

ENCOURAGING INVESTMENT IN ALGERIA BETWEEN INCENTIVES AND CHALLENGES - A REVIEW OF SUCCESSIVE INVESTMENT LAWS

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Abstract:

Encouraging private national investment and attracting foreign investment requires the liberalization and optimization of the business environment to benefit the national economy and facilitate both domestic and international trade. Although the state has pursued this objective since the economic opening and transition to a market economy following the 1989 Constitution, the implementation of legal frameworks governing investment has not met the desired goals. Despite numerous incentives and the diverse range of high-quality investment opportunities available in Algeria, this failure can be attributed to several legal factors, including the fragility of upholding fundamental investment principles such as freedom, equality, transparency, and legislative stability. Additional challenges stem from security, economic, and political factors, which need to be addressed to initiate a serious effort to stimulate investment in Algeria. This paper examines successive investment regulations, highlighting both achievements and shortcomings, and identifies the true reasons impeding the realization of a promising economic activity that could position Algeria as a secure investment destination.

Keywords: Investment, incentives, freedom, equality, transparency, legislative stability.

INTRODUCTION

Attracting foreign investment, enhancing domestic investments, and fostering their growth are subjects that have garnered extensive attention from researchers. This is understandable given their central role in economic vitality, diversifying production beyond the hydrocarbons sector, supplying goods and services, absorbing unemployment, and providing hard currency, among other benefits. Algeria, like other developing nations, has sought and continues to strive for a promising breakthrough in this area through the legislative framework it has developed over various periods, reflecting changing conditions, interests, and priorities.

Indeed, since the late 1980s, Algeria, in its process of adopting a market economy, has been working on a series of political and economic reforms in an overall program of state encroachment, including improvement of investment legislation. Such improvements began with the creation of Legal Decree No. 93/12 on Investment Promotion, Ordinance No. 01/03 on the development of investment, amended and supplemented by Ordinance No. 06/08. This was followed by Law No. 16/09 on Investment Promotion and most recently, the new Law No. 22/18 on Investment Promotion.

By "investment projects," we refer broadly to various types, including industrial, tourism, agricultural, and real estate investments, among other diverse fields of activity. Algeria has made significant progress in the agricultural sector, evidenced by tangible results. However, our study will primarily focus on economic investment, specifically directed towards industrial and service-oriented projects. We will exclude the topic of tourism investment due to the nature of the research, as expanding into this area could complicate the scope of the study.

Given the limited success in realizing national and foreign investment projects through the application of these legislative texts, it has become imperative to assess the effectiveness of successive regulations in convincing investors with their guarantees and incentives. These measures are intended to encourage entry into the investment landscape in Algeria, which offers diverse opportunities and is rich in substantial economic potential across various sectors. The evaluation will also address the challenges that persist and continue to hinder the achievement of significant economic growth beyond the hydrocarbons sector.

In light of these circumstances, the new investment law, introduced following the 2020 constitutional amendment, aims to establish new foundations and guarantees that could potentially rejuvenate stagnant investment activity. However, the issue may not lie in the texts themselves but in their implementation by the relevant investment bodies. Additionally, there may be other factors that need to be addressed and adapted to support comprehensive economic development.

To investigate this topic, our research paper poses the following question:

To what extent has the legislator enshrined principles that promote and attract investments in the legal texts governing investment, and what challenges does it face?

To address this question, we have divided our research into three main sections. The first section examines the principle of investment freedom. The second section explores other principles, namely equality, transparency, and legislative stability. The final section discusses the new incentives introduced by the latest investment law, using an analytical approach.

Section One: The Evolution of the Principle of Investment Freedom

The principle of investment freedom is a fundamental cornerstone for an open economy, facilitating both domestic and international trade liberalization. Investment freedom is defined as the state's assurance to both national and foreign investors of the liberty to establish investment projects, choose activities, and determine the amount of funds allocated to the project. It also encompasses the freedom to own multiple projects and to manage and control the project in terms of administration and marketing without undue government interference or restrictions, except insofar as necessary to provide support for the establishment of investments.¹

To assess the extent to which this principle has been disseminated and implemented in legislation, it is essential to distinguish between two key phases separated by the political and economic orientation adopted by Algeria under the Constitution of February 23, 1989, which embraced a market economy policy. Therefore, we will illustrate this principle as follows:

01- The Principle of Investment Freedom from 1962 to 1989

As is well known, at the beginning of independence, Algeria's legislative policy was based on French legal texts that did not conflict with national sovereignty, as extended by Ordinance No. 62/157, which continued the application of French laws.² During this period, the principle of freedom was upheld for colonists but was not applied to Algerian nationals under the relevant French legislation. Under these circumstances, Algeria had adopted a socialist approach to governance, which was fundamentally at odds with the capitalist system prevalent during the colonial era. However, the legislator issued Legislative Ordinance No. 63/277,³ which regulated private investment freedom under the conditions of project localization, modernization and renewal of production factors, and ensuring training and professional advancement. According to researchers, this law-imposed restrictions on foreign investments in Algeria, as it was believed that colonists monopolized such investments. This text was later amended by Ordinance No. 66/284,⁴ which clarified the modalities for private capital involvement in various economic sectors and reinforced the guarantees established in the aforementioned legislative ordinance. This amendment is seen as an enhancement of investment freedom and a reassurance to investors, despite the contractionary economic stance of the time.

