

# The Brief

August 2004

## Mediterranean and the Orient

### NEWS FLASH

#### Algeria - Conversion of debt into investment

The debt conversion agreement between France and Algeria, signed in Algiers on 17 December 2002 during the visit of France's Minister of Foreign Affairs, Dominique de Villepin, is intended to fulfil a dual role: it is a means both of relieving part of Algeria's debt to France (61 million euros) and promoting investment in Algeria. For a number of years now, the Algerian government authorities have been attempting to encourage French businesses to go beyond the stage of mere trade relationships towards physically establishing businesses in Algeria.

This is the context in which the French Ministry of the Economy, Finance and Industry (FMEFI) issued, on 26 July 2004, a preliminary invitation to tender for the assignment of debt claims against Algerian to those investors interested in converting Algerian debt into investment. According to the official communiqué, investor bids are due to be submitted no later than 6 September 2004 to COFACE.

The aim of this memorandum is to explain the conversion mechanism. It is worth noting that the procedure is similar to that for previous debt conversion agreements signed by France, such as its agreement with Morocco.

#### 1. Eligibility

Conversions of debt into investment are subject to the following terms and conditions.

##### 1.1 Eligible investors

The conversion mechanism is only available to natural persons or corporate entities that are non-resident in Algeria.

This agreement is open to all non-resident investors regardless of their nationality.



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## 1.2 Eligible investments

Eligible investments are capital investments that may benefit any economic sector, involving the financing of a new venture, the furtherance of an existing venture or acquiring an equity interest in an Algerian company.

The amount in Algerian dinars recovered pursuant to the conversion mechanism will enable investors either to acquire (fixed or moveable) assets or to purchase or subscribe for shares in an Algerian company with a view to carrying on an economic activity to produce goods or supply services.

The relevant company may be a private company governed by the Commercial Code or a "public economic corporation". Such corporations are commercial companies subject to the general law and directly or indirectly controlled by the State or a public law corporate entity<sup>1</sup>.

Offering the capital of such an undertaking for private acquisition will constitute privatisation within the meaning of Ordinance No. 01-04 of 20 August 2001 governing the organisation, management and privatisation of public economic corporations. Any privatisation is subject to special legal rules and requires, *inter alia*, the prior consent of the State Equity Investments Committee.

## 2. Approval by the Algerian authorities

Any investment eligible to benefit from the conversion mechanism must first be approved by the Algerian authorities. This approval will be granted by the Algerian Ministry of Finance according to the following procedure:

### 2.1 Submission of an investment proposal

Applications for approval of an investment must contain the information set out at the end of this memorandum and be submitted to the Debt to Investment Conversion Programme Implementation Committee, Directorate General of the Treasury, Ministry of Finance. Applications are investigated in order to make an overall assessment of the contribution that such a venture may make to the Algerian economy.

The Debt to Investment Conversion Programme Implementation Committee comprises representatives of the Algerian Directorate General of the Treasury, the Bank of Algeria, the Minister of the privatizations and promotion of investment and the National Investment Development Agency.

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<sup>1</sup> These commercial companies are either joint stock companies or limited liability companies governed by the Commercial Code.

## 2.2 Notice of approval to the potential investor

Within 30 days of the date of receipt of the application for approval by the Algerian authorities, the Algerian Minister of Finance will give written notice of his decision regarding the potential investor, with copy of this notice to the French authorities.

The Minister of Finance may issue three distinct types of decision:

- a rejection, where the proposed investment does not satisfy the eligibility criteria or is assessed as making an insufficient contribution to the Algerian economy; or
- a request for further and better particulars, in which case the aforementioned 30 day period will begin on the date the additional information is received; or
- an approval, which will stipulate the amount of the debt to be converted, the redenomination rate and the terms and conditions to be agreed with the investor.

The FMEFI will apply a discount to debt claims at a rate of around 44%. This rate takes into account an adjustment of the debt to reflect its current value and any variations resulting from exchange rate fluctuations. This rate means that Algeria undertakes to repurchase the debt claim for 56% of its face value.

To make the mechanism attractive, the FMEFI will sell the debt claim at a price just below its par value (56% of its face value), for example, at 54%.

