Deferred Prosecution of Legal Persons: Balancing Accountability and the Protection of the Economic Fabric

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Abstract
This study examines the relationship between the criminal liability of legal persons and the deferral of prosecution. Recognition of such liability is a major feature of modern criminal policy. Deferred prosecution, by contrast, is an alternative procedural mechanism. It seeks to improve the response to crime without requiring a conventional trial and sentence in every case.
The central question is whether deferred prosecution can balance the criminal accountability of legal persons with the protection of the public interest and the national economy. The study also considers whether this mechanism remains consistent with the fundamental principles of criminal law, especially legality and equality before the law.
The research uses an analytical method to examine statutory provisions, legal scholarship, and judicial approaches. It also uses a comparative method to identify similarities and differences between Algerian law and selected foreign systems, particularly French law.
The study concludes that criminal liability for legal persons is a necessary response to economic development and the growth of organized and corporate crime. Deferred prosecution is not an exemption from liability. It is a modern mechanism that requires corrective action, compensation, and legal compliance. Its legitimacy nevertheless depends on strong legal and judicial safeguards. These safeguards must prevent impunity and maintain a proper balance between deterrence and the continuity of lawful economic activity.
Keywords: legal person; criminal liability; deferred prosecution; criminal proceedings; criminal policy; negotiated criminal justice; compliance; Algerian law.

Introduction

Over recent decades, criminal law has undergone substantial change. Economic and technological developments have expanded the scope of institutional activity. Legal persons have therefore become major actors in economic and social life. Their organization and resources also enable them to commit offences whose effects may exceed those caused by an individual offender.

This development generated extensive doctrinal and legal debate. Traditional criminal law linked criminal liability to human will and treated punishment as strictly personal. These assumptions raised doubts about whether a legal person could be held criminally liable.

Modern criminal policy has gradually moved beyond that position. Many legal systems, including Algerian law, now recognize the criminal liability of legal persons. This recognition is necessary to address economic, financial, and environmental crime. It also supports effective deterrence. In addition, it prevents a legal entity from serving as a shield for the individual who benefits from unlawful conduct. Corporate criminal liability is therefore no longer only a theoretical issue. It has become part of the modernization of criminal justice and its response to new forms of crime.

At the same time, criminal justice is no longer confined to the traditional path of initiating criminal proceedings and ending them with a judgment. Contemporary policy increasingly supports alternatives to prosecution. These alternatives seek to combine deterrence and the public interest with procedural speed, reduced judicial workload, and economic stability. Deferred prosecution is one of the most important of these mechanisms. It permits the suspension or postponement of criminal proceedings under defined legal conditions. In return, the legal person must remove the effects of the offence, compensate injured parties, and comply with governance and monitoring measures. The objectives of criminal policy may thus be achieved without immediately resorting to trial and punishment.

The combination of corporate criminal liability and deferred prosecution nevertheless raises difficult legal and practical questions. The mechanism must remain consistent with legality, equality before the law, and the personal nature of punishment. It must also balance general and individual deterrence with the economic and social reasons for allowing a legal person to correct its conduct before a criminal trial begins.

The importance of this study lies in its connection between the theory of criminal liability for legal persons and contemporary criminal policy. It evaluates the effectiveness of deferred prosecution and identifies the safeguards needed to prevent it from becoming a means of avoiding punishment.

The principal research question is therefore the following: To what extent can deferred prosecution allow a legal person to avoid formal prosecution for business offences while still ensuring criminal accountability?

The study adopts descriptive and analytical methods. It examines the substantive and procedural rules governing the criminal liability of legal persons. It also considers the conditions for using deferred prosecution instead of principal and supplementary penalties that may harm both the legal person and the national economy.

The article is divided into two main sections. The first addresses the legal framework of criminal liability for legal persons. The second examines the system of deferred prosecution for legal persons.

I. The Legal Framework of Criminal Liability for Legal Persons

Algerian law recognizes the criminal liability of legal persons through Article 51 bis of the Penal Code[1] and, at the procedural level, Article 102 of the Code of Criminal Procedure.[2] The nature of a legal person differs from that of a natural person. Its liability for business offences therefore involves distinct conditions, trial procedures, and penalties.

[1] Article 51 bis of the Penal Code, as amended by Law No. 24-06 of 18 April 2024, Official Gazette of the People's Democratic Republic of Algeria, No. 30 (2024).

[2] Law No. 25-14 of 3 August 2025 containing the Code of Criminal Procedure, Official Gazette, No. 54 (2025).

A. Rules for Attributing Criminal Liability to a Legal Person

Legal persons may be governed by public law or private law. The rules of criminal liability primarily concern private-law legal persons. It is therefore necessary to identify the entities covered by these rules, the conditions for liability, and the penalties that may be imposed.

1. Legal persons that may be held criminally liable for business offences

The legal nature and defining characteristics of a legal person are central to criminal liability. Legal persons fall into two broad categories. The first comprises entities governed by public law. The second comprises entities governed by private law and subject to criminal law. Article 51 bis of the Penal Code, introduced by Law No. 04-15 and amended by Law No. 24-06, excludes "the State, local authorities, and legal persons governed by public law."

The State, local authorities, and public-law legal persons are therefore not subject to criminal liability. The usual justification is that the State is sovereign and retains the power to determine and impose punishment. The Minister of Justice relied on this reasoning during the legislative debate on Law No. 04-15 amending the Penal Code.