During this period, the state was the primary driver of all economic activities, controlling all import and export operations and owning all means of production. This was enshrined in the 1976

¹ Abdel Salam Abu Qahf, *Management and Investment Economics*, University House, Alexandria, Egypt, 1993, p 234

² Ordinance No. 62/157 of 31/12/1962 extending the application of French laws unless they conflict with national sovereignty, OG n° 02/1963

³ Law No. 63/277 of 26/07/1963 on the Investment Law, OG No. 53/1963

⁴ Ordinance No. 66/284 of 15/09/1966 on the Investment Code, OG No. 80/1966

Constitution⁵, particularly in Article 14, which stipulated that the state owned all institutions, banks, insurance companies, transportation enterprises, and other similar entities. This framework-imposed limitations on the aforementioned principle of investment freedom, even though the state allowed national institutions to establish joint ventures with foreign entities, in accordance with the principle of parity as specified in Law No. 82/13 regarding the establishment of joint ventures.⁶ In 1988, the legislator issued a legal text under the number 88/25⁷ concerning the direction of private national economic investments. This legislation was aimed at prioritizing sectors to achieve economic integration, enhance national capabilities, and create job opportunities. However, it restricted investments in strategic areas such as banking and insurance. Shortly after the law came into effect, the events of October 5th led to its suspension and the initiation of a new phase.⁸ During this period, Algeria, newly independent, was navigating its economic path under a socialist orientation. This situation led to a contraction of investment freedom in favor of public national investment over private and foreign investment. However, following the adoption of the Constitution on February 23, 1989,⁹ Algeria underwent an ideological shift, embracing a market economy. This transition was accompanied by price liberalization, the deregulation of foreign trade, and the opening up of the investment sector to foreign investors.

02- Principle of Investment Freedom from 1989 to 2024:

Under the new constitution, Algeria underwent significant political and economic transformations, adopting a market economy accompanied by the liberalization of both domestic and foreign trade. The state gradually retreated from its previous role as an active participant in managing all aspects of the national economy. In this context, it is important to distinguish between the constitutional foundation of this principle and its legislative regulation. We will discuss the key texts according to their chronological implementation, irrespective of the hierarchical order or strength of the legal norms. This will be detailed in the following sections:

- 1) The principle of investment freedom was broadly enshrined in the 1989 Constitution through the constitutional legislator's adoption of a liberal approach, which necessitates trade freedom and a market economy. This is reflected in the constitution's recognition of private property rights, as stipulated in Article 49. However, the Constitution did not explicitly address the concept of investment freedom.
- 2) Investment freedom is closely linked to foreign trade freedom, as the former inherently implies the latter. This relationship led to the issuance of Law No. 90/10 concerning Currency and Credit¹⁰, which aimed to stimulate the foreign exchange market and the flow of foreign capital. The law also outlined mechanisms for financing investments and promoting competition within the banking sector, thereby paving the way for the new market economy approach.
- 3) Under the new economic reforms, Decree-Law No. 93/12 was enacted to promote investment¹¹, introducing a more open approach to both private and foreign national investment. This legislation

⁵ Constitution of 1976, issued by Ordinance No. 76/97 dated November 22, 1976. Official Gazette No. 94/1976.

⁶ Law No. 82/13 dated August 28, 1982, concerning the establishment of mixed companies. Official Gazette No. 35/1982.

⁷ Law No. 88/25 dated July 12, 1988, concerning the orientation of private national economic investments. Official Gazette No. 28/1988

⁸ Mohamed Ali Aibout, *Foreign Investments in Algerian Law*, 2nd edition, Dar Houma, Algeria, 2014, p. 39.

⁹ Constitution of 1989, promulgated by Presidential Decree No. 89/18 of 28/02/1989, OG No. 09/1989.

¹⁰ Law No. 90/10 dated April 14, 1990, concerning the Law on Loans and Currency. Official Gazette No. 16/1990, repealed by Ordinance No. 03/11 dated August 6, 2003, Official Gazette No. 52/2003, which was further repealed by Law No. 23/09 dated June 21, 2023, Official Gazette No. 43/2023.

¹¹ Legislative Decree No. 93/12 dated October 5, 1993, concerning Investment Promotion. Official Gazette No. 64/1993, repealed by Ordinance No. 01/03 dated August 20, 2001, concerning

established investment freedom by stipulating in Article 3 that: "Investments may be made freely, subject to legislation and regulations concerning regulated activities. These investments must be declared to the agency mentioned below prior to their implementation." This provision required investors to declare their investments, thereby eliminating the previous requirement for prior licenses—permits granted by the state allowing investors to engage in specific activities.¹² However, the law excluded investments specifically reserved for the state and its public institutions. While this did not diminish investment freedom in other diverse areas of Algeria, the legislative text was subsequently repealed in 2001.

