which marked the historical genesis of this rule within the broader spectrum of legal systems that have adopted this principle²⁸.

To invoke this exception:

- The transaction in question must possess a financial nature, such as those related to commercial dealings, excluding matters of personal status such as marriage.

- The transactions must be executed within Algeria and yield their effects within its jurisdiction.

This exception does not apply to transactions concluded within Algeria that have effects outside of it, or vice versa. Moreover, the foreign contracting party must be regarded as legally competent under Algerian law while lacking the capacity under their national law. This stipulation is logical, as the exception cannot be applied if the foreigner is also deemed incapable under Algerian legal standards. If a party can be excused for being unaware of the foreigner's incapacity

according to their national law, they are not excused for the same ignorance under Algerian law.

If the incapacity of the foreigner is due to a concealed reason that is not immediately apparent, the discretionary authority on this matter resides with the judge.

When all these conditions are satisfied, the contracting party has the right to invoke this exception, thus rendering the transaction valid and effective under Algerian law. Consequently, the transaction will be governed by Algerian law as an exception.

second Section: The Capacity of minors

Concerning commercial activities, these acts typically straddle the boundary between advantage and risk. When executed by a person with diminished legal capacity, such acts are liable to annulment for the benefit of that individual. Therefore, as a general principle, commercial transactions remain valid and operative when carried out by a party with full legal capacity.

The Algerian legislator has addressed the issue of emancipation of minors within the Commercial Code. This provision permits minors to engage in commerce as adults, subject to specific legal criteria and constraints.

Under Article 5 of the Commercial Code, the legislator permits the emancipation of minors if certain conditions are met. These include the minor having reached the age of eighteen years and obtaining authorization from the father. In cases where the father is deceased, absent, or incapable of exercising paternal authority, permission must be obtained from the mother. In the absence of both parents, the minor must secure a decision from the family council, comprising close relatives such as grandparents, uncles, aunts, or elder siblings. This written authorization or decision must accompany the application for registration in the commercial registry.

While the Algerian legislator allows emancipated minors to conduct business akin to adults, making their transactions legally binding and effective, certain restrictions are imposed by Article 6 of the same law. These restrictions primarily concern

the disposition of immovable property, whether voluntarily or compulsorily, given the significant value of such assets. The legislator mandates compliance with the prescribed procedures when selling the property of minors or individuals lacking full legal capacity.

Referring to Articles 88 and 89 of Ordinance N° 84-11, which encompasses the Family Code²⁹, the procedures stipulate that prior judicial consent must be obtained by the guardian, custodian, or trustee for the disposition of immovable assets. Should the court grant approval for the transaction, it is considered legally binding; if not, the act is deemed categorically null and void. Furthermore, the transfer must occur through a public auction process.

Regarding the extent of authorization for the disposal of movable assets, such approval may either be unconditional or subject to specific limitations, with the discretionary power vested in the authority responsible for issuing such permission. Accordingly, if the authorization is granted without condition, the minor is free to engage in any commercial activity. However, if the authorization is subject to restrictions, the minor must comply with those constraints. Any actions that exceed the confines of the granted authorization will render the transaction voidable due to the minor's legal incapacity concerning those actions. The minor will not acquire the status of a merchant beyond the scope of the granted authorization³⁰.

Chapter Two: The Discrepancy Between the Preconditions for Attaining Merchant Status and Its Consequential Legal Ramifications.

Upon fulfilling the requisite conditions for acquiring merchant status, a new legal entity—designated as "merchant"—is established. However, in practice, various issues emerge due to inherent contradictions within commercial legislation. These concerns encompass disputes regarding the evidence of professional activity (Section One) and the juridical nature of registration in the commercial register—whether it merely substantiates professional engagement and consequently imposes corresponding duties on the individual, or whether it

functions as an obligatory prerequisite for obtaining merchant status (Section Two).

