

GOOD GOVERNANCE STRATEGY IN ALGERIA...ENGAGING THE PRIVATE SECTOR IN DEVELOPMENT

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Abstract :

Algeria is among the countries that have continued to strive to involve the local and foreign private sector, especially after the adoption of the 1989 Constitution and the move towards political and economic openness to lay the foundations for good governance. To keep pace with global economic changes in all fields, it has put in place legal texts and regulatory legislation, the first of which is the legislative decree 93-12, law 01-03, and law 16-09. In addition to reforms that included tax legislation, customs procedures and the banking system in order to encourage and stimulate the private sector. However, from a practical point of view, investment has faced a number of obstacles, difficulties and barriers that have prevented the achievement of the set goals. Therefore, and in order for the process to succeed again in the framework of the continuity of good governance, it is linked to the provision of economic, security and political conditions, while also taking into account - as well - bilateral and multilateral international agreements related to investment, which prompted the Algerian legislator to issue a new law, Law 22-18 for the organization of investment, which seems from a theoretical and formal point of view more qualified than the previous one to encourage the private sector in its two forms, in order to achieve development and create added value.

Keywords: Private sector; investment; development; regulatory and legislative laws; good governance.

INTRODUCTION

Amidst the challenging economic circumstances brought about by the global economic crisis that began in the mid-1980s, which resulted in a continuous decline in state budget revenues due to plummeting oil prices and the allocation of a significant portion of these revenues to debt servicing, coupled with the deteriorating state of public sector enterprises due to the mounting debt burden on the state budget. In light of the prolonged recession and stagnation that plagued the national economy, and as a consequence of all these suffocating conditions, particularly since the early 1990s, which were primarily manifested in external debt, unemployment, inflation, and imbalances in the balance of payments, it became imperative for the state to seek solutions and strategies that align with the new dynamic and complex environment, enabling it to develop its economic activities, achieve development, and overcome these exacerbation of the problems.

Algeria has entered a critical stage in light of the national economy conditions. To overcome these challenges, it is imperative to establish the pillars and foundations of good governance, the foundations of which were laid following the adoption of the 1989 Constitution. To achieve its economic program in the face of global economic transformations, Algeria must engage the private sector in accordance with market principles to play its assigned role. This requires establishing clear and well-defined frameworks and legal foundations to encourage the private sector to join the development process. Several legislative and regulatory laws have been enacted, such as Law 01-03, Law 16-09, and the new Law 22-18, which has introduced a set of advantages and incentives for the sustainability, differing in content from its predecessors, for the benefit of the private sector. These incentives aim to ensure the continuity of institutions to contribute to achieving comprehensive development and sustainable good governance. The market economy, based on competition, price liberalization, and freedom of initiative, allows for the involvement of private

ownership of means of production, which in turn allows for the development of a better spirit of initiative.

In this study, we aim to shed light on two approaches to organizing the private sector in Algeria, past and present. Firstly, while there was some organization of the private sector, it was marginalized under the state's dominance of the economy for an extended period, leading to ambiguity in the concept and objective. Secondly, there is a liberal doctrinal, political, and ideological approach to embodying the pillars and foundations of good governance by engaging the private sector as a key actor in the development process, especially since the early 1990s and the adoption of the 1989 Constitution, followed by the 1996 Constitution, culminating in the issuance of Law 22-18. This aims to address the following question: To what extent is the state convinced of the need to involve and encourage the private sector to achieve development, whose concept now differs from the past to meet the growing demands of society? Before answering this question, it is necessary to address the development and organization of the private sector in Algeria under the centrally planned economy. Therefore, we have divided our work into three main axes:

Axis one: Development and Organization of the Private Sector in Algeria under the Centrally Planned Economy

Axis two: Regulatory and Legislative Measures for the Private Sector under the Market Economy

Axis three: Sustainability of Strengthening the Foundations of Good Governance through Law No. 22-18.

Axis one: Development and Organization of the Private Sector in Algeria under the Centrally Planned Economy.

The policy of framing and integrating economic activities into national development programs, initiated in 1981, clarified the position of the public sector through a legislative and regulatory process aligned with the principles of the National Charter of 1976. This granted the private sector a monopoly on various economic activities. However, this does not imply that the private sector was non-existent; rather, its development was acknowledged, or rather, it was marginalized under a socialist system built on a centralized economic management system, which inherently imposed state control over economic activities.

