

## Registration in the commercial register as a means of giving publicity to the free management contract of a commercial business

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**Abstract---**This study aims to highlight the fundamental role of registration in the Commercial Register as a legal mechanism for ensuring publicity and transparency in the lease-management contract of a commercial business under Algerian legislation. It does so by analyzing the legal framework governing the Commercial Register, particularly the provisions of Law No. 04-08 and Executive Decree No. 15-111. The study also seeks to clarify how registration enables the determination of the true legal status of the operator of the commercial business, distinguishing between the capacity of the owner and that of the tenant-manager, thereby ensuring the provision of information to third parties and the protection of contracting parties and creditors. Registration in the Commercial Register is not merely a formal administrative procedure; rather, it constitutes a legal instrument with constitutive effect, especially for the tenant-manager who acquires the status of a trader upon registration. Furthermore, legal publicity contributes to achieving legal certainty and the stability of commercial transactions. However, its effectiveness remains limited due to the absence of strict legal provisions specifying sanctions for non-compliance with registration and amendment procedures, which calls for strengthening the relevant legislative framework.

**Keywords---**Commercial Register, lease-management contract, commercial business, legal publicity.

### Introduction

The Commercial Register is considered one of the most important legal mechanisms adopted by the Algerian legislator to organize commercial life and uphold the principle of publicity. It serves as the

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official tool that enables third parties to access information regarding the legal and economic status of traders, the nature of their activities, and the legal relationships associated with a commercial establishment. The importance of this register increases in contracts that separate ownership of the commercial premises from its exploitation, foremost among them the lease-management contract (*contrat de gérance libre*), which allows the owner of a commercial establishment to relinquish its exploitation in favor of a tenant-manager who operates the business for their own account and responsibility.

This complex legal arrangement raises precise practical and legal issues, particularly regarding the identification of the actual trader, the allocation of responsibilities, and the protection of creditors and business partners. This makes registration in the Commercial Register a central tool for providing publicity and transparency in such contracts.

This study aims to highlight the fundamental role that registration in the Commercial Register plays in establishing the publicity of a lease-management contract for commercial premises. It seeks to clarify the legal nature and effects of such registration, whether in terms of acquiring the status of a trader, defining the legal positions of the parties, or protecting bona fide third parties. Furthermore, it analyzes the legal framework governing registration and publicity procedures, particularly in light of the provisions of the Algerian Commercial Code and Executive Decree No. 15-111, while examining the adequacy of these mechanisms in ensuring legal certainty and transactional stability in the context of the ongoing digitalization of commercial activity.

Based on the above, the central research problem can be formulated as follows: **To what extent does registration in the Commercial Register contribute to granting actual publicity to a lease-management contract for a commercial premises, ensuring clarity of legal positions and protection of creditors and business partners?**

From this central question, a number of subsidiary questions arise, including: What is the legal basis for registration in the Commercial Register? How effective is it as legal publicity for a lease-management contract? Does the current regulatory framework suffice to ensure the transfer of responsibility from the owner to the tenant-manager? And what are the legislative gaps in case of failure to comply with registration or amendment procedures?

To address these questions, a two-part structure has been adopted:

**First Axis:** The legal system of registration in the Commercial Register.

**Second Axis:** Controls over registration in the Commercial Register as a mechanism to achieve publicity for the lease-management contract of a commercial premises.

### **First Section: The Legal Framework of Registration in the Commercial Register**

The Commercial Register system aims to establish the principle of transparency in the commercial sphere by providing comprehensive and accurate information regarding the legal and financial status of the trader, as well as the components of their commercial activity. This is achieved by disclosing such data and making it accessible to the public.

Consequently, individuals and relevant entities are enabled to deal with traders with full knowledge of their situation and to assess their creditworthiness in accordance with prevailing standards and conditions. Registration in the Commercial Register leads to the legal publication of relevant data, which enhances confidence and reassurance among those dealing with the trader. It also contributes to facilitating commercial transactions and exchanges, as well as strengthening mutual trust between different parties, within a regulatory framework supervised by the competent authority.

### **First: Definition of Registration in the Commercial Register**

Registration in the Commercial Register is not limited to a formal procedure associated with the establishment of a commercial activity or the acquisition of trader status. Rather, it extends to include all subsequent events that affect the legal or material status of the commercial business or its owner.