Section One: Verification of Commercial Activity

As stipulated by Article 1 of the Algerian Commercial Code, a merchant is defined as any person who engages in commercial endeavors as a profession and a source of livelihood. Given that commercial involvement constitutes a factual reality, it can be substantiated through any admissible form of proof, in accordance with the principle of evidentiary freedom in commercial disputes. Therefore, according to this provision, the acquisition of merchant status depends primarily on the actual practice of commercial activity, rather than on formal registration in the commercial register, as such registration is not a requisite for obtaining the status.

Thus, an individual who conducts commercial transactions on behalf of a hidden principal is still regarded as a bona fide merchant, serving to preserve the integrity of appearances.

Notwithstanding the clear stipulation in Article 1 of the Algerian Commercial Code, which demands proof of actual engagement in commercial activities for one to attain merchant status, Article 21 introduces a divergent principle. Specifically, it declares that anyone listed in the commercial register is presumed to possess merchant status, irrespective of their actual involvement in commercial endeavors. In this regard, mere registration in the commercial register is sufficient to confer merchant status, creating a clear conflict with the stipulations in Article 1, which requires tangible evidence of commercial practice.

This discrepancy reveals that merchant status cannot be presumed but must be substantiated by the claimant through the presentation of pertinent evidence, as this is an empirical issue that is within the discretionary power of the adjudicating judge. However, this rule is modified in the case of individuals who are duly registered in the commercial register, as registration establishes a presumption of merchant status, effectively transforming the act of registration into a quasi-legal declaration of the individual's commercial identity, particularly since the

commercial register extract is regarded as an official document³¹.

Additionally, Section 2 of Article 2 of Law N° 08-04, which delineates the prerequisites for engaging in commercial activities, reinforces this presumption by affirming that the commercial register extract serves as an official document granting any legally capacitated person the right to engage in commercial activities. Official documents, by their nature, are susceptible to challenge solely on the grounds of forgery, thereby rendering the claim of merchant status unassailable unless evidence of falsification is presented. Hence, an individual holding a valid commercial register extract, irrespective of their actual participation in commercial activities, is deemed to have acquired merchant status *ipso facto*, according to this provision.

This, therefore, suggests that registration in the commercial register is not merely a procedural obligation but, in fact, a condition precedent to the acquisition of merchant status under Algerian law.

Some scholars infer from the text of Article 21 of the Commercial Code that "any individual registered in the commercial register is deemed to have acquired merchant status... unless proven otherwise." However, following its amendment by Ordinance N° 27-96, the legislator removed the phrase "unless proven otherwise," thus positioning registration as definitive proof of merchant status, refutable only by claims of forgery. Nevertheless, when applying the stipulations of Article 1 of the Commercial Code, it becomes clear that while registration may serve as *prima facie* evidence of merchant status, failure to register does not, in itself, imply the presumption of not possessing such status³².

In reference to Article 25 of Law N° 22-90, which regulates the commercial register, any interested party is empowered to lodge appeals against disputes concerning the legal capacity of a trader or issues related to registration in the commercial register. Such appeals must be filed before the judge overseeing the commercial register, who will resolve the matter

through an order. The registration process is suspended during the pendency of the appeal, pending a final judicial determination. If the judgment upholds the trader's status, the registration is deemed fully effective; if not, it is annulled, and a note of cancellation is entered in the margin of the register.

Further, the first paragraph of Article 4 of Law N° 08-04, addressing the conditions for engaging in commercial activities, permits challenges to the commercial register in cases of disputes or conflicts, which can be brought before the competent judicial authorities.

These two provisions underscore that the Algerian legislator has granted any concerned party the right to challenge the legal capacity of a trader and to suspend the registration process in the commercial register. This provision is likely a safeguard aimed at protecting the interests of traders, consumers, and the economy. The influx of a new trader into a particular sector could potentially threaten smaller traders and, by extension, harm consumer interests by altering competitive dynamics.

Moreover, the legislator mandates that if an appeal is made, the registration process will be suspended until a final judicial decision is rendered, which is a logical application of the suspensive effect of an appeal. The judgment is expected to examine whether the commercial register extract or the accompanying documents are forged, as clarified in paragraph 2 of Article 2 of Law N° 08-04, which recognizes the extract as an official document.