A more difficult issue concerns public industrial and commercial establishments. These entities are governed by administrative law in their relations with the State but by private law in their relations with third parties. A public economic enterprise of an industrial and commercial nature may therefore incur criminal liability when it commits a business offence in dealings with third parties. Article 8 of Law No. 25-14 on criminal procedure[3] reintroduced a prior-complaint requirement for proceedings against managers of public economic enterprises. The rule applies to management acts that result in theft, dissipation, embezzlement, damage, or loss of public or private property. It is intended to protect managers from unjustified prosecution and operates as a limited form of decriminalization of management decisions. Where the State owns all or part of the capital, criminal proceedings may be initiated only after a complaint by the corporate bodies listed in the Commercial Code.[4]

This rule was reintroduced after the Algerian legislature had repealed, in 2019, the prior-complaint requirement contained in Article 6 of the former 2015 Code of Criminal Procedure.

All private-law legal persons may, in principle, incur criminal liability regardless of their form or purpose. This includes profit-making commercial and civil companies as well as non-profit associations, political parties, and sports clubs. The nationality of the legal person is not decisive.

The entity must, however, possess legal personality. A de facto company[5] and an undisclosed partnership do not incur criminal liability as separate legal persons.[6] A distinction must also be drawn

[3] Article 8 of Law No. 25-14 of 3 August 2025 on the Code of Criminal Procedure, Official Gazette, No. 54 (2025).

[4] Ordinance No. 75-59 of 26 September 1975 containing the Commercial Code, Official Gazette, No. 101 (1975).

[5] The Algerian legislature recognized the undisclosed partnership in commercial law through Legislative Decree No. 93-08 of 25 April 1993. It is commercial by its object rather than its form. Its partners bear personal and joint liability for its debts. It has no separate legal personality and is managed according to the partners' agreement rather than by a formal legal representative. Since it does not appear to third parties as an independent legal person, it cannot incur criminal liability as such. See Abderrahmane Ben Cheneb, "The Undisclosed Partnership in Algerian Commercial Law," Al-Bayan Journal of Legal Studies, vol. 9, no. 1 (2024), p. 185.

[6] A de facto company differs from an undisclosed partnership because it does not arise from an express or implied company contract. Two or more persons simply act as partners in a common enterprise, each contributing money or work.

between the formation stage and liquidation.[7] Commercial law may recognize a limited legal personality during some stages, but criminal law remains governed by legality and strict interpretation. An offence cannot be attributed to an entity before its legal personality has been fully established.

2. Conditions for the criminal liability of a legal person

Article 51 bis of the Penal Code, as amended by Law No. 24-06[8], provides that, except for the State, local authorities, and public-law legal persons, a legal person is criminally liable for offences committed on its behalf by its bodies, legal representatives, or persons holding delegated authority, where the law expressly so provides. This provision establishes the following conditions.

a. The legal person must be governed by private law

A private-law legal person may incur liability regardless of its purpose. The rule covers profit-making and charitable entities. It applies to commercial companies, economic interest groupings, public economic enterprises, private companies, civil companies, federations, trade unions, political parties, and social, cultural, or sports associations.

By contrast, the State, local authorities, and public-law legal persons are excluded.

The State includes central authorities such as the Presidency, the Government, ministries, and their external services, including provincial directorates. Local authorities include the wilaya and the municipality.

Public-law legal persons mainly include administrative public institutions, such as the Higher School of Magistracy, hospitals, the National Office for University Services, and the National Agency for Investment Development. They also include scientific and technological institutions, universities, university centres, higher education institutes, vocational training centres, and certain industrial and commercial public establishments.

b. The offence must be committed by a body, legal representative, or person holding delegated authority

The competent bodies vary according to the legal form of the entity. For a commercial company, they are identified by reference to the Commercial Code.

- Joint-stock company: the general meeting of shareholders, the board of directors, the chair and chief executive officer, the management board, the supervisory board, and the chair of the management board.

See Karima Amara, "Legal Rules Governing Commercial Companies without Legal Personality," Al-Manar Journal of Legal and Economic Studies, vol. 1, no. 3 (2017), p. 127.

[7] Under Article 549 of the Commercial Code, a commercial company acquires legal personality upon registration in the commercial register. It therefore does not incur criminal liability before registration for offences committed by its founders. Articles 766 of the Commercial Code and 444 of the Civil Code extend legal personality during liquidation to the extent necessary for that process. A company may therefore incur liability during liquidation for offences committed before dissolution, particularly through fines and confiscation, because it retains a separate patrimony. See Mohamed Hazit, Criminal Liability of Legal Persons in Algerian Law, 1st ed. (Dar Belqis, Algiers, 2022), pp. 39–44.

[8] Law No. 24-06 of 28 April 2024 amending and supplementing the Penal Code, Official Gazette, No. 30 (2024).

- Simplified joint-stock company: the company president or delegated general manager under Article 715 bis 136 of the Commercial Code, and the shareholders acting collectively under Article 715 bis 137.
- Limited liability company: the meeting of partners and the manager under Articles 579 to 583 of the Commercial Code.
- Partnership limited by shares: the general meeting, supervisory board, and manager or managers under Article 715 ter 1 of the Commercial Code.
- Economic groupings: the administrator, supervisory bodies, or members' assembly, as determined by the constitutive instrument and Article 799 bis 2 of the Commercial Code.