Before delving into the organization and status of the private sector as outlined in the legal texts governing it from 1962 to 1988, during a period when the state embraced a socialist approach and dominated the economy, it is crucial to provide a definition of the private sector.

1. Definition of the Private Sector:

The concept of the private sector is always associated with a free market economy, which places a strong emphasis on open competition. This involves determining the prices of goods, the quantities produced and consumed, and establishing a balance between supply and demand forces. In open competition market, certain assumptions are necessary for its proper functioning, including the presence of a significant number of economic actors, freedom of access and information, and a disregard for social considerations. The private sector shares the same responsibilities as the public sector, provided the necessary conditions are met.

Definitions of the private sector have varied, but they all converge on a similar meaning, including: The private sector is defined as "the sector that is managed by individuals and businesses, where market mechanisms guide private economic activities and strive to maximize profits (Afifi, 1994, p. 33).

Alternatively, the private sector is defined as "that part of the economy that is not under government control and is managed according to financial profitability considerations (Mahfoudh2, 2002, p. 14).

The private sector can also be defined as "the sector owned by private individuals and guided by market mechanisms, which consequently strives to maximize profits (El-Rabiei, 2004. p. 49).

The private sector can be divided into two categories:

1. Organized private sector: This sector operates within an organized framework, adhering to systematic accounting practices in its operations and transactions.
2. Unorganized private sector: This sector does not maintain systematic accounting practices in its operations and transactions, and it is typically characterized by artisanal activities.



The private sector also boasts numerous advantages, including:

- Encouraging the establishment and expansion of private enterprises, fostering competition among them, and enabling them to compete for customers in both the private and public sectors.
- Reducing government bureaucracy and red tape in the delivery of goods and services.
- Continuously lowering costs and improving quality.
- The private sector can contribute to increasing the volume of operations, expansion, creativity, and technological advancement for the state.
- The process leads to improving the performance of government management, which in turn reduces the tax burden on citizens.
- The private sector contributes to increasing state revenues and reducing its burdens.

2. Legal Texts Regulating the Private Sector during the Period 1962-1988:

Upon examining the stages of development of this sector and its importance in national planning, we find that this sector was completely marginalized despite its potential and ability to develop. It was not relied upon in the state's economic development policies, despite the existence of regulatory laws, including:

-Law No. 63-277 dated July 26, 1963: This was the first investment law in Algeria and it defined the general framework for state intervention in investments. Article 3 of the law stated that "freedom of investment is guaranteed to foreign legal and natural persons (Code. Official Journal, July 26, 1963, p. 774). It also defined the role of the local private sector in performing certain secondary economic tasks in the field of trade and services. For foreigners, it was limited to the hydrocarbons sector.

-Law 66-284 of 1966: This law includes Article 4 on investments, which defines the methods of intervention of private capital in the domestic trade and services sector, as well as the methods of placing establishments related to the activities of these sectors by legal persons under state control (Official Journal. No. 80, September 17, 1966.).

-Law 82-11 of August 22: Following discussions at various political and union bodies, as well as at the committee tasked with studying the private sector file, given the weight it had acquired, it became - according to Djilali Liabes - "to occupy a prominent place in the national economy, and that the fear expressed in the previous charters has indeed materialized (Liabes, 1984, p. 56). This law, for the first time, recognized that the private sector¹ is the necessary complement to the public sector in the framework of national economic and social development (Vandewal, 1994, P. 10).

-Law 86-13 of August 19, 1986: This law came as an amendment and modification to Law (82-13) because the latter focused more on formal aspects than on incentive aspects, and failed to stimulate and attract the desired volume of foreign direct investment institutions to invest in Algeria. The new law came to be more responsive to the need of the national economy for local and foreign private capital to contribute to increasing production capacities and raising growth rates (Law 86-13 dated August 19, amended and supplemented by Law 82-13.), especially in the hydrocarbons sector. To this end, the new law included methods for the formation and management of mixed companies in a flexible, clear and relatively incentive manner compared to the previous law.