However, under the practical application of Article 25 of Law N° 22-90, the presiding judge evaluates whether the individual has genuinely engaged in commercial activity, as opposed to merely being registered in the commercial register. The law mandates the suspension of registration and the annotation of its cancellation in the margin if deemed necessary.

Thus, the Algerian legislator's reinterpretation of Article 1 of the Commercial Code reaffirms the primacy of actual commercial activity in determining merchant status, relegating the provisions of Article 21 of the Commercial Code and

paragraph 2 of Article 2 of Law N° 08-04—which treat registration as a presumption of acquiring such status—to secondary consideration. In effect, registration in the commercial register becomes a rebuttable presumption, subject to challenge by third parties who can demonstrate otherwise.

This legal framework indicates that the Algerian legislator assigns absolute evidentiary weight to commercial register registration only in relation to the registered individual. Third parties, however, retain the ability to challenge the registration or demonstrate that an individual engages in commercial activity without formal registration, as exemplified by the situation of a concealed trader.

Given the apparent contradictions within the provisions of the Commercial Code (Articles 1 and 21), the regulations governing the commercial register (Law N° 22-90), and those concerning the conditions for conducting commercial activities (Law N° 08-04), it becomes evident that the Algerian legislator has not adopted a coherent and uniform approach in defining the concept of a trader. This discrepancy prompts further inquiry into whether registration in the commercial register constitutes a mandatory obligation for traders or merely serves as a presumptive indicator of acquiring trader status.

Second Requirement: To what extent is registration in the commercial register a presumption of acquiring trader status or an obligation imposed on traders?

According to Article 19 of the Commercial Code, any natural person considered a trader under Algerian law and conducting their commercial activity within national territory is required to register in the commercial register. This also applies to legal entities, whether they are traders by form or by substance, whose headquarters are in Algeria, including foreign entities effectively conducting activities in Algeria. Article 20 of the same law reinforces this requirement, stating that registration is mandatory for every trader, whether a natural or legal person.

From these two articles, it is understood that a person must first engage in commercial activities in accordance with Article 1 of the Commercial Code. Subsequently, the obligation of registration in the commercial register arises. This indicates that registration is not a presumption of acquiring trader status, as it is required only after practicing and engaging in commercial activities. Instead, it is an obligation imposed on the trader.

Referring to the first paragraph of Article 4 of Law N° 08-04, concerning the conditions for practicing commercial activities, it requires every natural or legal person wishing to engage in a commercial activity to register in the commercial register. The use of the verb in the present tense ("wishing") suggests that any person intending to practice commerce must comply with the procedures for registration in the commercial register as specified by Executive Decree N° 15-111, which outlines the modalities for registration, modification, and deletion in the commercial register³³. This obligation applies regardless of the actual practice of commercial activities as stipulated in Article 1 of the Commercial Code.

Thus, under this provision, any person, even without conducting any commercial activity, may acquire trader status. This raises the question of how Article 1 of the Commercial Code, Article 25 of Law N° 90-22 (on the commercial register), and Articles 19 and 20 of Ordinance N° 75-59 (the Commercial Code) are to be reconciled. These articles emphasize that registration applies to individuals who have already acquired the status of a trader?.

In the same context, Article 3 of Executive Decree N° 13-140, which specifies the conditions for practicing itinerant commercial activities³⁴, states that itinerant commercial activities are practiced by natural persons holding commercial registers bearing activity codes designated according to the classification in the Index of Economic Activities subject to registration in the Commercial Register. Furthermore, Article 5 of the same decree stipulates that the practice of itinerant commercial activities is subject to registration in the Commercial Register and obtaining a license from the President

of the Municipal People's Council for a location within prepared spaces or exhibitions.

On the other hand, according to Article 1/18 of Law N° 90-22, mentioned above, registration in the Commercial Register establishes the legal status of a trader. In cases of objection or dispute, only the competent courts may adjudicate. This registration also grants the right to freely practice commercial activity.