For a civil company, the competent bodies are determined by the partnership agreement. They generally include the partners' meeting, the company president, or a partner delegated to manage the company.

For an association, the competent bodies are defined by the law governing associations. They usually include the general assembly, the governing board, the secretariat, the secretary-general, and the president.

Article 102(2) of the Code of Criminal Procedure defines the legal representative as the natural person authorized by law or by the constitutive instrument to represent the legal person. Liability therefore arises where the offence is committed by that representative or by another person who has received authority from the entity's bodies in accordance with its constitutive documents.

Under Article 638 of the Commercial Code, the chair and chief executive officer is the legal representative of a joint-stock company. Where the company is managed by a management board, Article 652 designates the chair of that board as the legal representative. Under Article 577, only the manager of a limited liability company acts as its legal representative.

Law No. 24-06 amended Article 51 bis of the Penal Code by adding persons who hold delegated authority to the categories capable of engaging the liability of a legal person.[9]

A person holding delegated authority is a natural person who receives powers from the entity's competent bodies. In a joint-stock company, the delegation may come from the chair, board of directors, or general meeting. In a limited liability company, it may come from the partners' meeting or the manager. Appointment to a position may itself constitute a delegation for the functions attached to that position. For employees, a valid delegation requires sufficient competence, authority, and resources to perform the assigned duties.

c. The offence must be committed on behalf of the legal person

The offence must serve the interests or provide a benefit to the legal person. For example, a public works company may incur liability if its general manager gives an undue advantage to a municipal president so that the company obtains a public works contract. By contrast, the entity is not liable if the advantage is given solely to help the manager obtain private land for a family home.

The phrase "on behalf of the legal person" refers to conduct intended to secure a benefit or prevent harm to the entity. The benefit may be material or non-material, present or future, direct or indirect,

[9] Law No. 24-06 of 28 April 2024 amending and supplementing Ordinance No. 66-156 of 8 June 1966 containing the Penal Code, Official Gazette, No. 30 (2024).

certain or potential. It is enough that the conduct was intended to support the entity's operations or objectives, even if no benefit was ultimately obtained.[10]

d. The law must expressly provide for the liability of the legal person

A legal person may be prosecuted only where a statutory provision expressly authorizes such liability. Algerian law therefore follows a principle of specific attribution. Examples include money laundering under Article 389 bis 7 of the Penal Code[11]; offences against automated data-processing systems under Article 394 bis 4[12]; foreign-exchange offences[13]; smuggling under Ordinance No. 05-06 of 23 August 2005[14]; tax fraud[15]; environmental offences[16]; and offences against property[17].

3. The principle of dual criminal liability

Algerian law recognizes the concurrent liability of the legal person and the natural person. Article 51 bis does not exclude the liability of the individual who committed the offence for the benefit of the entity. This prevents corporate liability from becoming a shield for a legal representative, governing body, or delegate. Acting on behalf of another person does not remove the offender's own criminal responsibility.[18]

4. Sanctions adapted to the nature of a legal person

Because a legal person differs from a natural person, Algerian law provides sanctions adapted to its legal existence, reputation, activities, and assets. These sanctions fall into three main categories.

a. Sanctions affecting the entity's assets

Fines and confiscation are particularly suitable for legal persons that commit business offences. They affect the entity's assets and remove the benefit of unlawful enrichment.

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[10] Mohamed Abderrahmane Bouzbar, "Criminal Liability of Legal Persons for Money-Laundering Offences: A Comparative Study of Law No. 35 of 2002," Journal of Law, Kuwait, vol. 28, no. 3 (2004), p. 51.

[11] Article 389 bis 7 of the Penal Code, as amended by Law No. 04-15, provides for the punishment of a legal person that commits the offences under Articles 389 bis 1 and 389 bis 2.

[12] Article 394 bis 4, added by Law No. 04-15 amending the Penal Code, provides for the punishment of a legal person that commits an offence under the section concerning attacks on automated data-processing systems.

[13] Ordinance No. 96-22 of 9 July 1996 repressing breaches of foreign-exchange rules and rules governing capital movements to and from Algeria, Official Gazette, No. 43 (1996), as amended by Ordinance No. 03-01 of 19 February 2003, Official Gazette, No. 12 (2003), and Ordinance No. 10-03 of 26 August 2010, Official Gazette, No. 50 (2010).

[14] Ordinance No. 05-06 of 23 August 2005 on combating smuggling is intended to protect the national economy and address cross-border crime.

[15] The Tax Procedures Code issued under Law No. 01-21 of 22 December 2001 containing the Finance Law for 2002, Official Gazette, No. 79, as amended by Law No. 11-10 of 28 December 2011 containing the Finance Law for 2012, and by subsequent finance laws through 2025.

[16] Law No. 03-10 of 19 July 2003 on environmental protection within the framework of sustainable development, Official Gazette, No. 43 (2003).

[17] Offences against property are listed in Chapter III, Title II, Book III of the Penal Code and include theft, extortion, fraud, issuing a cheque without funds, and breach of trust. Article 382 bis 1, as amended by Law No. 06-23, permits a private-law legal person to be held criminally liable for the offences in Sections 1, 2, and 3 of that chapter under the conditions of Article 51 bis.

[18] Bouzbar, cited above, p. 54.