The legislator has adopted a broad conception of registration, not restricting it to initial registration alone, but also including amendment and deletion (cancellation) operations, thereby ensuring that the Commercial Register keeps pace with the various changes affecting commercial activity<sup>1</sup>.

This legislative approach is clearly reflected in the provisions of Article 05 of Law No. 04-08, as amended and supplemented, which stipulates that registration in the Commercial Register is not limited to initial registration, but extends to include amendment and deletion operations. The regulation of the procedures for carrying out these operations is left to implementing texts.

This provision reflects the legislator's intent to establish an expanded concept of registration, enabling the Commercial Register to adapt to the various developments that may affect commercial activity, while ensuring the accuracy and continuity of the published data<sup>2</sup>

Furthermore, Executive Decree No. 15-111 reinforces this approach. Article 2 explicitly provides that registration in the Commercial Register includes registration, amendment, and deletion, in implementation of the provisions of the aforementioned Article 05.

Accordingly, registration in the Commercial Register may be understood as a legal procedure aimed at establishing, updating, or removing data relating to natural or legal persons engaged in commercial activities, in accordance with the rules and procedures set out by the applicable legislation and regulations.

From another perspective, and in accordance with the provisions of Article 06 of Executive Decree No. 15-111, registration in the Commercial Register is divided into two types: primary registration and secondary registration<sup>3</sup>.

**Primary registration:** This refers to the initial procedure by which any person, whether natural or legal, is entered into the Commercial Register upon commencing an activity subject to mandatory registration. It constitutes the legal basis for establishing the existence of the commercial activity.

**Secondary registration:** This refers to any registration relating to secondary activities carried out by a natural or legal person. It represents an extension of the main activity and/or reflects the exercise of other commercial activities, whether within the same province (wilaya) where the principal establishment is located or across other provinces.

With reference to the provisions of Article 02 of Law No. 04-08, as amended and supplemented, the National Centre of the Commercial Register is entrusted with maintaining the Commercial Register, numbering it, and having it authenticated by the competent judge. Furthermore, Article 10 of the same law provides that the head of the local branch of the National Centre of the Commercial Register is granted official authorization based on the legally required file, enabling them to perform duties related to registration procedures in accordance with the established legal requirements.

Accordingly, it appears that the authority responsible for maintaining the Commercial Register is the National Centre of the Commercial Register, which carries out its functions through a network of local

<sup>1</sup> Attou El Moussaoui, Functions of the Electronic Commercial Register in Light of Executive Decrees 15-111 and 18-112, Journal of Law, University Center of Relizane, Vol. 09, No. 02, Algeria, 2020, p. 30

<sup>2</sup> Article 05 of Law No. 04-08 of 14 August 2004, as amended and supplemented, relating to the conditions for exercising commercial activities, Official Gazette No. 52, issued on 15 August 2004

<sup>3</sup> see: Article 06 of Executive Decree No. 15-111; Amhamed Saad Eddine, Procedures of Registration in the Commercial Register in Light of Executive Decree No. 15-111, Algerian Journal of Legal, Economic and Political Sciences, University of Algiers 01, Vol. 53, No. 03, Algeria, 2016, p. 276

branches distributed across the national territory. This Centre is a public institution established by Decree No. 63-248 of 10 July 1963 under the name “National Office of Industrial Property.”<sup>4</sup> Initially, its powers were limited to collecting copies of the Commercial Register that were, at the time, delivered by court registry services. However, its legal status subsequently evolved to become an independent administrative body placed under the supervision of the Minister of Trade as of March 1997<sup>5</sup>

## **Second: Scope of Registration in the Commercial Register in Terms of Persons**

The scope of registration in the Commercial Register, in terms of persons, concerns identifying the categories legally required to register, whether natural or legal persons engaged in commercial activities. It also involves identifying categories prohibited from registration due to legal incompatibilities, through a distinction between persons subject to mandatory registration and those exempted from it.