4) The 1996 constitutional amendment¹³ reinforced the principle of investment freedom by promoting trade and industry freedoms, which are inherently linked to investment. Article 37 of the amended Constitution states: "Freedom of trade and industry is guaranteed and exercised within the framework of the law." This provision serves as a constitutional guarantee of investment freedom within its broad scope. Additionally, Article 67 provided legal protection for foreigners and supported the freedom to innovate, further enhancing the investment environment.

Through this amendment, the constitutional founder aimed to specifically encourage foreign investments and reassure private national investors regarding the previously established legislative gains. This was intended to solidify the principle of diverse investment freedoms.

5) After the implementation of numerous investment projects under Decree-Law No. 93/12, which predominantly featured local investments, the state struggled to attract foreign investors to the national market. In response, Ordinance No. 01/03 concerning investment development was issued, incorporating most of the provisions from the repealed legislation. A notable advancement in this ordinance is its lack of any mention of sectors excluded from national or foreign investment activities. Article 4 of the ordinance states: "Investments may be made with complete freedom, subject to legislation and regulations related to regulated activities and environmental protection. These investments shall benefit from the legal guarantees stipulated in applicable laws and regulations." The term "complete freedom" signifies the removal of all constraints and obstacles that impede investment progress and development, which is the goal the legislator aims to achieve. The legislator reinforced this approach in Ordinance No. 06/08, which amends and supplements Ordinance No. 01/03. The inclusion of the same article in its previous form in this amendment demonstrates a commitment to ensuring investment freedom, safeguarding it from restrictions and obstacles, and aligning with global trends where developing countries compete to attract foreign capital.

6) The executive branch has occasionally introduced unconventional legislative measures through financial laws, which serve as a convenient means for enacting provisions deemed appropriate by the authorities. Specifically, the supplemental finance laws for 2009¹⁴ and 2010¹⁵ included significant regressions from the principle of investment freedom. These laws imposed new restrictions on foreign investments, such as requirements for shareholder declarations, government consultation on investment transfers, and the right of preemption, among other provisions. Foreign

Investment Development, Official Gazette No. 47/2001, amended and supplemented by Ordinance No. 06/08 dated June 15, 2006, Official Gazette No. 47/2006, which was also repealed by Law No. 16/09 dated August 3, 2016, concerning Investment Promotion, Official Gazette No. 46/2016, and subsequently repealed by Law No. 22/18 dated July 24, 2022, Official Gazette No. 50/2022, which is currently in effect.

¹² Rana Mohamed Radi, *The Role of the Administration in Granting and Revoking Investment Licenses*, 1st edition, National Center for Legal Publications, Cairo, 2016, p. 57.

¹³ Constitutional Amendment of 1996, enacted by Presidential Decree No. 96/438 of 07/12/1996, Official Gazette No. 76/1996

¹⁴ Ordinance No. 09/01 of June 22, 2009, on the Supplementary Finance Law for 2009, Official Gazette No. 44/2009.

¹⁵ Ordinance No. 10/01 of August 26, 2009, on the Supplementary Finance Law for 2010, Official Gazette No. 49/2009

investors perceived these measures as a rollback of the benefits established by Ordinance No. 01/03 concerning investment development. This situation led to dissatisfaction among those overseeing foreign investment agencies in Algeria, highlighting a perceived inequality between foreign and domestic investments.

7) The 2016 constitutional amendment aimed to reinforce the principle of investment freedom by improving the investment climate.¹⁶ Article 43 of the amended Constitution states that "Investment and trade freedom are recognized and practiced within the framework of the law. The state is committed to improving the business environment and encouraging the growth of enterprises without discrimination." This affirmation came at a time of significant economic sensitivity for the Algerian economy, which prompted the constitutional legislator to emphasize such guarantees and incentives.

8) The amendments to the Investment Promotion Law, introduced through successive finance laws, led to the enactment of Law No. 16/09 concerning investment promotion. This law was designed to revitalize investment after a significant decline in private national investments and the reluctance of foreign investors to enter the national market. Notably, this law avoided directly addressing the principle of investment freedom, likely to avoid criticisms of the legislator who previously established freedoms only to impose subsequent restrictions.

Article 4 of the law stipulates: "Investments must be registered with the National Development Agency to benefit from the advantages provided under this law before their implementation." Although this law simplified procedures, introduced flexibility, and eliminated the prior declaration system, it restricted the authority of the National Investment Promotion Agency, particularly regarding its discretion in granting investment benefits. Investors, upon registration, gain access to the benefits and incentives prescribed by the law. However, the law did not address concerns about inequality, ensure full investment freedom, or eliminate the requirement for prior approval by the National Investment Council for projects exceeding five billion Algerian dinars, among other issues.

9) The latest constitutional amendment of 2020¹⁷ reaffirmed the principle of investment freedom and foreign trade. Article 61 states that "The freedom of trade, investment, and entrepreneurship is guaranteed and exercised within the framework of the law." This reiteration by the constitutional legislator underscores the commitment to this principle and the incentives provided to investors, particularly as Algeria entered a new era of political and economic reforms. Following this, the new investment law was enacted, introducing further guarantees and incentives.