Fine as a principal penalty. A fine is the principal penalty for a felony, misdemeanour, or contravention committed by a legal person. Articles 18 bis and 18 bis 2 of the Penal Code[19] generally set the amount at between one and five times the maximum fine applicable to a natural person. Special rules apply to certain offences, including money laundering, smuggling, attacks on automated data-processing systems, the issue of cheques without sufficient funds, and foreign-exchange offences.

Confiscation. Articles 18 bis and 18 bis 1 of the Penal Code authorize confiscation against a legal person. Confiscation is a supplementary property-based penalty. It may apply to the object of the offence, its proceeds, or the instruments used to commit it. If the property is not produced before the judicial authorities, property of equivalent value may be confiscated. This approach is used, for example, in money-laundering and foreign-exchange cases.

b. Sanctions affecting the existence or activities of the legal person

A fine alone may not provide sufficient deterrence in serious business crime. Additional penalties may therefore affect the entity's continued existence or its right to operate.

Dissolution. Article 18 bis lists dissolution among the supplementary penalties for felonies and misdemeanours committed by legal persons. It does not apply to contraventions and is excluded for some offences, including certain data-processing, foreign-exchange, and smuggling offences. Article 25 of Law No. 04-18 on narcotic drugs and psychotropic substances, however, requires dissolution or closure for a period not exceeding five years in the circumstances specified by that law.[20]

Closure of the establishment or one of its branches. Article 18 bis treats closure as a supplementary penalty for a felony or misdemeanour committed by a legal person. The closure may be ordered for up to five years.

Exclusion from public procurement. This penalty prevents the legal person from participating, directly or indirectly, in a transaction involving a public-law body. It also prevents the entity from acting as a subcontractor to a private party that has contracted with a public body. The measure restricts the entity's activities, but it protects public funds and promotes integrity, transparency, and good governance.

Article 18 bis authorizes exclusion from public procurement for felonies and misdemeanours, but not for contraventions. The court may impose it after ordering a fine. In the offences for which it is available, its duration may not exceed five years.

Prohibition from exercising a professional or social activity. This discretionary penalty is available for certain serious offences. It may affect workers and the entity's creditors, which explains why the legislature has limited its scope. It does not apply to contraventions. It is also excluded in certain offences involving automated data-processing systems, foreign exchange, and drug trafficking. Under Article 18 bis, closure may be permanent or temporary for up to five years.

[19] Articles 18 bis and 18 bis 2, added by Law No. 06-23 amending Ordinance No. 66-156 of 8 June 1966 containing the Penal Code, Official Gazette, No. 49 (1966).

[20] Mohamed Hazit, Criminal Liability of Legal Persons: An Analytical Study Supported by Case Law, 1st ed. (Dar Belqis, Algiers, 2022), p. 123.

c. Sanctions affecting the freedom and reputation of the legal person

Algerian law does not rely only on financial penalties or restrictions on activity. It also permits sanctions that affect the entity's autonomy and reputation. These include judicial supervision and the publication or posting of the conviction.

Judicial supervision. Placement under judicial supervision significantly restricts the independence of a commercial company. The sentencing court appoints a judicial officer to monitor the activity connected with the offence. Under Article 18 bis, the measure may last for up to five years.

Publication and posting of the conviction. The judgment may be publicized through audio, visual, or other media so that it reaches a sufficient number of people. This exposes the convicted entity to reputational harm and may reduce public confidence in its operations. Article 18 bis authorizes this sanction. Article 18(1) further provides that wall posting may not exceed one month and that publication costs are borne by the convicted person.

This is one of the most damaging sanctions for a commercial company. Businesses invest heavily in advertising and reputation. Publication of a conviction works in the opposite direction and may undermine both public confidence and the entity's financial standing. Deferred prosecution may prevent this consequence and preserve the reputation of a legal person that accepts responsibility and complies with corrective measures. The next section examines that mechanism in detail.

II. Deferred Prosecution of Legal Persons

Deferred prosecution of legal persons is one of the clearest developments in modern Algerian criminal policy. The legislature introduced it as an alternative procedural mechanism. It seeks an effective response to crime without making a conventional trial and sentence inevitable in every case. The system is based on negotiated criminal justice. It allows criminal proceedings to be suspended or postponed under defined legal conditions.

The mechanism seeks a careful balance between corporate accountability and the stability of economic activity. It also protects employment. Severe penalties may lead to liquidation and job losses. Deferred prosecution instead gives the entity an opportunity to correct its practices. It may be required to compensate injured parties, recover misappropriated assets, and comply with governance and internal-control programmes.

Algerian law incorporated this mechanism into the legislative reforms of 2025, particularly Law No. 25-14 containing the new Code of Criminal Procedure. The mechanism is directed mainly at business, economic, and financial offences. It marks a shift from punishment alone toward settlement and institutional reform. It also seeks faster and more effective recovery of the rights of the State and society, subject to specific conditions and procedures.

A. Conditions for a Deferred Prosecution Agreement with a Private-Law Legal Person

Law No. 25-14 establishes conditions that must be met before the Public Prosecution Service may defer proceedings against a private-law legal person. Some conditions relate to the entity itself. Others relate to the offence and to the results of the preliminary investigation.