### **1. Persons Required to Register in the Commercial Register**

Article 04 of Executive Decree No. 15-111 defines the categories subject to mandatory registration in the Commercial Register. It provides that registration is compulsory for both natural and legal persons engaged in commercial activities, subject to legally established prohibitions. These categories include, in particular<sup>6</sup>

- Any trader, whether a natural or legal person.
- Any commercial enterprise whose headquarters are located abroad and which operates in Algeria through a branch, agency, or any other establishment.
- Any commercial representation or agency belonging to a foreign state, public entity, or institution operating within the national territory.
- Any craft enterprise or service enterprise, whether in the form of a natural or legal person.
- Any tenant-manager of a commercial business.
- Any legal person of a commercial nature, whether by its form or its object, having its headquarters in Algeria or establishing a branch or other entity therein.
- Any natural or legal person carrying out an activity that the law requires to be subject to registration in the Commercial Register

### **2. Persons Prohibited from Registration in the Commercial Register**

With reference to the provisions of Article 09 of Law No. 04-08, no person may engage in a commercial activity if they are subject to a specific legal regime that establishes cases of incompatibility. The burden of proving the existence of such incompatibility lies with the person who invokes it<sup>7</sup> Accordingly, registration in the Commercial Register and the exercise of commercial activity are incompatible with certain categories, including:

**Professionals and public officials**, such as doctors and civil servants, whose professions are governed by rules prohibiting the combination of their official duties with the exercise of commercial activities, due to the existence of functional incompatibility.

**Non-emancipated minors**: namely persons who have not yet reached the age of 18, given the financial risks inherent in commercial activity, particularly bankruptcy. Where a minor owns shares in a joint-stock company or commercial assets, they are represented by their legal guardian or trustee, subject to prior judicial authorization from the competent court<sup>8</sup>

**Artisans (craft practitioners)**: This category refers to individual artisans or craft cooperatives engaged in activities of a civil nature, such as hairdressing, tailoring, and similar professions, which are not

<sup>4</sup> It was later reorganized and renamed the National Centre of the Commercial Register by Decree No. 73-188 of 21 November 1973, Official Gazette No. 95, issued on 27 November 1973

<sup>5</sup> Executive Decree No. 97-90 of 17 March 1997, Official Gazette No. 17, issued on 26 March 1997.

<sup>6</sup> Article 09 of Executive Decree No. 15-111

<sup>7</sup> Article 09 of Law No. 04-08, as amended and supplemented, previously cited.

<sup>8</sup> Abdelaziz Saad, *Procedures for Family Law Litigation before First Instance Court Divisions*, 1st ed., Dar Houma, Algeria, 2010, p. 122.

classified as commercial enterprises in the legal sense<sup>9</sup>. However, a craft enterprise organized in the form of a company under a specific legal structure is subject to registration in the Commercial Register<sup>10</sup>

Furthermore, Article 07 of Law No. 04-08 provides for explicit exceptions by excluding certain activities from its scope of application. These include agricultural activities, artisans as defined by Ordinance No. 96-01 of 10 January 1996 regulating the practice of traditional crafts, civil companies and non-profit cooperatives, liberal professions exercised by natural persons, as well as public institutions responsible for managing public services. However, public institutions of an industrial or commercial nature are excluded from this exemption<sup>11</sup>

According to Article 08 of Law No. 13-06, amending Law No. 04-08 on the regulation of commercial activities, persons convicted of the following felonies or misdemeanors, and who have not been rehabilitated, are prohibited from engaging in any commercial activity or registering in the Commercial Register:

- Illegal transfer of capital, whether domestically or abroad.
- Bankruptcy.
- Production or marketing of counterfeit or fraudulent products intended for consumption.
- Counterfeiting or infringement of copyright and related rights.
- Bribery or any form of financial corruption.
- Trafficking in drugs or prohibited substances.<sup>12</sup>

Previously, before the amendment of this article, it provided that registration in the Commercial Register or the exercise of any commercial activity was prohibited for persons convicted, without rehabilitation, of offenses such as embezzlement of funds, abuse of office, bribery, theft, fraud, concealment of stolen goods, breach of trust, issuance of checks without sufficient funds, and making false declarations.

### **Second Section: Regulations Governing Registration in the Commercial Register as a Mechanism for Ensuring the Publicity of the Lease-Management Contract of a Commercial Business**

Registration in the Commercial Register is considered one of the most important legal tools adopted by the Algerian legislator to establish the principle of publicity in commercial life, as it constitutes the official means through which the legal status of the trader and the commercial business is disclosed, enabling third parties to access essential data relating to commercial activity.

