



The Legal Framework for Startups and Business Incubators: A Comparative Study Between Algerian and French Law

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Abstract:

The emergence of startups as catalysts for economic growth and technological innovation has necessitated the development of specialized legal frameworks to support their creation, incubation, and expansion. This academic article provides a comprehensive comparative analysis of the legal regimes governing startups and business incubators in Algeria and France. By examining the legislative evolution in both jurisdictions, the study highlights how each country addresses the unique challenges faced by innovative enterprises. France, with its established "French Tech" ecosystem, offers a mature legal infrastructure characterized by robust intellectual property protections, flexible corporate structures, and significant tax incentives. Conversely, Algeria has recently embarked on a transformative legislative journey, introducing specific decrees and finance laws, such as the 2026 Finance Law, to cultivate a dynamic startup environment and transition from a hydrocarbon-dependent economy. The article explores the legal definition of startups, the contractual relationships within business incubators, and the mechanisms for financial and administrative support. Ultimately, this comparative study identifies best practices and proposes recommendations for optimizing the legal environment to foster sustainable entrepreneurial ecosystems in both developed and emerging economies.

Keywords: Startups, Business Incubators, Comparative Law, Algerian Law, French Law, Innovation, Corporate Governance, Intellectual Property, Tax Incentives, Entrepreneurship.

Introduction

In the contemporary global economy, innovation and entrepreneurship are universally recognized as the primary drivers of sustainable economic development, job creation, and technological advancement. At the vanguard of this economic transformation are "startups"—innovative, high-growth potential enterprises that disrupt traditional markets and introduce novel solutions. However, the inherent characteristics of startups, notably their high risk of failure, need for rapid scalability, and reliance on intangible assets, render traditional corporate legal frameworks often inadequate. Consequently, governments worldwide are increasingly



focused on designing specialized legal and regulatory environments to nurture these emerging institutions. Central to this supportive ecosystem are "business incubators," entities designed to accelerate the successful development of entrepreneurial companies through an array of business support resources and services.

This article undertakes a comparative legal analysis of the frameworks governing startups and business incubators in two distinct yet historically connected jurisdictions: the French Republic and the People's Democratic Republic of Algeria. The selection of these two countries provides a compelling comparative paradigm. France represents a mature, highly developed entrepreneurial ecosystem, globally recognized through its "French Tech" initiative, which offers a sophisticated legal architecture tailored to innovative enterprises [1]. In contrast, Algeria represents an emerging economy actively seeking to diversify its economic base away from hydrocarbon dependency by aggressively promoting a knowledge-based economy through recent, sweeping legislative reforms [2].

The central problematic addressed in this research is how different legal systems define, regulate, and incentivize startups and business incubators, and to what extent these legal frameworks effectively mitigate the inherent risks of innovative entrepreneurship. While France has integrated startup support into its broader commercial and intellectual property codes, supplemented by specific visa and tax programs, Algeria has opted for a more targeted legislative approach, creating bespoke legal categories and dedicated state agencies, such as the National Agency for Support to Youth Employment (ANSEJ) and recent executive decrees specifically defining startups and incubators [3].

To systematically explore this problematic, the article is structured into three primary chapters (Mabahith). Chapter 1 examines the conceptual and legal definitions of startups and business incubators in both jurisdictions, analyzing the criteria required to obtain the "startup" label. Chapter 2 delves into the legal structuring and contractual dynamics of business incubators, focusing on the rights, obligations, and liability allocations between the incubator and the incubated enterprise. Chapter 3 analyzes the incentive mechanisms—specifically tax exemptions, financing structures, and intellectual property protections—that form the bedrock of the support ecosystem in both Algerian and French law. Through this comparative lens, the article aims to elucidate the strengths and limitations of each system, contributing to the broader academic discourse on the intersection of law, innovation, and economic policy.