1. Conditions relating to the legal person

Article 105 requires the legal person to cooperate in bringing the offence to an end. The entity must have no previous conviction for an offence listed in Article 106. It must take disciplinary action against the natural person who acted in its name or for its benefit and must report that person to the judicial authorities. The entity must not have been established for a fraudulent or criminal purpose. It must also be possible to assess all damage caused to the Treasury and public institutions.

The entity must accept several obligations. It must pay a fine to the Treasury that may not exceed 30 per cent of its average annual turnover during the preceding three years. It must compensate any injured public party covered by the agreement. It must also submit to an internal remediation programme designed to promote integrity and prevent the offences listed in Article 106 of Law No. 25-14[21]. These offences include those under Articles 119 bis, 418, and 419 of the Penal Code.[22] They also include offences under anti-corruption legislation, except bribery[23], as well as offences concerning capital movements, banking and monetary law[24], and smuggling. One or more experts, or another qualified body appointed by the Public Prosecutor, prepare and monitor the remediation programme. The prosecutor may impose any additional obligation considered appropriate.

Under Article 107(2), the fine is calculated by considering, in particular, the damage to the Treasury, the undue benefits obtained from the offence, and the turnover generated by the contract or transaction connected with the unlawful conduct. The Public Prosecutor may appoint one or more experts to assess the fine or the compensation owed to the injured civil party under Article 107(3). Payment may be scheduled in instalments fixed by the prosecutor. The schedule must take account of the amount due and the entity's financial position. It may not extend beyond four years under Article 107(4).

The legal person also bears the costs of the expert, experts, or qualified body appointed to assess the fine or compensation, pursuant to Article 107(5).

2. Conditions relating to the offence

Deferred prosecution is not available for every offence. Article 106 limits the mechanism to an exhaustive list. Article 105 provides that, before criminal proceedings are initiated, the Public Prosecutor may conclude a deferred prosecution agreement with a private-law legal person that is a principal or accomplice in one or more offences listed in Article 106. In return, the entity must restore funds, property, and proceeds that were disposed of or transferred abroad, or pay their equivalent value. It must also pay all sums owed to the Treasury and to public bodies injured by the attributed offences.

The decision is discretionary. Before proceedings begin, the Public Prosecutor may conclude the agreement with a private-law legal person that committed or participated in a listed offence. The agreement is subject to legal conditions and obligations. The entity must return dissipated property and criminal proceeds transferred abroad, or their equivalent value. It must also pay the amounts owed to the Treasury and the injured public parties. The relevant offences are the following.

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[21] Law No. 25-14 of 13 August 2025 on the Code of Criminal Procedure, Official Gazette, No. 54 (2025).

[22] Article 119 bis of the Penal Code defines negligent management that results in embezzlement, loss, or destruction of public property. Under Article 8 of Law No. 25-14, prosecution of managers of State-owned or mixed-capital public economic enterprises for specified management acts requires a prior complaint from the corporate bodies listed in the Commercial Code. Articles 418 and 419 address obstruction of investment and harm to the national economy.

[23] Law No. 06-01 of 20 February 2006 on the prevention and combating of corruption, Official Gazette, No. 14 of 8 March 2006, as amended by Ordinance No. 10-05 of 26 August 2010 and Law No. 11-15 of 2 August 2011.

[24] Monetary and Banking Law No. 23-09 of 21 June 2023, Official Gazette, No. 43 (2023).

- Negligent management, described as manifest negligence causing damage to property, under Article 119 bis of the Penal Code as amended by Law No. 24-06.[25]
- Offences that obstruct investment or harm the national economy under Law No. 24-06. Article 418 punishes bad-faith acts or practices intended to obstruct investment. Article 419 increases the penalty where the conduct is intended to harm the national economy.

A difficulty arises because Article 51 bis makes the liability of a legal person dependent on an express statutory provision. Articles 119 bis, 418, and 419 are addressed to natural persons and do not expressly establish corporate liability. The issue must therefore be assessed in light of legality, the personal nature of punishment, and the requirement of individualized liability.

- Offences under Law No. 06-01 on the prevention and combating of corruption, except bribery. The covered offences include embezzlement by a public official, unlawful use of property, embezzlement in the private sector, trading in influence, receipt of gifts, illicit enrichment, abuse of office, misappropriation, unlawful taking of benefits, unlawful tax exemptions or reductions, unjustified advantages in public procurement, abuse of influence by public officials, laundering and concealment of corruption proceeds, failure to declare assets or false declarations, conflicts of interest, concealed financing of political parties, obstruction of justice, and malicious reporting. Article 53 of the anti-corruption law recognizes the criminal liability of legal persons in accordance with the Penal Code.

Bribery in all its forms is excluded. The exclusion covers bribery of public officials under Article 25, bribery and commissions in public procurement under Article 27, bribery of foreign public officials and officials of public international organizations under Article 28, and bribery in the private sector under Article 40. The likely reason is the exceptional seriousness of bribery. It distorts public office, undermines public values, threatens State authority and the rule of law, creates inequality among citizens, harms the public interest, and facilitates unlawful enrichment.[26]

- Smuggling offences under Ordinance No. 05-06 of 23 August 2005, as amended up to the Finance Law for 2025.[27] They include smuggling goods or weapons and failing to report smuggling. A legal person is punishable by a fine equal to three times the maximum fine applicable to a natural person who commits the same conduct.[28]
- Offences under Monetary and Banking Law No. 23-09 of 21 June 2023.
- Offences under the legislation on invoicing, including Executive Decree No. 05-468 of 10 December 2005 on the requirements and procedures for issuing consolidated invoices.