- Law 88-25 (Official Journal. No. 28, July 13. 1988. p. 1031) came to remove these barriers, as licenses were granted and hard currency was allocated to the National Chamber of Commerce. The government, on the other hand, has the role of ensuring control, while the officials of the National Chamber of Commerce were given the freedom to act and follow up on activities, and 1,000 projects were approved. Despite the issuance of Law 88-25, the private sector did not play its role as it should, due to the economic crisis that hit Algeria, the collapse of oil prices, and the entry

¹ This law gave some freedom to the private sector to establish private institutions whose mission is to transform some raw materials into complete industries. Through the provisions of the law, the creation of 2,500 investment projects was approved. However, out of this total, only 350 projects were actually created. This is due to the obstacles and constraints imposed by the authorities on the private sector through this law.

into a transitional phase. All these circumstances contributed to the deterioration and exacerbation of the crisis of confidence between the state and the private sector, which is due to the weight of the bureaucracy imposed by the public administration under the state authorities.

Note: Based on these legal texts organizing the private sector since independence, there is a recognition by the Algerian legislator of this sector. However, this recognition was accompanied by a great deal of contradiction and reservation; It was marginalized in terms of resource allocation due to the economic pattern followed at that time, as the public sector was the one that received the greater part. It was supposed to be parallel to the public sector, especially Law 82-11 on national private economic investment, as this law aims to define the objectives assigned to national private economic investments and determines the framework for practicing the activities resulting therefrom and its scope and conditions, especially in Article 24 of which it provides for the granting of facilities that the private investor benefits from, such as obtaining land plots, financing by means of equipment and supply of spare parts and raw materials (Law No. 82-11, August 21, 1982).

Axis Two: Regulatory and Legislative Measures for the Private Sector in a Market Economy

The failure of the central planning system to foster economic development due to excessive state intervention in economic activities, coupled with the persistent deficit of public economic institutions that had become a significant burden on the state budget, particularly following the 1986 financial crisis, necessitated a shift towards a market-oriented approach. In light of global transformations in all spheres and the evolution of ideological thinking towards embracing market forces, it became imperative to revitalize and develop the national economy by integrating the private sector as a complementary mechanism for achieving local development. This transition aligned with the economic reforms undertaken by Algeria after adopting a market economy, which involved allocating ownership of the means of production in accordance with market principles, harmonizing with the requirements of establishing the foundations of good governance. Modern studies focused on economic development have demonstrated that good governance can only be attained through a partnership between the state and the private sector to contribute to enhancing development performance. The private sector plays a pivotal role in driving the wheel of national development and achieving profitability. In this regard, Algeria has implemented a series of economic reforms aimed at supporting and developing the private sector to revitalize the national economy. These developments prompted the state to reconsider the regulation of the private sector, as embodied in the fundamental laws represented by the 1989 and 1969 Constitutions, as well as the regulatory texts, as we will elaborate upon:

1-Regulatory and Legislative Texts for the Private Sector During the Period 1990-2016.

Prior to 1988, political and economic reforms in Algeria were slow due to internal opposition that rejected change and sought to preserve the gains achieved under the one-party system and the centrally planned economy. However, after the events of October 1988, reforms accelerated towards economic and political liberalization, culminating in the ratification of the new Constitution on February 23, 1989, which granted guarantees for the exercise of individual and collective freedoms. The Constitution opened the door to freedom of expression and allowed the creation of political parties, in addition to adopting a market economy system and opening the door to private initiative. This clearly demonstrates a change in the official position towards the private sector, as Article 49 recognized the right to private property: "Private property is guaranteed (Presidency of the Republic, Decree No. 89-18, February 28, 1989). Thus establishing the first legal guarantee that recognizes, ensures, and protects private property and eliminates discrimination between the exploited and non-exploited private sector, leading to the adoption of the term "national private sector".

- Law 90-10, the Law of Money and Credit (Official Gazette of the Algerian Republic, No. 16, p. 1.), was enacted on April 14, 1990, following the adoption of the 1989 Constitution. This law repealed Law 82-13 and provided significant guarantees for the private sector, aiming to absorb a large number of workers. It also opened the door to all types of partnerships without distinction and enshrined the principle of freedom of foreign investment, as stipulated in Articles 181 and 182.