The importance of such registration becomes particularly evident in the case of the lease-management contract of a commercial business, given that this contract creates a separation between ownership of the business and its operation. This situation necessitates informing third parties of the person who effectively carries out the commercial activity and bears its risks<sup>13</sup>

From this perspective, registration in the Commercial Register is not merely a formal administrative procedure, but rather constitutes a legal instrument for achieving publicity and transparency, ensuring

<sup>9</sup> Nour Eddine Gastel, *The Commercial Register and the Register of Traditional Crafts as a Necessary Mechanism for Regulating and Guiding Commercial and Craft Activities*, Journal of Al-Hikma for Economic Studies, University Center of Maghnia, Vol. 05, No. 12, Algeria, 2018, p. 69

<sup>10</sup> Mohamed El-Sayed El-Fiqi, *Commercial Law: Theory of Commercial Acts and the Trader*, Vol. 1, 1st ed., Halabi Legal Publications, Beirut, 2005, p. 46.

<sup>11</sup> Article 07 of Law No. 04-08, as amended and supplemented, previously cited.

<sup>12</sup> Article 08 of Law No. 13-06 of 23 July 2013, amending and supplementing Law No. 04-08 of 14 August 2004 relating to the conditions for exercising commercial activities, Official Gazette No. 39, issued on 31 July 2013.

<sup>13</sup> Farha Zraoui Saleh, *Comprehensive Algerian Commercial Law*, 1st ed., Ibn Khaldoun Publishing, Oran, Algeria, 2003, p. 01.

the stability of commercial transactions, and protecting creditors and contracting parties by identifying the real trader, whether the owner or the tenant-manager.

**First: Procedures for Registration in the Commercial Register under Executive Decree No. 15-111 and Its Effect in Ensuring the Publicity of the Lease-Management Contract**

Executive Decree No. 15-111 regulates the procedures for registration in the Commercial Register in a precise manner, establishing a legal framework aimed at organizing the exercise of commercial activity and unifying the published data, thereby ensuring effective legal publicity.

This regulatory framework is of particular importance in cases of lease-management, as registration here goes beyond the mere recording of an activity and becomes a means of legally publicizing the lease-management contract, allowing third parties to identify the actual operator of the commercial business.

**1. Documents Required for Registration in the Commercial Register and Their Role in Revealing the Legal Status of the Commercial Business**

The legislator requires every natural or legal person intending to carry out a commercial activity to register in the Commercial Register. This registration is characterized by its personal nature, as it is carried out upon the request of the concerned party or their legally authorized representative.

Pursuant to Article 10 of Law No. 04-08, the head of the local branch of the National Centre of the Commercial Register is responsible for registering natural and legal persons, based on predefined legal files, ensuring compliance with the conditions and procedures stipulated by law.

This file serves as a means of demonstrating the legal relationship linking the trader to the commercial business, whether it is ownership, lease, concession, or lease-management, thereby enabling the publication of such relationships and informing third parties.

**A. Registration of a Natural Person and Its Effect on the Publicity of the Management of the Commercial Business**

The Algerian legislator allows a natural person to engage in commercial activity either as a permanent trader or a non-permanent trader. This distinction affects the nature of registration, the required documents, and the degree of publicity of the commercial activity<sup>14</sup>

**A.1 Registration of a Permanent Natural Person Trader**

A commercial activity is considered permanent when it is carried out regularly in a fixed premises designated for that purpose. This is the most common form, as it is directly linked to the commercial business as the framework of activity. The trader establishes their legal domicile at the place of business, making registration in the Commercial Register a means of publicizing:

- The location of the business,
- The nature of the activity,
- The status of the operator (owner or tenant).

Registration requires the submission of a signed application on forms provided by the National Centre of the Commercial Register, accompanied by the following documents<sup>15</sup>:

- Proof of the existence of a suitable premises (title deed, lease contract, concession, or allocation decision),
- Residence permit for foreigners,
- Receipt of payment of stamp duties,
- Payment of registration fees,
- Licenses or authorizations for regulated activities,
- Authorization to engage in trade if the person is legally emancipated.

These documents clearly demonstrate the legal basis upon which the trader operates the business, constituting a necessary prerequisite for the publication of any subsequent legal situation, such as transfer of operation or lease-management.