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[25] Law No. 24-06 of 28 April 2024 amending and supplementing Ordinance No. 66-156 of 8 June 1966 containing the Penal Code, Official Gazette, No. 30 of 30 April 2024.

[26] Mohamed Hazit, Mechanisms for Combating Corruption Offences in Algerian Legislation, 2nd rev. ed. (Dar Belqis, Algiers, 2025), p. 119.

[27] Ordinance No. 05-06 of 23 August 2005 on combating smuggling, Official Gazette, No. 59 (2005), as amended by Ordinance No. 06-09 of 15 July 2006.

[28] Article 24 of Ordinance No. 05-06 of 23 August 2005 on combating smuggling, Official Gazette, No. 59 of 28 August 2005.

- Offences under securities-exchange legislation, including Legislative Decree No. 93-10 of 23 May 1993, as amended by Ordinance No. 96-10 of 10 January 1996, Law No. 03-04 of 17 February 2003, and Law No. 17-11 of 27 December 2017.
- Customs offences under Customs Law No. 79-07 of 21 July 1979, as amended most recently by the Finance Law for 2025.[29]
- Tax evasion and tax fraud under criminal and financial legislation. Article 303(9) of the Direct Taxes and Similar Levies Code[30] provides for custodial and supplementary penalties against administrators or legal representatives when the offence is committed by a company or another private-law legal person. Corporate liability also appears in Article 554 of the Indirect Taxes Code[31], Article 138 of the Turnover Tax Code[32], Article 36(4) of the Stamp Code[33], and Article 121(4) of the Registration Code[34].
- Offences under the ordinance repressing breaches of foreign-exchange rules and rules governing the movement of capital to and from Algeria.[35] A private-law legal person is liable for offences under Articles 1 and 2 when they are committed on its behalf by its bodies or legal representatives.[36]

A deferred prosecution agreement may be concluded only if all of the following conditions are satisfied:

- The preliminary investigation has produced sufficient evidence to make conviction of the private-law legal person highly likely if it is prosecuted.
- Deferred prosecution can achieve the expected result of a trial while avoiding the time required for a judicial investigation. The mechanism should shorten proceedings and facilitate the recovery of criminal proceeds, especially assets transferred abroad. Recovery may otherwise be obstructed by banking secrecy or a foreign State's refusal to provide judicial cooperation.
- All damage caused to the Treasury and public institutions can be assessed.
- The public interest and the recovery of amounts owed to the Treasury and injured public parties are better served by the agreement than by other penalties.
- The legal person has cooperated to end the offence.

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[29] Customs Law No. 79-07 of 21 July 1979, Official Gazette, No. 30 (1979), as amended by Law No. 17-04 of 16 February 2017, Official Gazette, No. 11 (2017).

[30] The Direct Taxes and Similar Levies Code issued under Law No. 90-36 of 31 December 1990 containing the Finance Law for 1991, Official Gazette, No. 57 (1990), as amended.

[31] Ordinance No. 76-104 of 9 December 1976 containing the Indirect Taxes Code, Official Gazette, No. 70 (1977), as amended.

[32] The Turnover Tax Code issued under Law No. 91-25 of 18 December 1991 containing the Finance Law for 1992, Official Gazette, No. 65 (1991), as amended.

[33] Ordinance No. 76-103 of 9 December 1976 containing the Stamp Code, Official Gazette, No. 39 (1977), as amended.

[34] Ordinance No. 76-105 of 9 December 1976 containing the Registration Code, Official Gazette, No. 81 (1977), as amended.

[35] Ordinance No. 03-01 of 19 February 2003 amending and supplementing Ordinance No. 96-22 of 9 July 1996 on foreign-exchange rules and capital movements, Official Gazette, No. 12 (2003).

[36] Article 5 of Ordinance No. 96-22, as amended by Ordinances No. 03-01 and No. 10-03, on breaches of foreign-exchange rules and capital movements to and from Algeria.

- The legal person has taken disciplinary measures against the natural person who acted in its name or for its benefit and has reported that person to the judicial authorities.
- The legal person was not established for a fraudulent or criminal purpose.
- The legal person has no previous conviction for an offence listed in Article 106.[37]

B. Procedure for Concluding a Deferred Prosecution Agreement

When the legal conditions are met and deferred prosecution is chosen for a private-law legal person suspected of or participating in one or more financial or economic offences listed in Article 106, Article 108 governs the agreement.[38] It is concluded with the entity's legal representative. That representative must not personally be accused as a principal or accomplice in the same offences. The territorially competent Public Prosecutor informs the Judicial Agent of the Treasury and any injured party of the proposed agreement. They are invited to submit a memorandum setting out the damage, relevant documents, and any useful observations. The prosecutor then summons the legal representative[39] and presents the proposed agreement. The representative must be informed of the right to assistance from a lawyer or expert and must provide a written response within one month. If no representative is available because of resignation, death, flight, or concurrent prosecution, the president of the court appoints an employee of the legal person to act as its judicial representative[40] at the request of the Public Prosecution Service.

Article 5 bis, added by Ordinance No. 03-01 of 19 February 2003 to Ordinance No. 96-22 on foreign-exchange and capital-movement offences, also provides that proceedings against a private-law legal person are conducted through its legal representative. If that representative is prosecuted for the same or related acts, the competent court calls another manager to represent the entity.