Chapter 1: Legal Conceptualization and Qualification of Startups and Incubators

The foundational step in establishing a supportive legal regime for innovative enterprises is the precise legal definition and qualification of what constitutes a "startup" and a "business incubator." This chapter compares how Algerian and French legislators have approached this definitional challenge, which is crucial for determining eligibility for specific legal and fiscal benefits.

Section 1.1: The Legal Definition of a Startup

The term "startup" originated in business and economic literature rather than legal doctrine, generally describing a newly emerged, fast-growing business that aims to meet a marketplace



need by developing a viable business model around an innovative product, service, process, or platform. Translating this economic concept into a precise legal definition presents a significant challenge for legislators.

The French Approach: French law does not provide a single, monolithic definition of a "startup" within its Commercial Code (*Code de Commerce*). Instead, the French legal system identifies startups through specific legal statuses and tax qualifications designed for innovative companies. The most prominent of these is the status of *Jeune Entreprise Innovante* (JEI) or Young Innovative Enterprise [4]. To qualify as a JEI, a company must meet several cumulative criteria: it must be a small or medium-sized enterprise (SME), be less than eight years old, be independent (capital held at least 50% by individuals), and, crucially, allocate a minimum of 15% of its total expenses to research and development (R&D). This approach focuses on measurable, objective criteria—specifically R&D expenditure and age—rather than attempting to legally define "innovation" or "scalability."

The Algerian Approach: In contrast to the French model, the Algerian legislator has recently introduced a specific, dedicated legal framework to define and label startups. Executive Decree No. 20-254, establishing the national committee for granting the label of "Startup," "Innovative Project," and "Business Incubator," provides a direct legal definition [5]. Under Algerian law, to obtain the "Startup" label, an enterprise must fulfill specific conditions: it must not have been established for more than eight years, its workforce must not exceed 250 employees, its annual turnover must not exceed a defined threshold, its capital must be held by natural persons or approved investment funds, and its business model must be based on innovative concepts with high growth potential. The Algerian approach relies heavily on a specialized national committee to evaluate the subjective criteria of "innovation" and "growth potential," creating a formal labeling process that acts as a gateway to state support.

Section 1.2: The Legal Framework of Business Incubators

Business incubators are organizations designed to accelerate the growth and success of entrepreneurial companies through an array of business support resources and services. The legal recognition of these entities is essential for structuring the entrepreneurial ecosystem.

Incubators in French Law: In France, business incubators (*incubateurs d'entreprises*) operate within a highly developed and diverse ecosystem, comprising public incubators (often linked to universities and research institutions, established under the 1999 Innovation Law), private corporate incubators, and independent accelerators [6]. Legally, a French incubator can take various corporate forms, such as an association (*Association loi 1901*), a simplified joint-stock company (*Société par Actions Simplifiée - SAS*), or a public-private partnership. The legal relationship between the incubator and the startup is primarily governed by contract law, specifically through incubation agreements (*contrats d'incubation*), which define the provision of services, workspace, and mentorship in exchange for fees or, increasingly, equity stakes.

Incubators in Algerian Law: Algerian law has recently formalized the status of business incubators to integrate them into the national economic strategy. Similar to startups, incubators are subject to a labeling process. According to the regulatory framework, an entity seeking the



"Business Incubator" label must demonstrate its capacity to support startups, provide adequate physical infrastructure, and offer specialized coaching and training programs [7]. The Algerian government actively promotes the creation of incubators within universities (e.g., the Incubator of Algiers 1 University) to bridge the gap between academic research and commercialization. The legal structure of these incubators is often tied to public institutions, though private incubators are emerging, governed by the general provisions of the Algerian Commercial Code but benefiting from specific state recognition through the labeling system.

Section 1.3: Comparative Analysis of the Qualification Process

The comparison reveals a fundamental divergence in legislative philosophy. France utilizes an objective, criteria-based system (like the JEI status) integrated into existing tax and commercial laws, allowing companies that meet the numerical thresholds to automatically benefit from the status. This provides legal certainty and reduces bureaucratic friction.