Article 22 of the Commercial Code, for its part, emphasized that engaging in commercial activities places the burden of initiating registration procedures on the individual who has acquired the status of a trader. However, the Algerian legislator is criticized for setting a maximum period of two months to initiate commercial activities before registering in the Commercial Register. From a practical standpoint, can engagement in trade be established within this timeframe?

According to the first paragraph of Article 22 of the Commercial Code, a person who engages in commercial activities for two months without initiating registration in the Commercial Register cannot assert their status as a trader. As a general principle, registration is an obligation for the trader after practicing and engaging in commerce. Failure to register strips the individual of their trader status. However, this is not a presumption for acquiring this status. The second paragraph of the same article addresses another rule, stating that non-registration in the Commercial Register cannot be invoked as an excuse to evade obligations. This means that an individual is subject to the legal framework governing traders regarding their obligations, even if they are not registered in the Commercial Register.

Thus, given these glaring contradictions between the provisions of the Commercial Code on the one hand, and the provisions of the law on the Commercial Register as well as the law concerning the conditions for practicing commercial activities on the other hand, the question remains: Who is considered a trader? Is it the person engaged in commercial activities or the person registered in the Commercial Register?

And is registration in the Commercial Register merely an obligation imposed on the trader, or is it the process through which an individual acquires the status of a trader?

Conclusion:

The Algerian legislator, through the stipulations of the Commercial Code, has delineated the prerequisites for acquiring merchant status, as per Article 1. However, due to inherent contradictions between various provisions, the framework fails to provide a coherent and consistent legal structure. The following points outline these contradictions:

Inconsistency Between Articles 1 and 4: Article 1 defines a merchant by reference to the engagement in commercial activities, which naturally directs one to Article 4. However, Article 4 subsequently defines commercial activities with respect to the merchant, thus creating a cyclical dependency on Article 1, leading to an unclear circular reference that undermines the clarity of the legal definition.

Contradiction Between Articles 1 and 21: While Article 1 stipulates that a merchant is defined by the exercise of commercial activities as a profession and a livelihood, Article 21 adopts a divergent perspective. This article posits that mere registration in the commercial register suffices to bestow merchant status, without any requirement for prior engagement in commercial activities, thereby contradicting the intent of Article 1.

Conflict Between Articles 4 of the Commercial Code and Law N° 08-04: Article 4 of the Commercial Code requires that a person wishing to engage in commercial activity must be registered in the commercial register. In contrast, Articles 19 and 20 of the Commercial Code assert that registration is mandatory only for individuals who have already attained merchant status, highlighting a significant discrepancy in the procedural requirements.

Discrepancy Between Article 2/2 of Law N° 08-04 and Article 25 of Law N° 22-90: Article 2/2 of Law N° 08-04 treats the commercial register extract as a public document, while Article 25 of Law N° 22-90 empowers the judge to assess the

acquisition of merchant status based on the actual practice of commerce. This creates a divergence in the interpretation of the legal standing of the commercial register extract, with one provision regarding it as a conclusive public document and the other stipulating that a judicial review of professional activity is necessary to confirm merchant status.

Given these contradictions, it is imperative that the Algerian legislator promptly intervenes to reconcile these conflicting provisions. A legislative amendment is necessary to clarify the conditions for acquiring merchant status in a manner that eliminates ambiguity and resolves interpretive disputes, especially considering that these contradictory provisions are part of the same legal framework. This would render the application of the principle of *lexspecialis* overriding *lexgeneralis* inapplicable, as the articles involved should harmonize to ensure consistent and enforceable legal standards.

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06)-Law N° 04-08, dated August 14, 2008, concerning the conditions for practicing commercial activities, Official Gazette N° 52, issued on August 18, 2008, amended and supplemented.

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1 -Ordinance N° 75-59, dated September 26, 1975, contains the Algerian Commercial Code, published in Official Gazette N° 101, dated December 19, 1975, as amended and supplemented.