The agreement must contain the following information:

- The identity of the legal representative who signs the agreement.
- A detailed statement of the facts, including the time and place of the conduct and its possible legal characterization.
- Measures taken under judicial supervision.
- Steps taken by the legal person to end the offence or identify the offender, and the measures taken against that person.
- The amount of the fine owed to the Treasury and the method and deadlines for payment.
- Compensation owed to the injured civil party and the method and deadlines for payment.
- Costs associated with implementing the agreement.

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[37] Article 106 of Law No. 25-14 on the Code of Criminal Procedure.

[38] Article 108 of Law No. 25-14 on the Code of Criminal Procedure.

[39] Article 102(1) of the Code of Criminal Procedure provides that a legal person is represented during investigation and trial by the person who was its legal representative when proceedings began. Article 102(2) defines the legal representative as the natural person authorized by law or by the constitutive instrument to represent the entity.

[40] Article 103 of the Code of Criminal Procedure provides that, where both the legal person and its representative are prosecuted or no qualified representative exists, the president of the court appoints one of the entity's employees at the request of the Public Prosecution Service.

A deferred prosecution agreement may also concern cross-border conduct. Through the Ministry of Justice and within the framework of international judicial cooperation, the Public Prosecution Service may apply the mechanism after notifying and consulting the competent foreign judicial authorities.

The legal effects of the agreement differ according to whether it is fully performed, correctly performed, or wholly or partly breached.

1. Effects of performance

- The agreement does not constitute a criminal conviction of the private-law legal person.
- Once endorsed with an enforcement formula, the agreement constitutes an enforceable instrument.
- The confidentiality rules governing investigations and inquiries under the Code of Criminal Procedure apply to the agreement.
- The limitation period for criminal proceedings is suspended while the agreement is being performed.
- Criminal proceedings are extinguished when the legal person performs all obligations under the agreement. This is a special ground for termination of proceedings in addition to the general grounds.

Article 110(2) of Law No. 25-14[41] requires the Public Prosecutor to notify the legal person and the other parties. Extinction of the criminal proceedings does not prevent other injured parties from pursuing civil rights before the civil court.

2. Effects of non-performance

If the legal person fails to comply with all or part of its obligations, the Public Prosecutor informs its legal representative that performance of the agreement is terminated. The termination takes effect as soon as the representative is notified.

The legal person may then be prosecuted before the investigating or trial court. Article 51 bis, introduced by Law No. 04-15 and amended by Law No. 24-06, provides that a legal person is criminally liable for offences committed on its behalf by its bodies, legal representatives, or persons holding delegated authority where the law so provides. The liability of the legal person does not prevent the liability of the natural person as a principal or accomplice in the same conduct.[42]

C. Critical Assessment: Procedural Effectiveness and the Risks of Concentrated Authority

Deferred prosecution offers important economic benefits. Nevertheless, Law No. 25-14 also raises legal and constitutional concerns that may affect the substance of criminal justice.

1. Concentration of power and broad prosecutorial discretion. Articles 105 and 106 grant the Public Prosecutor wide discretion to decide whether deferred prosecution is appropriate. The prosecuting authority is therefore also the authority that determines the settlement. This concentration may create a risk of abuse or unequal treatment, especially in the absence of uniform national guidelines.

2. Absence of judicial review of legality and consent. Negotiated criminal justice may sacrifice fair-trial safeguards in favour of speed and economic efficiency. Under the current provisions, an

[41] Article 110(2) of Law No. 25-14 provides that criminal proceedings are extinguished when the legal person performs all obligations under the deferred prosecution agreement.

[42] Article 51 bis, introduced by Law No. 04-15 of 10 November 2004 and amended by Law No. 24-06 of 28 April 2024 amending the Penal Code.

agreement may be concluded and implemented without prior approval by a neutral judge, such as the trial judge or president of the court.[43] It is therefore difficult to ensure that the legal person accepted the obligations freely and without the pressure of threatened prosecution.

3. Reduced transparency and general deterrence. Article 108 subjects the negotiation process to investigative secrecy. Confidentiality may protect the economic position of the entity. However, an agreement concluded solely by the prosecution and outside public hearings may create the impression that financially powerful entities can avoid punishment. This perception weakens the deterrent force of criminal law.

4. Constitutional concern regarding the separation of powers. The Public Prosecution Service may terminate criminal proceedings through an agreement that becomes enforceable once endorsed with the enforcement formula. This transfers part of the authority to determine a criminal dispute from trial judges to prosecutors. The prosecuting authority may therefore become the final decision-maker in serious cases involving corruption and public funds.[44]

5. Legislative solutions and comparison with French law.[45] Algerian law drew inspiration from the French system. French law requires judicial approval[46] by an independent judge who verifies the fairness and legality of the terms.[47] Algeria could introduce a limited form of judicial supervision, such as approval by the president of the court. This would promote legality and transparency without removing procedural flexibility.

Conclusion

Law No. 25-14 introduced deferred prosecution for private-law legal persons, including commercial and civil companies, associations, amateur sports clubs, trade unions, and mutual-benefit organizations. The mechanism advances negotiated criminal justice. It seeks to deter economic and financial offences while preserving the continuity of entities that remain economically and socially useful. The agreement suspends prosecution in return for fines, compensation, and the recovery of misappropriated assets.