Algeria, conversely, has adopted a centralized, committee-based labeling system. While this allows for a qualitative assessment of innovation and ensures that state support is directed toward genuinely high-potential projects, it introduces an element of administrative discretion. The Algerian model reflects a state-led developmental approach, where the government actively curates the startup ecosystem, whereas the French model reflects a more mature market where the state sets the parameters and allows the market to operate within them.

Feature	French Law (e.g., JEI Status)	Algerian Law (Startup Label)
Primary Mechanism	Objective criteria (R&D spend, age, size)	Committee evaluation and labeling
Definition of Innovation	Quantitative (15% R&D expenditure)	Qualitative (Committee assessment)
Legal Integration	Embedded in Tax and Commercial Codes	Specific Executive Decrees
Administrative Process	Declaratory (subject to tax audit)	Application and Committee Approval

Chapter 2: Contractual Dynamics and Corporate Governance in Incubation

The relationship between a business incubator and a startup is fundamentally contractual, yet it operates within the broader constraints of corporate law and governance. This chapter examines the legal structuring of this relationship, focusing on the incubation agreement, the allocation of liability, and the corporate governance frameworks in both French and Algerian law.



Section 2.1: The Incubation Agreement (*Le Contrat d'Incubation*)

The incubation agreement is the cornerstone of the legal relationship between the incubator and the startup. It is an innominate contract (*contrat innommé*) in both jurisdictions, meaning it is not specifically regulated by a dedicated section of the civil code but is governed by the general principles of contract law.

French Contractual Practice: In France, the incubation agreement is highly sophisticated, reflecting the maturity of the ecosystem. The contract typically outlines the provision of premises, administrative services, strategic mentoring, and access to networks. Crucially, French incubation contracts meticulously detail the financial consideration. While some public incubators offer services for free or at a subsidized rate, private incubators often utilize a "services for equity" model. In this model, the incubator receives a percentage of the startup's shares (often through warrants like *Bons de Souscription d'Actions* - BSA) in exchange for its services [8]. This requires complex legal drafting to ensure compliance with French corporate law regarding the issuance of securities and the valuation of in-kind contributions.

Algerian Contractual Practice: In Algeria, the incubation agreement is evolving. Historically, support structures like ANSEJ focused primarily on financial loans rather than comprehensive incubation. With the new regulatory framework, incubation contracts are becoming more standardized, particularly within university incubators. These contracts primarily focus on the provision of workspace, access to university laboratories, and basic business coaching. The "services for equity" model is less prevalent in Algeria due to stricter regulations on corporate shareholding and a less developed venture capital market, though recent reforms aim to facilitate such arrangements [9]. Consequently, Algerian incubation contracts often resemble specialized lease agreements combined with service provision clauses.

Section 2.2: Allocation of Liability and Risk Management

Startups operate in a high-risk environment, making the allocation of liability a critical component of the incubation relationship.

Liability in French Law: French incubators are acutely aware of the legal risks associated with advising startups. If an incubator provides negligent strategic advice that leads to the startup's failure, it could theoretically face civil liability (*responsabilité civile*). To mitigate this, French incubation contracts invariably include robust limitation of liability clauses (*clauses limitatives de responsabilité*). Furthermore, incubators must navigate the risk of "de facto management" (*gestion de fait*). If an incubator's mentors exert excessive control over the startup's decisions, French courts may classify the incubator as a de facto manager, exposing it to severe liabilities, including covering the startup's debts in the event of bankruptcy [10]. Therefore, contracts explicitly state that the incubator provides advisory services only and that the startup's founders retain full decision-making autonomy.