<sup>14</sup> Karim Karima, The Use of Information Technology and the Registration Process in the Commercial Register, *Maaref Journal*, University of Bouira, Vol. 13, No. 24, Algeria, 2018, pp. 75–76.

<sup>15</sup> Article 19 of Executive Decree No. 15-111; Amhamed Saad Eddine, previously cited, p. 290

### **A.2 Registration of the Tenant-Manager as a Central Mechanism for Publicizing the Lease-Management Contract**

Where registration concerns the tenant-manager, it goes beyond mere recording of a commercial activity and becomes an official means of publicizing the lease-management contract and identifying the real trader<sup>16</sup>.

The tenant-manager, whether a natural or legal person, is required to submit an application for registration accompanied by the following documents:

- A copy of the announcement published in the Official Bulletin of Legal Announcements relating to the contract,
- A copy of the articles of association if the applicant is a legal person,
- A copy of the Commercial Register of the owner indicating the lease-management arrangement and identifying the tenant-manager,
- A copy of the official lease contract specifying the management of the commercial business.

These documents are of particular importance as they embody the principle of legal publicity by:

- Demonstrating the transfer of management from the owner to the tenant,
- Highlighting the transfer of risks and responsibilities arising from the commercial activity,
- Identifying the person who acquires trader status under the law<sup>17</sup>.

### **A.3 Registration of a Non-Permanent Natural Person Trader**

Non-permanent commercial activity is carried out in a mobile manner or through itinerant trade, and requires the designation of a legal domicile at the place of habitual residence<sup>18</sup>

Registration requires the submission of:

- A decision allocating a location or a vehicle registration card,

Proof of residence,

Authorization from the President of the Municipal People's Assembly<sup>19</sup>.

This type of registration ensures limited publicity, yet remains essential for establishing trader status.

## **B. Registration of a Legal Person and Its Role in Publicizing an Independent Commercial Patrimony**

Registration of a legal person constitutes a mechanism for publicizing the existence of an independent legal entity. It is carried out through the submission of:

- The articles of association or founding document,
- Proof of publication in the Official Bulletin,
- Proof of the existence of business premises,
- Payment of stamp duties and registration fees,
- Specific licenses where required<sup>20</sup>.

As for branches or representations of foreign companies, their registration is subject to more stringent procedures, in order to uphold the principles of sovereignty and legal publicity.

## **2. Registration in the Commercial Register as a Tool for Ensuring Publicity of the Termination of the Lease-Management Contract**

Registration in the Commercial Register constitutes a fundamental pillar of the lease-management system. Publicity is not achieved solely through notarization or publication in the Official Bulletin; rather, it requires registration and subsequent amendment in the Commercial Register in order to reflect the true legal status of the commercial business and its operator, thereby safeguarding trader status, responsibilities, and the rights of third parties.

<sup>16</sup> Article 09 of Executive Decree No. 15-111

<sup>17</sup> Article 11 of Executive Decree No. 15-111

<sup>18</sup> Article 20 of Law No. 04-08.

<sup>19</sup> Article 08 of Executive Decree No. 15-111

<sup>20</sup> Article 09 of Executive Decree No. 15-111.

While registration confers trader status upon the tenant-manager at the beginning of the contract, this status ceases upon its termination. This necessitates the cancellation and amendment of the registration in order to restore the legal positions to their original state. Regardless of the reason for the termination of the lease, the tenant-manager is required to cancel their registration, while the lessor must amend their own registration. This is followed by publication in the Official Bulletin and the relevant journal as a complementary measure to ensure publicity.

### **A. Cancellation and Amendment of Registration in the Commercial Register as a Mechanism for Ending Publicity**

The specific nature of the lease-management system entails an exchange of roles between the parties during the execution of the contract, and their restoration upon its termination. Just as registration grants the tenant-manager the status of trader, cancellation of registration terminates this status and restores the legal positions to their original configuration.

#### **A.1 Legal Basis for Cancellation and Amendment of Registration and the Constitutive Nature of Registration in the Commercial Register**

The Algerian legislator requires any person wishing to engage in a commercial activity to complete registration procedures in the Commercial Register at the commencement of such activity, in accordance with the provisions of Article 13 of Law No. 90-22 (Official Gazette No. 36 of 22 August 1990) and Article 04 of Executive Decree No. 97-41 of 18 January 1997, as amended and supplemented, relating to the conditions for registration in the Commercial Register.