10) The new Investment Law No. 22/18¹⁸ explicitly reaffirms the principle of investment freedom. Article 3 states that the law enshrines investment freedom, allowing any individual or entity, whether national or foreign, resident or non-resident, to freely choose their investment, provided they comply with applicable laws and regulations. This approach aligns with a broader policy aimed at gaining the confidence of both national and foreign investors, enhancing previous gains, and establishing equality between national and foreign investments, as well as between public and private investments. It also emphasizes the transparent implementation and management of investments.

However, these efforts have not fully achieved the desired results in attracting foreign investment and effectively diversifying private national investments. This shortfall may be attributed not only to challenges related to investment freedom but also to other principles such as equality, transparency, and legislative stability, or to factors beyond the legislative framework, which will be analyzed further below:

Section Two: Enshrining the Principles of Equality, Transparency, and Legislative Stability

¹⁶ Constitutional Amendment of 2016, enacted by Law No. 06/01 of March 06, 2016, Official Gazette No. 14/2016.

¹⁷ Constitutional Amendment of 2020, enacted by Law No. 442/2020 of 30/12/2020, Official Gazette No. 82/2020.

¹⁸ Law No. 22/18 of July 24, 2022, related to Investment Promotion, Official Gazette No. 50/2022.

An investment-friendly environment requires ensuring equality among investments, implementing transparent procedures, and minimizing bureaucratic interference from public administration. Additionally, it is essential to maintain legislative stability for the legal provisions governing investment processes, thereby preserving the legal status of investors. Such measures encourage and stimulate private national investment and aid in attracting foreign investments. In this section, we will examine how effectively these principles have been adopted and enshrined by the legislator.

Principle of Equality Among Investments:

The principle of equality among investments is a crucial constitutional principle, particularly for foreign investors. Discriminatory treatment between national and foreign investments can cast doubt on the state's commitment to upholding this fundamental principle. The Algerian Constitution, as articulated in Article 50, emphasizes that any foreigner legally present within the national territory is entitled to legal protection for their person and property. This protection includes investment guarantees, which safeguard investments from non-commercial risks through both substantive and procedural legal means.¹⁹

This principle is embedded within the general legislative framework aimed at ensuring fairness in public life, so that neither citizens nor foreign residents, whether present or non-resident, experience discriminatory policies. In the realm of investment, fostering a spirit of equality is essential. This principle has been progressively integrated into the legal texts governing investment, particularly following the ideological shift marked by the 1989 Constitution.

The principle of equality is especially critical in distinguishing between public and private national investors and between national and foreign investors, particularly when engaging in similar activities under comparable conditions. The state strives to mitigate or, more accurately, eliminate these disparities in treatment, which have emerged inconsistently in investment regulations.

The principle of equality entails ensuring fair treatment and uniformity in the handling of investments. This means that investments should receive consistent treatment whether they are foreign investments from different nationalities, or between foreign and national investments, or between private national investments and public investments, if applicable. Investors should enjoy the same rights and bear the same obligations as stipulated by investment law and the nature of the activities being undertaken. The objectives of investment may include development and productivity, project expansion, or the creation of new products, among other goals.²⁰

Most countries that have opened up to foreign investment strive to reassure investors by promoting equality within their domestic laws, recognizing its significant impact on attracting foreign capital and encouraging investors to enter national markets. This principle has made considerable progress in many countries that attract investment, ensuring balanced relationships between investments and equal treatment by the host country.

Where the principle is that the Algerian legislator shows concern for consecration - especially with regard to the new investment law - does not define foreign investment, but provides that any natural or legal person, either national or foreign, either a resident or a non-resident, may engage freely in the activity of investment. It emphasizes transparency and equality among investments.

We will examine how effectively this principle is upheld in light of the current investment regulations and legal texts:

1. The first legislative text governing investment in Algeria, as the country opened up to a market economy in the early 1990s, enshrined the principle of equality. Article 38 of the repealed Decree-Law No. 93/12 concerning investment promotion stated: "Foreign natural and legal persons shall receive the same treatment as Algerian natural and legal persons concerning rights and

¹⁹ Abdullah Abdelkareem Abdullah, *Investment Guarantees in Arab Countries*, 1st ed., Dar Al-Thaqafa, Amman, Jordan, 2008, p. 23.

²⁰ Mohamed Ali Soueilem, *Investment Contracts*, 1st ed., 2014, Dar Al-Matbou'at Al-Jami'iya, Alexandria, 2014, p47.

obligations related to investment, with due regard to the provisions of agreements concluded between the Algerian state and the state of which these persons are nationals."

2. Similarly, Ordinance No. 01/03 concerning investment development, which repealed the previous decree-law, upheld this principle. Article 14 of this ordinance stated: "Foreign natural and legal persons shall be treated in the same manner as Algerian natural and legal persons regarding rights and obligations related to investment."