Liability in Algerian Law: In Algeria, the concept of incubator liability is less frequently litigated but remains governed by the general principles of civil liability under the Algerian Civil Code. The primary legal concern for Algerian startups often revolves around the personal



liability of founders, especially when utilizing state-backed loans. The new legal framework attempts to mitigate this by encouraging the creation of Joint Stock Companies (*Société par Actions* - SPA) or Limited Liability Companies (*Société à Responsabilité Limitée* - SARL), which protect the founders' personal assets. However, the legal boundaries of an incubator's liability for the failure of an incubated project remain largely untested in Algerian jurisprudence, necessitating careful contractual drafting to protect both parties.

Section 2.3: Corporate Governance and Founder Equity

The corporate structure chosen by the startup significantly impacts its ability to raise capital and govern its relationship with the incubator and future investors.

French Corporate Structures: The *Société par Actions Simplifiée* (SAS) is the undisputed corporate form of choice for French startups. The SAS offers unparalleled contractual freedom in drafting the articles of association (*statuts*). It allows founders to create complex governance structures, issue various classes of shares with different voting or financial rights, and easily integrate investors and incubators into the capital structure [11]. This flexibility is essential for implementing the equity arrangements common in French incubation contracts and for subsequent venture capital funding rounds.

Algerian Corporate Structures: Algerian corporate law, historically more rigid, has adapted to accommodate startups. While the SARL remains common, the SPA is increasingly utilized for startups anticipating significant external investment. Recent amendments to the Algerian Commercial Code have introduced more flexibility, but it still lacks the extreme contractual freedom of the French SAS. A significant development in Algeria is the legal recognition of crowdfunding and the establishment of specific investment funds for startups, which require robust corporate governance mechanisms to protect minority investors while allowing founders to retain operational control [12]. The challenge in Algeria remains balancing the need for investor protection with the agility required by startups.

Chapter 3: Incentive Mechanisms and Intellectual Property Protection

The success of a startup ecosystem relies heavily on the legal mechanisms designed to incentivize innovation, attract investment, and protect intangible assets. This chapter compares the tax incentives, financing frameworks, and intellectual property regimes in France and Algeria.

Section 3.1: Tax Incentives and Fiscal Frameworks

Tax policy is a primary tool used by governments to mitigate the financial risks associated with early-stage ventures.

The French Fiscal Arsenal: France offers one of the most generous tax incentive regimes for innovation in Europe. The cornerstone is the Research Tax Credit (*Crédit d'Impôt Recherche* - CIR), which allows companies to deduct a significant percentage of their R&D expenses from their corporate tax liability [13]. Furthermore, the aforementioned *Jeune Entreprise Innovante* (JEI) status provides substantial exemptions from corporate income tax and local economic contributions for the first few years of profitability, as well as significant reductions in



employer social security contributions for R&D personnel. These mechanisms are designed to lower the cost of innovation and encourage the hiring of highly skilled researchers.

The Algerian Fiscal Runway: Algeria has recently implemented aggressive fiscal incentives to stimulate its nascent startup ecosystem. The 2026 Finance Law, building upon previous legislation, provides unprecedented tax exemptions for companies holding the "Startup" label [14]. These labeled startups benefit from exemptions from the Corporate Income Tax (IBS), the Global Income Tax (IRG), and the Business Activity Tax (TAP) for a period of up to four years, renewable under certain conditions. Additionally, equipment acquired for the startup's activities is exempt from Value Added Tax (VAT) and customs duties. This "fiscal runway" is designed to completely shield early-stage companies from tax burdens, allowing them to reinvest all capital into growth and development.

Section 3.2: Financing Mechanisms and Investment Law

Access to capital is the lifeblood of any startup. The legal framework governing investment dictates the availability and flow of this capital.