- Legislative Decree 93-12 of October 5, 1993. This decree introduced the legal texts for the previous law, promoted investment, and eliminated discrimination between the local and foreign private sectors. It also established a new system within the framework of supporting the market economy (Official Gazette of the People's Democratic Republic of Algeria, No. 64, October 19, 1993). Additionally, it created the National Agency for Monitoring and Promoting Investments, which works to support and guide local and foreign investors (Hassani, 2005, pp. 30-31). It also guaranteed the simplification and facilitation of investment procedures, the provision of guarantees and tax and customs privileges (Hassani, 2005, pp. 30-31). Moreover, the organization of free competition, its promotion, and its protection, as well as the punishment of those who hinder it in all activities, including services, were approved (Mahfoudh, 2002) by the Competition Council, according to Ordinance No. 95-6 of January 25, 1995, related to competition.
- The 1996 Constitution serves as another legal guarantee that protects private property and reaffirms the state's interest in attracting private investment. Article 37 (Official Gazette. No. 76, December 8, 1996, p. 12) states that "freedom of trade and industry is guaranteed and exercised within the framework of the law." Article 52 (Algerian People's Democratic Republic, Presidential Decree No. 96-438. Ibid. p. 13) also guaranteed the right to private property and stated that "private property is guaranteed."
- Law 01-03 of August 20, 2001 This law, which was issued by presidential decree (The Official Gazette, August 22, 2001) to keep pace with the rapid international changes, came to review the mechanisms adopted by the previous Legislative Decree 93-12. This new law defined the general system that became applicable to national and foreign investments made in economic activities producing goods and services, as well as investments that are made within the framework of granting special privileges to the local and foreign sectors. The state bears part or all of the costs related to the basic infrastructure necessary for the investment, in addition to doubling the period of exemption from corporate tax, lump sum payment, and professional activity tax from five to ten years.
- This law also opened up the field to include the meaning of targeted investment to be developed and promoted. It means all the activities that the current economic policies have prepared for their emergence and appearance, such as the establishment and creation of new and modern projects by the public or private sector, national or foreign.
- Then came the decree 06-08 dated July 15, 2006, amending and supplementing Investment Development Law 01-03. Aiming to stimulate both domestic and foreign private sector investment in the production of goods and services within productive and service sectors,. This ordinance provided investors in Algeria with guarantees against any infringement upon the privileges they had obtained, thereby creating a conducive environment for fostering various types of investment and materializing diverse investment projects. These measures were intended to enhance the national economy and render it more competitive in pursuit of comprehensive development.
- Then came Law 09-16, dated August 3, 2016. Building upon the 2016 constitutional amendment and its Article 43, which recognized and regulated the freedom of investment and trade within the framework of the law, this law was enacted. Issued immediately following the entry into force of the constitutional text, this law repealed Ordinance No. 01-03 of August 20, 2001, on Investment Promotion. It aimed to regulate the investment domain at both the structural and institutional levels by amending various legislative and regulatory provisions related to the National Agency for Investment Development (NAID)², including its complete restructuring and the extent of its competencies and powers.

² Article 26 of Law No. 09-16 outlines the powers of the NAID, while Articles 4, 14, 17, and 20 define its specific competencies. The legislator mandated the requirement to obtain a license from the NAID or the regionally competent center for managing the benefits in case the investor wishes to exercise their right to transfer the benefits. This is stipulated in Articles 18 and 29. The law also specifies the NAID's intervention in monitoring investments benefiting from the incentives during the exploitation period. The NAID plays a significant statistical role by collecting information obtained from investors, as stipulated in Article 32 of the



- In addition to this, entirely new provisions have been introduced regarding the remaining rules governing investment regulation, particularly procedurally, as well as the benefits and guarantees granted to both local and foreign private sectors, as an essential requirement for investment. In this context, this law included basic guarantees for special investors in Chapter Four, Article 21 thereof, including "the principle of fair and equitable treatment of the investor," in line with the principles of international law governing the relationship between the foreign investor and the host state (Abdallah, 2008, p. 23). This principle, except in cases governed by bilateral or multilateral agreements between Algeria and the foreign investor's country, dictates equality in treatment among foreign investors and between them and their local counterparts in rights and obligations.