These provisions also regulate the procedures for amending registration, whether concerning natural or legal persons. They further stipulate the obligation to update registration data when necessary, or to remove the trader's name upon the definitive cessation of activity, thereby ensuring clarity of the trader's legal status and the confidence of all parties dealing with them, particularly creditors.

It is important to note that registration in the Commercial Register is not merely informational in nature; rather, it constitutes a form of constitutive legal publicity that grants the applicant a defined legal status. Accordingly, the tenant-manager acquires trader status upon registration, even if they do not own the commercial business. Modern trader status is thus linked to the independent and regular exercise of commercial activity, rather than ownership of the premises.

Since the tenant-manager conducts the activity in their own name and assumes the associated risks, their registration in the Commercial Register grants them full legal capacity to engage in commercial activity. They are also subject to obligations such as maintaining commercial books and complying with the tax system, and may be declared bankrupt if they cease to meet their financial obligations.

Consequently, the removal of their name from the Commercial Register results in the termination of this legal status and the loss of trader status <sup>21</sup>.

#### **A.2 Procedures for the Cancellation of the Tenant-Manager's Registration from the Commercial Register.**

Any natural or legal person operating agencies, branches, or other commercial establishments registered on a temporary basis is required to submit a request for cancellation within a period not exceeding two months from the date of cessation of activity, in accordance with the provisions of Article 22 of Law No. 90-22, as amended and supplemented <sup>22</sup>

The cancellation procedure is carried out by the tenant-manager through the submission of a formal request to the National Centre of the Commercial Register, accompanied by documents proving the termination of the lease-management contract. Although the submission of a cancellation request remains within the competence of the trader themselves, Article 23 of the Executive Decree relating to the conditions for registration in the Commercial Register also allows the successor of the trader,

<sup>21</sup> Hamcha Mekki, Guarantees for the Protection of Creditors in the Lease-Management Contract of a Commercial Business under Algerian Law, *Journal of Rights and Freedoms*, Vol. 13, No. 01, Algeria, 2025, p. 550.

<sup>22</sup> Article 22 of Law No. 90-22 relating to the Commercial Register.

following their death, or the competent authorities, to carry out this procedure upon verification of non-compliance with the required legal formalities<sup>23</sup>

Accordingly, the purpose of the cancellation procedure is to terminate the publicity established at the beginning of the contract and to inform third parties that the tenant-manager no longer holds trader status and is no longer responsible for the operation of the commercial business. This prevents third parties from dealing with them on the assumption that they are still operating the business.

### **A.3 The Death of the Tenant-Manager and Its Effects on Registration in the Commercial Register**

The death of the tenant-manager constitutes a legal cause for the termination of the lease, as provided in Article 469 bis 03 of the Civil Code, which states that “the lease is not transferred to the heirs”<sup>24</sup>

Given that the lease-management contract is generally based on personal consideration, the contract terminates upon the death of the tenant-manager, and the heirs do not automatically acquire any rights therein.

However, this principle may be set aside where there is an explicit agreement between the owner and the deceased tenant allowing one of the heirs—considered the most qualified—to continue operating the business. In such a case, this continuation must take place through a new and independent contract containing all its formal and substantive elements, and not as an extension of the original terminated contract.

In this situation, the registration of the deceased tenant-manager must be cancelled from the Commercial Register, while the heir who continues the operation under the new contract must register a new entry in their own name in accordance with the legal procedures governing the commencement of a lease-management contract. This ensures the continuity of legal publicity and the protection of the stability of legal positions<sup>25</sup>

### **A.4 Amendment of the Lessor’s Registration in the Commercial Register as a Parallel Measure to the Cancellation of the Tenant’s Registration**

Parallel to the obligation of the tenant-manager to cancel their registration upon the termination of the contract, the lessor is likewise required to amend their registration in the Commercial Register within the same two-month period. This is done by removing the indication “business leased under lease-management” that had been added to their registration at the beginning of the contract, in accordance with Article 17 of Executive Decree No. 15-111, along with the deletion of the tenant-manager’s name and address<sup>26</sup>

From the foregoing, it is clear that this amendment aims to restore the legal status of the lessor to its original state prior to the contract, to ensure clarity in legal positions, and to prevent confusion between the status of the owner of the business and that of its actual operator. This, in turn, positively contributes to the stability of commercial transactions and the protection of bona fide third parties.