3. Law No. 16/09 further reinforces this principle. Article 21 of the law states: "Subject to the provisions of bilateral, regional, and multilateral agreements signed by the Algerian state, foreign natural and legal persons shall receive fair and equitable treatment concerning their investment-related rights and obligations."

4. This principle finds further backing from the New Investment Promotion Law, Law no. 22/18. Article 3 of the aforesaid law states: "The present law enshrines the following principles: freedom of investment. Any national or foreign, resident or non-resident, physical or legal person, having the intention to invest, is at liberty to opt for an investment in conformity with the applicable legislation and regulations, under the condition of transparency and equality regarding investment treatment".

In the case of international agreements, this principle is supported by the agreement signed between Algeria and the Arab Republic of Egypt²¹ on March 29, 1997. Article 4 of the agreement accordingly stipulates: "Each contracting party shall grant investments made by the citizens and companies of the other contracting party treatment no less favorable than that granted to its own citizens and companies." This guarantee assures and guarantees the principle of just treatment of reciprocal investments, without discrimination between foreign and national investments. Secondly, investors are entitled to obtain the facilities to which the host state is bound to provide since it holds the authority to license investments as well as grant concessions²².

The new Investment Law has formalized key aspects related to the real estate designated for investment locations through its implementing provisions. This is addressed by Law No. 23/17,²³ which specifies the conditions and procedures for allocating state-owned private property for investment projects. The law grants foreign investors the right to transfer their concession in the same manner as national investors, a right that was previously denied to foreign investors under earlier legal frameworks.

2) The Principle of Transparency and Clarity of Procedures

The principle of transparency was not explicitly addressed in previous legal texts, as lawmakers considered it an inherent principle applicable to the treatment of both national and foreign investments, thus not requiring explicit mention. However, its inclusion in legal texts enhances confidence in the genuine intent to attract investments. This is explicitly enshrined in the new Investment Law No. 22/18, where Article 3, paragraph 2, states that treatment must be transparent and equitable between investments. Transparency is understood as the clarity of procedures, enabling investors to access relevant information, simplifying the process for obtaining the necessary licenses for project establishment and operation, and clearly defining the investor's obligations and rights.

The principle of procedural transparency also includes clarifying the roles of involved agencies to prevent exploitation and undue influence that could affect investors. Additionally, it addresses the

²¹ Agreement dated March 29, 1997, between Algeria and Egypt concerning the Promotion and Reciprocal Protection of Investments, ratified by Presidential Decree No. 98/320 dated October 11, 1998, Official Gazette No. 76/1998

²² Jihad Zohair Dibe Al-Harazin, *The Implications of Concession Contracts*, Dar Al-Fikr Wal-Qanun, Mansoura, 2015, p. 249.

²³ Law No. 23/17 dated November 15, 2023, specifying the Conditions and Procedures for Granting Economic Property from State Private Ownership for Investment Projects, Official Gazette No. 73/2023.

smooth handling of investment project disputes, providing clear mechanisms for resolving such disputes without ambiguity that could lead to misinterpretation. The recent adoption of digital procedures for receiving and processing applications is a clear example of enhanced commitment to this principle. This is reflected in Article 6 of the aforementioned law, which stipulates that investors should benefit from facilities provided by the relevant agency managing the real estate, as outlined in Article 4 of Executive Decree No. 22/298,²⁴ which regulates the organization and operation of the Algerian Agency for Investment Promotion.

Thus, investment legislation mandates the establishment of procedural transparency and simplification for both national and foreign investors. However, implementing these principles and provisions in practice requires significant efforts to improve the investment environment and prepare it for a new beginning. This includes particularly the need to change the mindset of those in charge of public administration responsible for handling various investment files.

3) Principle of Legislative Stability

Investors evaluate attractive and favorable factors as a whole, rather than in isolation. Therefore, the realization of investment freedom, transparency, and equality is insufficient if the legal framework governing investment does not exhibit legislative stability. Consistency in legal provisions and the avoidance of frequent changes or conflicts that could undermine the investor's legal status are crucial. Legislative stability serves as a legal mechanism to prevent disputes by limiting the state's role as both legislative authority and party in enforcing investment contracts.²⁵ Encouraging foreign investment and advancing national private investment requires the enduring stability of the legal rules that regulate it. This ensures the preservation of the investor's acquired rights under the current law, with any changes to their legal status only being advantageous as stipulated by the new legal provisions.

On this basis, a question arises regarding the frequent changes in laws related to investment promotion and development: does this constitute a breach of the principle of legislative stability? Alternatively, can it be deemed acceptable if it preserves all the previously acquired rights? However, such changes create new legal statuses for investments established under the new law, differing from those achieved under previous regulations. This disparity could potentially introduce inequality between investments. To address this issue, it is essential to ensure that new advantages are applied retroactively to existing investments to mitigate the effects of such discrepancies.

Does legislative stability and the permanence of legal rules imply their unchanging nature without modification or alteration, or does it refer to maintaining the validity of their provisions even if they are subject to change? Particularly, an investor whose project is in operation or in the establishment phase could be adversely affected if the investment benefits and incentives granted based on the prevailing regulations are not preserved.