## 3. Purchasing debt claims from the French Government

The French Treasury has issued an invitation to tender to which investors respond by making bids, through a bank, offering to pay a purchase price for French debt claims.

Investors are invited to make debt claim purchase bids of up to 61 million euros based on the face value of the debts which should be submitted to COFACE no later than 6 September 2004. These bids should be valid until the French authorities notify the bidders of their decision, which will be no later than 6 October 2004.

These bids are required to include the face value in euros of the debt claims that the investor wishes to acquire and the proposed price, net of costs or commissions, that the bidder is offering for the purchase of the debt claims. All bids must be for a minimum of one hundred thousand (100 000) euros calculated on the face value of the debt claims. If the bid is for a debt face value exceeding this figure, it should also specify that the bidder is willing to

accept an assignment of debt claims for an amount less than that requested at its offer price.

It is understood that making a bid as part of the invitation to tender supposes that the Algerian authorities have already granted the bidder their prior consent to its proposed investment project. In this respect, the bid should set out the local currency payment terms agreed with the Algerian authorities.

The bid must contain a firm commitment on the part of the bidding bank to pay the amount to be specified in the debt claim assignment agreement on the date the transaction is settled. All investors awarded debt claims will have a period of forty (40) days to complete the assignment.

The price at which the debt claim will be awarded to the investor must be less than its par value (56%) in order for the investor to be able to make a profit.

#### **4. Debt conversion**

The investor to which a debt claim is awarded will notify the French Treasury of the date the purchase price in euros for the debt claim will be paid to the French Government. Payment should be made within 120 days of the attribution date. If the debt conversion transaction is not completed within this 120 day period, the attribution will be annulled.

The French Treasury will notify the Algerian Treasury when the investor has paid the debt claim purchase price. Within 15 days of receipt of this notice, the Algerian Treasury will buy the debt claim back from the investor at the equivalent in Algerian dinars of Algeria's debt claim repurchase price (56% of the debt's face value) which it will pay into the Algerian bank account opened by the investor. The applicable exchange rate will be the purchase exchange rate quoted by the Bank of Algeria on the date the investor remits payment to the French Government for its debt claim against Algeria.

The investor should therefore make a profit of the difference between Algeria's debt claim repurchase price (56% of the debt's face value) and the price actually paid to the French Treasury.

#### **5. The investment rules arising out of this mechanism**

Since the capital in dinars arising out of the conversion mechanism is intended to be used for the financing of assets, or the purchase or subscription of shares in an Algerian company, the investment will be covered by the provisions of the Algerian Investment Code established pursuant to Ordinance No. 01-03 of 20 August 2001 on the promotion of investment.

According to the nature of the investment, the investor may be entitled to various forms of preferential tax and

customs treatment according to the general and exceptional rules laid down in the Investment Code.

It will also be protected by all the guarantees set out in the code:

- identical treatment of foreign and national investors;
- any amendments or repeals of provisions in the code currently in force will not apply to investments made pursuant to the present code unless the investor requests their application;
- just and equitable compensation will be paid for any requisitions or expropriations ordered by the authorities;
- any dispute between an investor and the Algerian Government may be submitted to arbitration;
- there is a guarantee that any capital invested or income deriving from that capital may be repatriated; the conversion mechanism will be construed as a foreign currency contribution to capital.

In the case of French investors, the investment will benefit from the guarantees and protection provisions contained in the 1993 bilateral agreement between France and Algeria on the reciprocal promotion and protection of investments.

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#### **Information to be provided in support of an application for approval to convert debt into investment**

##### **1. Presentation of the proposed investment**

- 1.1 Purpose
- 1.2 Sector of investment
- 1.3 Geographical location of the investment
- 1.4 Shareholders (specify)
  - name
  - nationality
  - equity interest
  - other relevant information

##### **2. Details of the investment programme**

- 2.1 Detailed feasibility study of the proposed investment
- 2.2 Provisional operational accounts
- 2.3 Proposed financing scheme
- 2.4 Par value of the debt claims that the investor proposes to purchase

##### **3. Contribution to the development of the Algerian economy**

- 3.1 Number of jobs to be created
  - 3.2 Purchase to be made on the local market
  - 3.3 Export turnover
  - 3.4 Added value
  - 3.5 Level of consolidation
  - 3.6 Other relevant information
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