- Note: The legislator in this law did not explicitly mention the National Investment Council as one of the investment entities stipulated in Chapter Six of this law, contrary to the situation in previous investment laws (93-12 and 01-03), which granted broad powers - as mentioned earlier - in framing and monitoring investments, setting legislative strategies in this field, and granting various benefits and guarantees for investments of significant importance to the national economy. However, this law generally referred to this role in Article 26 of Law 16-09 related to investment development.

- Furthermore, the absence of mention of the National Investment Council in this law does not intend to completely abolish its role, as affirmed by the text of Article 37, "The provisions of Order No. 01-03 relating to investment development, as amended and supplemented, shall be repealed, with the exception of the provisions of Articles 6, 18, and 22 thereof." Article 18 is considered the legal basis for establishing the National Investment Council, and this last article is an integral part of the new investment law text.

- Finally, it should be noted that the excessive expansion in the exploitation of oil by attracting foreign institutions, though justified by the development of the state's financial resources for developmental purposes, does not diminish Algeria's reliance on oil. It also indicates the continuity of development plans relying on petroleum revenue, subject to external fluctuations regarding price determination, which cannot be relied upon as a sustainable asset. Therefore, to achieve development, it is necessary to consider establishing a strategy that ensures the sustainability of the pillars of Good governance by involving and vigorously attracting both local and foreign private sectors for economic diversification to create added value. This is what the new law (Law 22-18) aims to achieve, which we will address in the third axis.

2- Assessment of Investment Development during the Period 2001-2016

During the period from 2000 to 2010, the inflow of foreign direct investment into Algeria witnessed a steady increase, which began at the start of 1998. This increase became more apparent with the beginning of the current millennium, reaching \$19.54 billion in 2010 and reaching \$27.77 billion in 2016 (Tayef & Kodar, 2019, p149). This confirms the success of previous regulatory efforts, reflected in maintaining a positive flow of investments, which led to an expansion of interest from foreign private sectors in investing in various economic sectors.

ORASCOM, the Egyptian company, invested in the telecommunications sector starting in 2001 and in cement in 2004. State investments in infrastructure projects (such as highways, the construction of one million housing units, etc.) contributed to an increase in the number of investment projects in the construction and public works sector. Additionally, it led to an increase in demand for cement, resulting in the establishment of numerous partnership projects in this field. These include the "ORASCOM Industrial Construction Complex" and the "Pharaoh Saudi Complex." Kuwait's National Telecommunications" also invested in the telecommunications sector in 2004. Furthermore, France invested outside the fuel sector through "DANONE," while the United States invested in chemistry and pharmaceuticals through "PFISER," and India invested in iron and steel through "ISPAT." However, this did not significantly reduce the share of the fuel sector from the total inflow of

law On one hand. On the other hand, Executive Decree No. 17-100, issued pursuant to this law, transformed this entity into an executive body with maximum decentralization.

foreign direct investment, which remained above 80%, due to the attraction of many companies³ to this profitable sector.

During the period 2010-2020, despite the stability witnessed in Algeria in its social, political, and economic aspects, the latter experienced a growth rate of 4.5% in 2014, with a GDP of \$227.3 billion, compared to growth rates of 3% in 2013 and 3.3% in 2012 (Al Jazeera News Channel, 2014, May 27). Algeria also recorded a decrease in the inflation rate, reaching 4.5% in 2013 compared to 9.4% in 2000.

Despite numerous tax incentives and facilitations encouraging private sector investment introduced by Algeria during this period to promote competition, attract investments, and improve product quality, the results have not met the expected level for development. This includes tax exemptions on transfer rights and permanent exemptions from property fees for essential real estate investments, defined by law as lasting ten years from the date of completion, as well as a 50% reduction in reinvested profits subject to a low tax rate of 33%. Additionally, financial incentives include raising the maximum financial guarantee for small and medium enterprises from 50 to 250 million Algerian dinars, along with a reduction in interest rates ranging from 0.25% to 1.5% depending on the project's location. Moreover, the financial allocation for the Youth Support and Employment Agency's Guarantee Fund has been increased from 20 to 40 billion dinars, and interest-free loans ranging from 20% to 25% are granted for projects exceeding a cost of 5 million dinars. Despite the enactment of Law 16-09, particularly Article 43 which liberalizes the investment sector, and after several years of implementing both constitutional and legislative provisions, the outcomes have fallen short of achieving anticipated development levels, especially following the World Bank's 2019 Investment Climate Report, which indicated Algeria's continued low rankings for the second consecutive year, placing 157th among countries with varying degrees of economic attractiveness for investment. Consequently, the new Law No. 22-18 takes into account international obligations arising from bilateral or multilateral investment agreements, which were obstacles for previous laws. This has led to the creation of an environment of good governance aimed at achieving national consensus on the importance of the private sector, fostering genuine competition free from distortions, and developing judicial systems and legislations concerning property rights and guarantees, as well as commercial, tax, and labor laws.