To clarify these nuances, legal doctrine defines legislative stability as maintaining the applicable law unchanged from the moment a contract is established between the investor and the host state. This means that even if the legal text is altered, the investor's legal status remains governed by the law under which it was originally established. The new law only applies if the investor explicitly requests it, provided that the new provisions are more favorable. This approach aims to create a stable legal environment that preserves the investor's rights and obligations without adversely affecting the economic and financial relationships of the investment project.²⁶

²⁴ Executive Decree No. 22/298 dated September 08, 2022, which regulates the organization and operation of the Algerian Agency for Investment Promotion, OG N° 60/2022.

²⁵ Ghassan Obaid Mohammad Al-Amouri, *Foreign Investment Contracts for Real Estate*, 1st edition, Al-Halabi Legal Publications, Beirut, Lebanon, 2015, p. 170.

²⁶ Abdelmajid Chentoufi, *Conditions of Stability in Investment Contracts*, Master's Thesis in Law, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, 2009, p88.

To assess the extent of legislative stability in successive investment laws, it is evident that the legal texts have consistently maintained the application of the law under which the investor's legal status was established throughout all stages of the investment project.

For instance, Article 39 of Legislative Decree No. 93/12 concerning Investment Promotion stipulates: "Future amendments or repeals shall not apply to investments made under this legislative decree unless expressly requested by the investor." Similarly, Article 15 of Ordinance No. 01/03 on Investment Development, which replaced the aforementioned decree, includes the same provision. This principle is also reflected in Article 22 of Law No. 16/09 on Investment Promotion, and it continues under the current Law No. 22/18. Article 13 of the latter states: "The effects of amendments or repeals of this law shall not apply unless expressly requested by the investor."

This principle has also been enshrined in the bilateral agreements signed by Algeria, including the Maghreb Investment Agreement, which was ratified by Presidential Decree No. 90/420. Article 15 of this agreement states: "Investments of nationals of any contracting party cannot be expropriated or nationalized except under conditions that must be met, such as the requirement of public interest, and must be accompanied by fair, prompt, and effective compensation within a period not exceeding one year from the date of expropriation."²⁷

From the above, it is evident that the legislator has consistently endeavored to uphold the principle of legislative stability in successive investment laws. This is particularly apparent in the treatment of the right to transfer concessions, which was permissible for national investors under Legislative Decree No. 93/12 and Ordinance No. 01/03 and their implementing provisions. This provision was maintained, and concession transfers meeting the conditions were processed even after the issuance of Ordinance No. 08/04, which established that the concession was non-transferable. This approach reflects the legislator's commitment to preserving the legal status of investors who originally benefited from a legal framework allowing national investors to fully own their investment location.

Despite this clarity and the incentives provided, Algeria has not yet achieved the level of investment outside the hydrocarbons sector that matches its aspirations. It appears that the issue is not solely related to these principles but extends to other factors beyond mere legislation. The investment climate is influenced by a complex array of factors, including political, security, and economic stability, as well as regional conditions and other elements that can either facilitate or hinder investment activities.

Section Three: Incentives of the New Investment Law and the Challenges Facing It

The legal framework for investment includes several general guarantees mentioned above, along with new incentives and advantages designed to encourage both national and foreign investors. Among these incentives are the protection of investors' property rights and guarantees for addressing issues through clear procedures. We will elucidate these aspects in the following discussion:

1) Processing Investment Files Through a Digital Platform

To enhance service for investors and manage their investment applications, project establishment, and operations, a digital platform has been provided. According to Article 27 of Executive Decree No. 22/298, investors have access to essential information on investment opportunities, real estate offerings, and more through this platform. It serves as an electronic interface for guiding and monitoring investors from the date of registration through to project operation.

This platform is electronically linked to the information systems of public agencies involved in investment file management and oversight. Its objectives include addressing all aspects of investment applications, ensuring procedural transparency, simplifying processes, enhancing communication between administration and stakeholders, and expediting file review through

²⁷ Presidential Decree No. 90/420, dated December 22, 1990, ratifying the Agreement on the Promotion and Guarantee of Investments between the Member States of the Arab Maghreb Union, Official Gazette No. 06/1991.

immediate information exchange. Additionally, the digital platform represents a significant advancement in combating bureaucracy and reducing pervasive administrative corruption.

2) Conversion of Concession Rights to Full Ownership

The conversion of concession rights to full ownership of the real estate allocated for investment projects is one of the significant advantages introduced by the new law. Notably, the law does not differentiate between national and foreign investors in this regard, unlike previous regulations, thus reinforcing the principle of equality.

This issue has been the subject of considerable legal debate under successive investment laws, particularly regarding the use of industrial real estate for investment purposes. Under Legislative Decree No. 93/12 and Ordinance No. 01/03, the right to convert a concession into full ownership was granted only to national investors, creating inequality as foreign investors did not have the same privilege. This situation highlighted the need for equal treatment among investors.