Publicity here performs a dual preventive function: it prevents third parties from dealing with the tenant on the assumption that they are still the actual operator of the business after the contract has ended, and it protects the lessor from claims by creditors for debts incurred during the management period. It also informs third parties of the lessor’s resumption of operation of the business or their disposal thereof<sup>27</sup>.

Accordingly, the Commercial Register is amended upon a prior application drafted on the official forms provided by the National Centre of the Commercial Register, accompanied by documents evidencing the termination of the lease-management contract. This procedure aims to ensure legal transparency and to accurately determine the true legal status of the commercial business, thereby safeguarding the

<sup>23</sup> Article 23 of Executive Decree No. 97-41, previously cited.

<sup>24</sup> Article 469 bis 03 of Ordinance No. 75-58 of 26 September 1975 containing the Civil Code, Official Gazette No. 78 of 30 September 1975, as amended and supplemented by Law No. 07-05 of 13 May 2007, Official Gazette No. 31.

<sup>25</sup> Hamcha Mekki, previously cited, p. 550.

<sup>26</sup> Article 17 of Executive Decree No. 15-111, previously cited.

<sup>27</sup> Lotfi Mohamed Saleh Kadri, Formalism in the Sale of a Commercial Business, *El-Oued Journal for Research and Studies*, University of Ouargla, No. 10, Algeria, 2010, p. 318

rights of the contracting parties and third parties, and preventing any ambiguity or potential disputes regarding liability for the commercial activity.

## **B. Publication in the Official Gazette and Specialized Newspapers as a Complementary Measure to Publicity**

The Algerian legislator does not limit the Commercial Register entry as the sole tool to confer publicity on the termination of a lease-management contract; rather, it also requires publication in the Official Gazette of legal announcements and in a specialized legal announcement newspaper. This ensures the widest possible scope of publicity and provides maximum protection for the rights of creditors and third parties dealing with the commercial establishment.

### **B.1 Legal Basis for Publication and Its Consistency with the Procedures for Publishing the Contract Commencement**

According to the last paragraph of Article 205 of the Commercial Code, the means used to publish the commencement of the activity are the same as those used to publish its termination under a lease-management contract. Any deviation from this by the courts is considered a violation of the law. Consequently, the termination of a lease-management contract must be published within fifteen (15) days from its conclusion in the Official Gazette of legal announcements, and additionally in a specialized legal announcement newspaper, either as an extract or notification<sup>28</sup>

This alignment of publication methods for the beginning and end of the contract ensures that the information reaches the same audience who were informed of the contract's commencement, thereby achieving consistency in publicity procedures and preventing any confusion or ignorance regarding the true legal status of the commercial establishment and its operator.

### **B.2 Protective Function of Publication and Its Effect on Securing Creditors' Rights**

Announcing the termination of a lease-management contract is an essential step to protect the rights of third parties, especially creditors who dealt with the tenant-manager. The law makes such publication mandatory; the owner or tenant cannot agree to waive it, as creditors' obligations are directly linked to this announcement. If the termination is not published, the procedure is not effective against third parties, and the tenant-manager remains jointly liable for any debts arising from the commercial activity even after the contract ends, contrary to the restrictive provisions of Article 41 of the Algerian Commercial Code<sup>29</sup>

Moreover, the end of the lease-management contract renders all financial obligations arising from the exploitation of the commercial establishment during the contract term immediately due, according to Article 211 of the Commercial Code. Publication enables creditors to monitor these obligations, know their due dates, and demand payment before the tenant's assets are dispersed or their financial position changes.