Axis three: Sustainability of Strengthening the Foundations of Good Governance through Law No. 22-18.

Despite the economic reforms undertaken by Algeria during the 1990s and the beginning of the current millennium, represented by the orientation towards a market economy and economic liberalization, which included tax legislation, customs procedures, and the banking system, all of this in order to encourage and motivate the private sector to integrate into the process, which resulted in the issuance of several investment-related laws, the first of which was Legislative Decree No. 93-12, then Decree No. 01-03, and finally Law No. 16-09; However, from a practical point of view, it faced a number of obstacles, difficulties, and impediments that prevented the achievement of the objectives it aspired to, although these laws contain provisions that suggest that they aim to develop and promote investment in Algeria, and primarily take into account Algeria's international obligations; which did not allow the three aforementioned laws to achieve the set goals, given their incompatibility with the Algerian economic reality, which required the development of a new law according to a new strategy to achieve development by providing an environment to complement the pillars of good governance to revive the private sector, which is represented by Law No. 22-18, dated July 24, 2022, concerning investment (Journal officiel n° 50, 28 juillet, 2022.), which included new and stimulating provisions and rules, trying to avoid the difficulties and imbalances experienced by previous laws, and came with additional content while retaining previously existing provisions.

1-Content of the Law and the Nature of the New Provisions.

³ Among these companies, Anadarko, Lasmo oil, Maersk oil first gallery, GP Petroleum LTD, Burlington Resources, Talisman, BHP.



Laws are constantly evolving to reflect new developments and changing circumstances, whether political, social, or economic. In response to these changes, new legal frameworks must be established to align with emerging realities and transformations, both domestically and internationally. For instance, the Algerian economy has experienced internal and external fluctuations due to global events such as the financial crisis, (the decline in oil prices and its impact on Algeria, and the COVID-19 pandemic in late 2020). These factors have negatively affected the way investment is handled by relevant authorities, prompting the need for a new law with fresh content and scope, distinct from previous ones, to encourage both domestic and foreign private sectors. To fully grasp the significance of this new law (22-18), it is crucial to examine its content, compare it to its predecessors, and identify the novelties it introduces while retaining provisions from previous investment-related laws. Among the new aspects introduced by Law 22-18 are:

- Enshrining the Principle of "Investment Freedom":

New concepts related to investment by both local and foreign private sectors have been introduced by Article 3 of Law 22-18, which has been termed as "Major Principles of Investment." These principles include the "Principle of Investment Freedom" and the "Principle of Equality and Transparency." These principles have not been elaborated or clarified in previous laws. It's worth noting that the principle of "investment freedom," which is irreversible, aligns with the constitutional amendment of 2020.

Note: This law is the first to specify the individual concerned with investment freedom, compared to previous laws including the latest one, Law 16-09. Previous laws focused solely on the types of investments involved in investment. Therefore, according to the new law (Article 5), the individual concerned with investment freedom is a natural person, whether national or foreign, whether resident or non-resident, or legal entities⁴

- Establishment of the "Principle of Equality" and the "Principle of Transparency":

Regarding the "Principle of Equality," it has been solidified as affirmed by Article 01 of Law 22-18, ensuring that all investors, whether natural persons or legal entities, nationals or foreigners, benefit from rights, duties, and advantages including tax or customs incentives. This principle finds its foundation in internationally recognized customary law, being enshrined in the legislation of nations and in international agreements encouraging foreign investment.

As for the "Principle of Transparency," Law 22-18⁵, also emphasizes it, serving as a complement to the Principle of Equality. This principle encompasses firstly the right to access documents, disclosure of procedures related to decision-making, and the manner of conducting deliberations (Nanteuil, 2015, p 810) .It also enables private investors to access all information related to their activities from the supervisory bodies overseeing investment projects, regardless of their legal status. This serves as a primary guarantee for investors, ensuring fairness during the period of investment activity, as well as through dispute resolution via international arbitration (Biiga, n.d.).