The legislator revisited this incentive for national investors with the issuance of Ordinance No. 08/04 concerning the modalities of granting real estate concessions. This ordinance maintained the non-transferable nature of concessions, which, while viewed as a disadvantage for national investors, could be interpreted as a move towards equal treatment between national and foreign investments in this respect.

Subsequently, the legislator reverted to the original provision allowing the conversion of concession rights to full ownership, extending this benefit to both national and foreign investments equally. This approach was reaffirmed in Law No. 23/17, which sets out the conditions and procedures for granting concessions on state-owned private land for investment projects. Article 17 of this law specifies: "The concession may be converted into full ownership by the Algerian Agency for Investment Promotion, upon the concession holder's request, after the project has been completed in accordance with the terms of the specifications, obtaining a conformity certificate, and the project entering into operation as verified by the relevant authorities and agencies."

To illustrate the principle of equality and equal opportunities between investments, the legislator has allowed this advantage and incentive to apply retroactively to investments established under the old law. Concession rights granted to these investments can be converted into full ownership under the same conditions available to investors under the new law. This is stipulated in Article 16 of Law No. 23/17, as mentioned above.

3) Financial Incentives

The new investment legal framework offers significant financial incentives, some of which were also present under the previous law. These incentives include:

The value of the land granted under the concession is assessed at the time of allocation to determine the annual fee that the investor must pay. This valuation is also used when converting the concession to full ownership. This provides an incentive by mitigating the impact of rising land values over time, as well as deducting the total amount of the annual fee paid. According to Article 16 of the Supplementary Finance Law for 2023, the annual fee is set at 1/33 percent of the value of the concessioned land. Additionally, the new law stipulates that the fee payment starts from the date the project begins operation, unlike the previous practice where fees were paid from the date of granting the concession. Another new feature is that the annual fee is updated only after the concession period ends, i.e., after 33 years, compared to the previous law which required updates every 11 years.

The new law provides reduced tax incentives applicable equally to both national and foreign investors. Additionally, there are exemptions from foreign trade procedures and banking establishment requirements, as outlined in Article 7 of Law No. 22/18. Although tax policy is a matter of national sovereignty, standardizing tax treatment for all types of activities and investments, regardless of their nationality, is crucial for encouraging foreign investment.²⁸

²⁸ Abdelaziz Kadri, *International Investments: International Commercial Arbitration and Investment Protection*, 2nd edition, Dar Homa, Algeria, 2006, p126.

4) National Appeals Committee

To reassure and protect investors from potential administrative overreach, the legislator established the National Appeals Committee under Article 11 of Law No. 22/18 concerning investment. This committee is responsible for reviewing investor appeals regarding administrative decisions communicated to them by the relevant bodies managing their investment files.

The organization of this committee is regulated by Executive Decree No. 22/296,²⁹ which outlines the composition and functioning of the National Appeals Committee for Investment. The committee is chaired by a representative from the Presidency of the Republic and includes a judge from the Supreme Court, a judge from the State Council proposed by the High Council of the Judiciary, and a judge from the Court of Accounts. Additionally, it consists of three independent economic and financial experts appointed by the President of the Republic through a presidential decree for a term of three years, which is renewable once.

However, it requires the investor to file a complaint to the administrative agency issuing the respective decision before appealing to the National Appeals Committee. Such a complaint has to be filed within one month following the date when the given decision was being communicated. This complaint shall be addressed to the agency that issued such an act, which shall, within 15 days of its receipt, issue the relevant decision, upon which the investor shall have the additional 15-day period for filing an appeal before the National Appeals Committee.

From our point of view, this is a very short period. The period should be two months, beginning with the date when the final decision on the complaint is given. Another approach would be for the law to provide that making a complaint to the administration is not obligatory but a right for the investor, who can either act on it or address himself directly to the National Appeals Committee.

5) Protection of Investor Property Rights

The ownership rights of an investment project are safeguarded under the general legal framework governing property rights. These rights may include financial, personal, tangible, or intangible aspects. While the basis for protecting property rights is established in general law, the legislator has added specific provisions in investment laws to emphasize this protection.

We will elaborate on this below:

a. Protection of Real Estate Ownership for Investment Projects

In addition to the general legal provisions protecting property rights, the legislator has introduced specific regulations for investment project ownership. This includes both usufruct rights and full ownership. Under the previous law, the concession granted to investors for real estate was valid for 33 years and could be renewed twice, leading to questions about the status of the concession after the renewal periods.³⁰

Law No. 23/17 addresses these concerns by allowing the concession to be granted for the same duration with indefinite renewal possibilities, eliminating previous uncertainties. Moreover, the new law permits the concession to be converted into full ownership upon the investor's request once the project is completed. This change enhances the security and confidence of both national and foreign investors, as the right to transfer ownership is now available to foreign investors in the same manner as to national investors.

The legislator has reinforced several aspects of investor property rights protection, including prohibiting actions such as confiscation, expropriation, or temporary seizure without valid

²⁹ Executive Decree No. 22/296, dated September 4, 2022, concerning the composition and functioning of the National Higher Committee for Investment Appeals, Official Gazette No. 60/2022.