French Venture Capital and Investment Law: The French legal framework is highly conducive to venture capital (VC) and angel investing. French law provides specific tax incentives for individuals investing in SMEs (the "Madelin" tax reduction). The legal structuring of investments is facilitated by sophisticated financial instruments, such as convertible bonds (*Obligations Convertibles*) and the BSA-AIR (*Bons de Souscription d'Actions - Accord d'Investissement Rapide*), which is the French equivalent of the SAFE (Simple Agreement for Future Equity) note [15]. These instruments allow startups to receive funding quickly without immediately determining a company valuation, which is often difficult for early-stage ventures.

Algerian Financing Innovations: Historically, Algerian enterprise financing relied heavily on traditional bank loans and state-sponsored employment programs (like ANSEJ), which were often ill-suited for the high-risk profile of startups. Recognizing this, the Algerian government established the Algerian Startup Fund (ASF), a state-backed venture capital fund designed to invest directly in labeled startups [16]. Furthermore, recent legal reforms have introduced regulations for crowdfunding (*financement participatif*), providing a legal basis for alternative financing platforms. These reforms represent a paradigm shift in Algerian commercial law, moving from debt-based financing to equity-based risk capital.

Section 3.3: Intellectual Property (IP) Protection

For startups, intellectual property is often their most valuable asset. A robust legal framework for IP protection is essential for securing competitive advantage and attracting investment.

IP Protection in France: France possesses a strong and highly developed IP regime, governed by the Intellectual Property Code (*Code de la Propriété Intellectuelle*). Startups can protect their innovations through patents (*brevets*), trademarks (*marques*), and copyrights (*droits d'auteur*), administered by the National Institute of Industrial Property (INPI). French law also provides robust protection for trade secrets (*secrets des affaires*), aligning with European Union



directives [17]. Incubators in France play a crucial role in IP strategy, often requiring startups to secure their IP before entering into equity agreements and providing legal counsel to navigate the patent filing process.

IP Protection in Algeria: In Algeria, IP protection is governed by national laws and administered by the Algerian National Institute of Industrial Property (INAPI) and the National Office of Copyrights and Related Rights (ONDA). While the legal framework exists for patents and trademarks, the challenge for Algerian startups often lies in the awareness and enforcement of these rights. The new startup ecosystem initiatives place a strong emphasis on educating entrepreneurs about IP [18]. However, the process of internationalizing Algerian patents remains complex and costly for early-stage companies. Strengthening the efficiency of IP registration and enforcement is a critical area for the continued development of the Algerian startup legal framework.

Conclusion

The comparative analysis of the legal frameworks governing startups and business incubators in Algeria and France reveals two distinct approaches shaped by different economic histories and ecosystem maturities. France exemplifies a highly evolved, market-driven ecosystem where the legal framework—characterized by the flexible SAS corporate structure, sophisticated equity instruments, and the objective JEI tax status—facilitates private investment and rapid scaling. The French model integrates startup support seamlessly into its broader commercial and intellectual property laws, providing legal certainty and a robust environment for venture capital.

Conversely, Algeria represents a dynamic, state-led approach to ecosystem creation. Recognizing the urgent need for economic diversification, the Algerian legislator has rapidly deployed a bespoke legal architecture, defining startups and incubators through specific executive decrees and a centralized labeling process. The unprecedented tax exemptions introduced in recent Finance Laws and the creation of state-backed venture capital funds demonstrate a strong political will to mitigate the risks of entrepreneurship.

While the French system excels in contractual flexibility and private capital mobilization, the Algerian system offers aggressive, targeted state support to overcome initial market barriers. For Algeria, the ongoing challenge will be to transition from a state-subsidized model to a self-sustaining private investment ecosystem, which will require further liberalization of corporate law and enhanced intellectual property enforcement. For France, the challenge remains maintaining its competitive edge in a globalized market by continuously refining its tax incentives and simplifying administrative procedures.

Ultimately, both jurisdictions demonstrate that a specialized legal framework is not merely an administrative formality, but a vital catalyst for innovation. By carefully balancing contractual freedom, investor protection, and fiscal incentives, legal systems can effectively nurture the startups and incubators that will drive the economies of the future.



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