- New Legal Guarantees.

: According to Article 9, new legal guarantees relate to the protection of intellectual property rights, as stipulated by the constitutional amendment of 2020, Article 74, wherein the state undertakes to protect these rights.

2-Benefits and Incentives of the New Law 22-18

Similar to Laws 01-03 and 16-09, the new Law 22-18 introduces a set of benefits and incentives that differ in their content for the benefit of both local and foreign private sectors⁶, regardless of the

⁴ including banks, financial institutions, insurance companies, exporters, various categories of enterprises, whether small or medium-sized, startups, commercial companies of all types, and others. These individuals or entities can be private or public, national or foreign, resident or non-resident in Algeria.

⁵ Law 22-18, Article 4 of Executive Decree No. 22-298 on the Organization of the National Investment Agency

⁶ Please refer to Articles 6, 7, and 27 to 33 of Law No. 22-18, dated July 24, 2022, concerning investment, in the Official Gazette, Issue No. 50, issued on July 28, 2022.

type of investment⁷. This is aimed at encouraging investment over long periods, a practice internationally recognized to increase the added value for the state. These benefits manifest through tax and fiscal laws, including fees and tax laws and financial laws issued annually for the benefit of all individuals in the state, including investors, in addition to customs law.

Furthermore, the fourth chapter of the new law allocates additional benefits and incentives termed "exceptional incentives," defining the conditions for their utilization. These incentives are specific to certain investments while respecting certain conditions as stipulated.

Additionally, Law 22-18 provides further exemptions for the benefit of the investor through Articles 27, 28, and 29, exempting certain property fees and taxes

Note: It's noteworthy that what distinguishes these incentives included in this law (22-18) in terms of content and substance, notably the exemption system from certain procedures related to foreign trade (Articles 7, 29 of the law), is that practically, when implemented, it eliminates bureaucratic practices, discrimination, and favoritism that existed previously. Investors benefit more from incentives, whether they are general privileges or exceptional ones.

3- Regulatory Authorities for Investment under the New Law 22-18

Similar to previous laws concerning investment, Law No. 22-18 defines the legal nature of the regulatory authorities overseeing the monitoring and supervision of investment projects through Chapter Three, titled "Institutional Framework," which includes:

- **National Investment Council:** This new law⁸, in Articles 16, 17, and 40, retains the same designation as Law No. 01-03 related to investment promotion. This council, the highest body in the state, contributes to the promotion and monitoring of investment projects by granting it the general supervision over investment projects under the presidency of the Prime Minister. Article 17 grants it new powers, allowing it to propose the state's investment strategy, oversee its comprehensive coherence, and conduct a complete evaluation, submitting an annual report at the presidential level.


- **Algerian Investment Promotion Agency:** According to Articles 16 and 18 of Law 22-18⁹, a new designation, the "Algerian Investment Promotion Agency," replaces the "National Agency for Investment Development," while maintaining the same legal form established in the previous laws (Law No. 01-03 and partially repealed Law No. 16-09). According to Article 18, this agency has a direct supervisory role over investment and is responsible for promoting and valuing investment in Algeria and abroad.

Assisting Windows for the National Agency for Investment Development: The purpose of these windows is to assist the Algerian Investment Promotion Agency, as also addressed by the previous laws (01-03 and 16-09). According to the principle of centralization and decentralization in Article 18 of Law 22-18, these windows are given a description.... to facilitate tasks and streamline the study of investment projects. Each window has specific specialized tasks in terms of supervising

⁷ Whether they are commercial or industrial investments, direct or indirect investments, technology-oriented investments, or fashion investments.

⁸ According to Executive Decree No. 22-297 dated September 8, 2022, which defines the composition of the National Investment Council, the formation and responsibilities of the Council are placed under the authority of the Prime Minister. It consists of ministers from various economic sectors, the Minister of Interior, the Chairman of the Board, and the Director General of the Algerian Investment Promotion Agency as observers. Additionally, the Council may seek the assistance of any individual based on their expertise or competency in the field of investment.