³⁰ Ordinance No. 08/04, dated September 10, 2008, outlining the conditions and procedures for granting concessions on land belonging to the State's private properties intended for investment projects, Official Gazette No. 49/2008

justification and ensuring stringent procedural oversight, as outlined in previous investment regulations.³¹

In contrast, the new law avoids detailing such procedures to protect investment projects. Instead, it provides for the possibility of requisition under justified circumstances. Article 10 of Law No. 22/18 stipulates: "Investment projects cannot be subject to requisition by the administration except in cases specified by law, and such requisition must be accompanied by fair and equitable compensation in accordance with applicable legislation."

b. Protection of Intellectual Property Rights Arising from Investment Projects

The Algerian legislator has addressed the protection of intellectual property rights specifically for the first time under the new law. Article 9 of Law No. 22/18 states: "The state guarantees the protection of intellectual property rights in accordance with the applicable legislation." These rights include patents, trademarks, industrial property rights, and other intellectual property generated by the investment project.

It is worth noting that intellectual property rights are constitutionally protected³² and consist of moral rights and material rights once the intellectual work is exploited³³. For a work to qualify for protection, it must be original, meaning it should not be a mere reproduction, but rather a novel creation resulting from personal effort.³⁴

Thus, the Algerian legislation provides legal protection for the intellectual property of both foreign and national investors, ensuring that there are no concerns in this regard. However, the practical application of these provisions will be crucial for attracting foreign investments and encouraging private national investments.

CONCLUSION

From the discussion above, it is clear that the Algerian legislator has repeatedly sought to improve the investment climate, progressing with successive steps that sometimes advance and other times retreat. Nevertheless, the legislator consistently strives to uphold the fundamental principles for attracting investment, namely freedom, equality, transparency of procedures, and legislative stability. With each new amendment to the investment law, these principles have been reinforced and the details that previously caused concerns for both national and foreign investors have been addressed. It is hoped that these improvements will encourage and attract more investments.

It has become clear that the failure of investment policies to attract foreign investment is due to several factors beyond the guarantees and incentives we have studied. These issues are primarily

³¹ In this context, Article 40 of the now-repealed Legislative Decree No. 93/12 concerning investment promotion stipulated the following protection: "Investments completed may not be subject to requisition by the administration except in cases specified by applicable legislation, and requisition shall entail fair and equitable compensation." Similarly, Article 16 of the now-repealed Ordinance No. 01/03 on investment development provided the same protection. However, Law No. 16/09 on investment promotion enshrined this protection against expropriation and confiscation in Article 23, which states: "In addition to the rules governing expropriation, investments completed may not be subject to confiscation except in cases stipulated by applicable legislation, and such confiscation and expropriation shall require fair and equitable compensation."

³² Article 74/3 of the Constitution stipulates that "All rights arising from intellectual creativity are protected by law."

³³ It is worth noting that intellectual property is regulated by the following legal texts: Ordinance No. 03/05 dated July 19, 2003, concerning Copyright and Related Rights, Official Gazette No. 44/2003; Ordinance No. 03/07 dated July 19, 2003, concerning Patents, Official Gazette No. 44/2003; and Ordinance No. 03/08 dated July 19, 2003, concerning the Protection of Layout Designs of Integrated Circuits, Official Gazette No. 44/2003.

³⁴ Dakkari Souheila, Protection of Integrated Circuit Designs under Copyright Law and Industrial Property Law, 1st edition, Dar Homa, Algeria, 2014/2015, p. 18.

related to the overall business environment, where political, economic, and regional security concerns intersect. Additionally, pervasive financial and administrative corruption undermines the credibility of the host country for foreign investments.

It has become clear that the failure of investment policies to attract foreign investment is due to several factors beyond the guarantees and incentives we have studied. These issues are primarily related to the overall business environment, where political, economic, and regional security concerns intersect. Additionally, pervasive financial and administrative corruption undermines the credibility of the host country for foreign investments.

In addition to improving the business environment by leveraging Algeria's relatively stable economic situation, which positions it well for economic revival through attracting foreign investment and supporting national investments, several steps can be taken. This involves reforming the financial system and combating corruption in all its forms. To this end, we propose the following recommendations to bolster economic progress and enhance achievements:

1. **Promote Investment Opportunities:** Encourage Investment Opportunities: Engage in active communication with prospective investors with the wide range of noteworthy and varied prospects that exist in Algeria in a number of industries, including tourism, agriculture, industry, and urban development. This can be achieved through an effective informational portal.
2. **Modernize and Digitize Land Registries:** Clean up and digitize the land registry system to efficiently process investment localization requests in a timely manner.
3. **Avoid Bureaucracy and Administrative Corruption:** Using precise and definite legislative provisions, combat bureaucratic inefficiency and administrative corruption, and holding people accountable for any activities that compromise procedural integrity and transparency.
4. **To improve the oversight of investment bodies:** strict central and local oversight mechanisms should be put in place to stop corruption from spreading to investment-related institutions.

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