This mechanism represents a significant change in the legal approach to corporate wrongdoing. The principal findings are set out below.

1. Criminal liability of legal persons

- Legal persons, including commercial companies, may be held liable for offences committed on their behalf by their representatives or competent bodies under Article 51 bis of the Penal Code.
- Corporate liability supports general and individual deterrence and addresses institutional crime, including tax evasion, bribery, and money laundering.

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[43] Circular of 31 January 2018 on the presentation and implementation of the criminal provisions of Law No. 2016-1691 of 9 December 2016; French Anti-Corruption Agency (AFA) and National Financial Prosecutor's Office (PNF), Guidelines on the Implementation of the Judicial Public Interest Agreement, 26 June 2019.

[44] Guillaume, M., "The Judicial Public Interest Agreement: A Revolution in Criminal Justice," Review of Criminal Science and Comparative Criminal Law (2017), p. 255.

[45] Lombard, F., "The CJIP: Between Enforcement Effectiveness and Judicial Safeguards," Dalloz Reports (2018), p. 1120.

[46] Law No. 2016-1691 of 9 December 2016 on transparency, the fight against corruption, and the modernization of economic life (the "Sapin II Law"), introducing the Judicial Public Interest Agreement (CJIP).

[47] Articles 41-1-2 and 801-1 of the French Code of Criminal Procedure.

- Severe penalties may lead to liquidation, job losses, and wider harm to the national economy.

2. Deferred prosecution

- Deferred prosecution is an alternative to a conventional trial. The Public Prosecutor may postpone criminal proceedings through an agreement with the legal person.
- The entity must return criminal proceeds, pay settlement fines, compensate victims, and restructure its internal systems to prevent recurrence.
- Full compliance extinguishes the criminal proceedings. Breach permits the Public Prosecution Service to resume ordinary prosecution and trial.

Modern legislation therefore combines two paths. The punitive path establishes the offence and legal responsibility to prevent impunity. The settlement path preserves the legal person as an active part of the economic and social fabric while recovering assets obtained or transferred unlawfully.

When all obligations are performed, the Public Prosecutor issues a decision terminating the criminal proceedings. If the entity breaches the agreement, the prosecutor may end the deferral and resume ordinary proceedings under Law No. 25-14.

The mechanism is a flexible instrument of justice. It protects the interests of the State and society through compensation and asset recovery. It also preserves employment and the continuity of private enterprises.

Addressing the weaknesses identified in Laws No. 24-06 and No. 25-14 is essential. Deferred prosecution should develop from a procedural alternative into a coherent legal system that protects the national economy without compromising the rule of law or society's right to accountability.

Recommendations

In light of the findings and the analysis of Algerian law and modern criminal policy, the study proposes the following recommendations:

1. Complete the legislative framework for deferred prosecution by adopting more detailed provisions on its conditions, procedure, and legal effects. Clear rules would promote legal certainty and consistent judicial practice.

2. Strengthen judicial oversight by subjecting agreements and related decisions to effective review. This is necessary to protect legality, equality before the law, and the rights of all parties.

3. Link access to deferred prosecution with corporate compliance programmes. Legal persons should be required to establish effective internal controls and crime-prevention systems.

4. Protect the rights of victims and injured parties by requiring reparation and compensation before the entity receives the benefit of deferred prosecution.

5. Issue circulars and implementing guidelines for prosecutors and courts. These instruments should define the criteria and limits governing recourse to deferred prosecution.

6. Provide specialized training for judges, prosecutors, and judicial police officers on corporate criminal liability and negotiated criminal justice.

7. Draw on comparative experience, especially the French system, while respecting the specific features and constitutional principles of Algerian law.

8. Create a national mechanism to evaluate the effectiveness of deferred prosecution. Periodic reports and statistics should record the number of agreements, their contribution to combating economic crime, and their effect on the duration of proceedings.

9. Promote governance and transparency within legal persons. Institutions should adopt codes of conduct, risk-management procedures, and whistleblowing systems.

10. Review the penal policy applicable to legal persons. Alternative sanctions should support reform and deterrence without causing unjustified harm to the entity, its workers, creditors, or business partners.

11. Encourage academic and applied research on corporate criminal liability and procedural alternatives to prosecution. Such work can support the development of Algerian law and alignment with international developments.

12. Expressly regulate the effect of successful performance on recidivism, the criminal record of the legal person, and the possibility of renewed prosecution after breach. This would improve legal certainty.

13. Prepare national guidance containing clear and uniform criteria for proposing and concluding deferred prosecution agreements. Uniform standards are needed to ensure equality before the law across judicial districts.

14. Introduce limited judicial approval, such as approval by the president of the court, to ensure legality and transparency without undermining flexibility.

15. Establish clear monitoring arrangements for internal remediation programmes. Experts or qualified bodies, such as the High Authority for Transparency, should verify that obligations are substantive rather than formal.

16. Adopt a policy of transparency and publication. Summaries of concluded agreements could be published on the Ministry of Justice website to reinforce general deterrence and demonstrate recovery of public assets.

17. Guarantee defence rights throughout negotiations. Statements made by the company's representative should not be used as evidence of guilt if negotiations fail and prosecution resumes.

18. Adopt transparent standards for calculating criminal proceeds and undue benefits. The method should ensure effective financial deterrence rather than partial recovery.

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