### **B.3 Legislative Gap in Determining Penalties for Failure to Publish**

Although failure to publish cannot be invoked against third parties by either contracting party, the legislator has not established an explicit penalty for failing to publish, unlike the commencement of the contract, where a fine ranging from 20 to 200,000 DZD is stipulated. It would therefore be useful either to reference the same fine or to establish an independent penalty to prevent any negligence in publicity procedures<sup>30</sup>

### **B.4 Publicity in Commercial Documents and Official Papers as an Extension of Publicity**

The Algerian legislator did not limit publicity to administrative announcements in the Commercial Register and newspapers, but extended it to the daily practical life of the commercial activity. Article

<sup>28</sup> see Article 205 of Ordinance No. 75-59 of 25 September 1975, relating to the Algerian Commercial Code, Official Gazette No. 101 of 19 December 1975, as amended and supplemented.

<sup>29</sup> see Article 41 of Ordinance No. 75-59.

<sup>30</sup> Hamcha Mekki, previously cited, p. 552.

204 of the Commercial Code requires that the status of the tenant-manager be indicated on all invoices, contracts, and commercial correspondence, including the phrase “tenant-manager” and their registration number in the Commercial Register during the term of the contract <sup>31</sup>

Upon termination of the lease-management contract, the tenant-manager must immediately cease using this phrase in all commercial documents. Similarly, the lessor must resume using their trade name without any reference to lease-management. This measure represents one of the most precise manifestations of legislative transparency, linking formal legal publicity to practical publicity, ensuring that all parties are aware of the true legal status of the party they are dealing with, and preventing any deception or misrepresentation regarding the identity of the trader responsible for the activity <sup>32</sup>.

Hence, this extension of publicity from formal procedures to daily practice consolidates the principle of transparency in commercial transactions and provides full protection for creditors and third parties, making registration in the Commercial Register an effective and comprehensive tool for conferring publicity on all stages of the lease-management contract, from commencement to termination.

## Conclusion

This study concludes that registration in the Commercial Register is no longer merely a formal administrative procedure aimed at organizing commercial activity; rather, it has become an essential legal tool to uphold the principle of publicity and ensure legal certainty in transactions, especially in contracts that separate the ownership of a commercial establishment from its exploitation, foremost among them the lease-management contract. Analysis has shown that the effectiveness of this registration lies in defining the legal positions of the parties, informing third parties of the identity of the actual trader, and protecting creditors and business partners from risks of ambiguity or confusion. By studying the legal and regulatory framework, a number of findings and recommendations can be drawn:

### I. Findings

- The Commercial Register is the primary legal instrument relied upon by the Algerian legislator to achieve publicity in commercial life and ensure transparency in transactions.
- The concept of registration in the Commercial Register extends beyond initial entry to include modifications and deletions, giving it a dynamic character that reflects the actual legal status of commercial activity.
- In the case of a lease-management contract, registration serves as a central tool to publicize the separation between ownership and exploitation of the commercial establishment, specifying who actually bears the risks of commercial activity.
- Registering the tenant-manager has a constitutive effect, conferring upon them the status of trader, along with the associated rights, obligations, and legal responsibilities.
- Amending the lessor’s registration in the Commercial Register ensures clarity of legal positions and prevents creditors from claiming subsequent debts arising from lease-management.
- Publicity in the Commercial Register, combined with publication in the Official Gazette of legal announcements, reinforces the effectiveness of legal publicity.
- Publicity in commercial documents and daily correspondence constitutes a practical extension of administrative publicity, ensuring that third parties are aware of the tenant-manager’s status.
- Despite the importance of the current regulatory framework, there is a legislative gap, notably the absence of explicit penalties for failing to register or amend entries, which may weaken legal protection for third parties.

<sup>31</sup> see Article 204 of Ordinance No. 75-59, Algerian Commercial Code.

<sup>32</sup> Hakima Dmouch, Sabrina Slimani, Protection of Creditors in Lease-Management Contracts, *Journal of Studies on the Effectiveness of Legal Norms*, Vol. 01, No. 01, Algeria, 2017, p. 151.

## II. Recommendations

- The Algerian legislator should introduce explicit provisions specifying legal penalties for failure to register or amend a lease-management contract in the Commercial Register.
- Standardize publicity procedures and strengthen coordination between the Commercial Register and electronic publication to avoid duplication and enhance efficiency and speed.
- Reinforce the mandatory requirement to indicate the status of the tenant-manager in all commercial documents, with stricter oversight to ensure compliance.
- Review the legislation governing lease-management contracts to provide greater protection for creditors and third parties, drawing inspiration from comparative experiences while respecting Algerian legal specificities.

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