2 -Law N 04-08, dated August 14, 2008, concerning the conditions for engaging in commercial activities (published in Official Journal N° 52 on August 18, 2008), as amended and supplemented, provides further context for this requirement.

3 It is worth noting that prior to the amendment of the Commercial Law under Ordinance N° 96-27, the Algerian legislator used the term "craft" instead of "profession" in defining a trader under Article 1. This was a positive change, considering that the term "profession" is broader than "craft," which is limited to traditional handicrafts.

4 - Bandar bin Hamdan Al-Otaibi, "Principles of Commercial Law" (2016), Riyadh, Law and Economics Library, p. 45.

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6 - Abdel Razzaq Jajan Abdel Qader, Omar Burghul, and Fares, "Introduction to Commercial Law: Commercial Activities, Trader, and Store", University of Aleppo Publications, Syria 2008, p. 128.

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 - 9 - Essam Hanfi Mahmoud, "Commercial Law", Part One, D S N, D B N, p. 225.
 - 10 - Abdel Qader Labqirat, "op, cit", p. 35.
 - 11 This includes crimes related to: movement of capital to and from abroad, production or marketing of counterfeit and adulterated products intended for consumption, bankruptcy, bribery, counterfeiting, violation of copyright and neighboring rights, and drug trafficking.
 - 12 - Mohammed Hassan Al-Jabr, "Saudi Commercial Law", 4th Edition, King Fahd Library, Riyadh, 1996, pp. 106-107.
 - 13 - Article 544 of Ordinance N° 5975, included in the aforementioned Commercial Law.
 - 14 - According to this definition, a range of activities are excluded from the commercial profession, including agricultural activities, crafts, civil companies, cooperatives that do not aim to achieve profit, independent civil professions practiced by natural persons, and public institutions responsible for providing public services, except for public institutions with an industrial and commercial character, as stipulated in Article 7 of Law N° 04-08 regarding the conditions for practicing commercial activities.
 - 15 - Bandar bin Hamdan Al-Otaibi, previously cited reference, p. 40.
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- 23 Ibid, , p 136.
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- 26 Article 43 of the same Code.
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- 28 Article 43 of Ordinance N° 06-03 of July 15, 2006, the Public Service Basic Law, as amended by Law N° 22-22 dated December 18, 2022 (Official Gazette N° 46, July 16, 2006, and N° 85, December 19, 2022).
- 29 It is noteworthy that only the general capacity to perform legal acts falls within the scope of Article 10 mentioned above. Specific capacity to perform acts and the capacity to acquire rights and obligations are excluded from its scope. Refer to Belkacem Aarrab, Algerian Private International Law: Conflict of Laws, Houma Publishing House, Algeria, 2002, p. 218.
- 30 The facts of the case are as follows: a 23-year-old Mexican man named Lizarde purchased jewelry from a French merchant. To fulfill the payment, he issued several promissory notes. When the due date arrived, he refused to pay. In response, the French merchant filed a lawsuit against him. Lizarde argued that the notes were invalid due to his lack of legal capacity under his national law, which sets the age of majority at 25 years. However, the French court ruled against him, ordering him to pay the value of the notes. The Court of Cassation upheld the judgment, reasoning that an individual cannot be expected to be familiar with all the laws of the world. It suffices that they contract without

recklessness or negligence and act in good faith. Refer to Belkacem Aarrab, op. cit., pp. 218-219.

31 See also Belkacem Aarrab, op. cit., pp.221-223.

32 *Ordinance N° 84-11, dated June 9, 1984, comprising the Family Code, Official Gazette N° 24, published on June 12, 1984, as amended and supplemented.*

33 -Executive Decree N° 11-15, dated May 3, 2015, specifying the modalities for registration, modification, and deletion in the commercial register, Official Gazette N° 24, issued on May 13, 2015.

34 -*Executive Decree N° 140-13, dated April 10, 2013, determining the conditions and modalities for practicing itinerant commercial activities, Official Gazette N° 21, published on April 23, 2013.*