⁹ According to Articles 19 and 20 of Executive Decree No. 22-298, central windows and decentralized windows are solely responsible for carrying out all necessary procedures to realize investment projects and to accompany and assist investors. However, the new decree grants more authority to the director of this agency, as outlined in the new law. The director is designated as the direct administrative head of the agency, responsible for its administrative management and exercising peaceful or presidential authority over its employees. Additionally, the director has the authority to intervene in all matters related to investment, unlike the previous laws that did not mention these powers. Please refer to Articles 17, 16, 15, 14, and 13 of Executive Decree No. 22-298 for more details.



investment projects in terms of the procedures to be followed¹⁰. This means that each window has assigned specialized tasks.

According to Articles 19 and 20 of Executive Decree No. 22-298¹¹, the sole central windows and the sole decentralized windows are entrusted with carrying out all necessary procedures to implement investment projects, and to accompany and assist investors.

Conclusion

In conclusion, despite the efforts made by the state, particularly since the early 1990s, to establish the foundations of good governance through the enactment of laws and regulations to encourage both local and foreign private sectors, and the establishment of supportive institutions to facilitate the investment process, and despite the political and social stability witnessed by the country since the beginning of the current millennium, and despite the significant facilitations provided, all of this has remained incongruent with the true perspective, and has not materialized to the level of aspirations and goals sought by the Algerian state in attracting investors, as it remained far from what was aimed for.

Therefore, Law No. 22-18 came to enhance sustainable development, good governance, and establish harmonious relations and activate economic integration, with the aim of creating new investment opportunities for investors that align with the enormous potential available to the Algerian economy, especially since it came with new stimulating and encouraging provisions, in addition to guarantees related to capital transfer, which was an obstacle in previous periods, along with guarantees related to the law itself, which cannot be amended until after 10 years, as well as the possibility of resorting to commercial courts in case of disputes, compensating the affected, which is in line with bilateral and multilateral agreements signed by the state, provided there is no harm, whether environmental, health-related, or to fair competition, with the necessity of providing information regarding accounting, taxation, and finance with credibility, transparency, and clarity. Moreover, the new law has eliminated the issue of preemptive rights in favor of the state, which was an obstacle for investors in previous laws.

Recent studies that have focused on economic development have shown that good governance is only achieved through a partnership between the state and the private sector to contribute to improving developmental performance. The private sector is of great importance in driving national development and achieving profit. Therefore, Algeria has adopted a series of economic reforms to strengthen and develop the private sector with the aim of boosting the national economy.

Finally, we must ask ourselves, is it time for foreign investors to invest in Algeria with these advantages, facilitations, and guarantees embodied in bilateral and multilateral agreements signed by the state, or is the ball still rolling, awaiting a new law? Bearing in mind that the recent law cannot be amended until after 10 years, or are there other obstacles hindering the flow of investors in Algeria?

Results

Although Law 22-18 came with significant advantages, there are still some difficulties that continue to act as barriers hindering the implementation of this law in practice. Therefore, the state must, in order to achieve good governance, eliminate all complexities and obstacles that prevent the application of this law, through several solutions, the most important of which are as follows:

- There must be a change in societal mindset, accepting the presence of foreign investors and moving away from the negative perception that prevailed earlier, considering it a form of colonization, and viewing it as an added value to the economy, without relying solely on the state and taking the initiative to create wealth for development.
- Working on developing infrastructure to improve the business environment to attract foreign investments.

¹⁰ Also, please refer to Article 18 of Executive Decree No. 22-298, which specifies the organization and operation of the Algerian Investment Promotion Agency, from the same source.

¹¹ Furthermore, please refer to Articles 19 and 20 of Executive Decree No. 22-298, which regulate the organization and operation of the Algerian Investment Promotion Agency, from the same source.

- Enhancing the new economy through the use of modern communication applications and the development of databases and information systems.
- Enacting the "principles of transparency" and "principles of equality" as two key qualities to embody good governance, contingent upon eliminating bureaucracy, which still has deep-rooted origins in old mentalities lacking technological aspects. Therefore, the digitization system should be generalized across economic and administrative sectors concerned with investment, such as customs administration, tax authorities, and also at the level of state properties.
- Encouraging investment requires the independence of banks and financial institutions to realize investment projects, which still remain a major obstacle in Algeria, due to the roles played by these institutions, whether in management or as partners in investment projects.

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