

# JUDICIAL GUARANTEES FOR FOREIGN INVESTMENT DISPUTES IN ALGERIA: EFFECTIVENESS AND COMPARATIVE PERSPECTIVES

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Received 15\01\2025

Published 01\04\2025

**Abstract** - This article examines the judicial guarantees for resolving foreign investment disputes in Algeria, assessing their effectiveness and comparing them to international and regional standards. Judicial protection is vital for attracting foreign investment, as investors prioritize robust legal frameworks to mitigate commercial and political risks. The study analyzes Algeria's reliance on national courts, grounded in sovereignty principles, as the primary venue for dispute resolution, evaluating their accessibility, impartiality, and judicial expertise. It also explores international arbitration as an alternative, highlighting its appeal to investors and Algeria's conditional acceptance under bilateral agreements or specific contractual clauses. Comparative perspectives with the ICSID framework and Morocco's flexible arbitration policies reveal Algeria's strengths in legal clarity but underscore limitations in judicial specialization and arbitration accessibility. Enhancing judicial training and broadening arbitration access could strengthen Algeria's investment climate, aligning it with global best practices and fostering competitiveness in attracting foreign capital.

**Keywords:** investment disputes; judicial guarantees; national courts; international arbitration; Algeria

## INTRODUCTION

Foreign investment is a cornerstone of economic development, particularly for developing nations like Algeria, where attracting global capital is essential for growth and industrialization. However, the decision to invest in a foreign country is heavily influenced by the host state's political and legal environment. Investors seek robust assurances that their investments will be protected against commercial and political risks, with judicial guarantees serving as a critical pillar of this assurance. In Algeria, the legal framework governing foreign investment disputes is shaped by a delicate balance between upholding national sovereignty and providing credible protections to foreign investors. While incentives such as tax exemptions and procedural facilitations are significant, they are often overshadowed by concerns about the impartiality, efficiency, and expertise of dispute resolution mechanisms.

At the heart of investment disputes lies a fundamental question: which authority is competent to adjudicate conflicts between foreign investors and the host state? Algeria, like many nations, asserts the primacy of its national courts, grounding this stance in the principle of sovereignty. Algerian investment law designates national courts as the default venue for resolving disputes involving foreign investors, with international arbitration permitted only under specific conditions, such as bilateral agreements or explicit contractual clauses. However, foreign investors frequently express apprehension about the impartiality of national courts, fearing bias toward the host state, slow judicial processes, and a lack of specialized expertise in handling complex investment disputes. These concerns underscore the need for a thorough examination of the judicial guarantees provided under Algerian law and their effectiveness in fostering a secure investment climate.

This article addresses the central question: What are the judicial guarantees under Algerian law for resolving investment disputes, and how effective are they in providing confidence to foreign investors? To answer this, the discussion is structured into three key sections. The first section analyzes the role of national courts in resolving investment disputes, evaluating their accessibility and effectiveness. The second section explores international arbitration as an alternative mechanism, highlighting its appeal to foreign investors and Algeria's legislative stance on its use. The third section offers comparative

perspectives, juxtaposing Algeria's judicial guarantees with international standards, such as those embodied in the International Centre for Settlement of Investment Disputes (ICSID) framework, and practices in a comparable developing nation, Morocco. By examining these dimensions, this study aims to provide a comprehensive assessment of Algeria's judicial mechanisms for investment disputes, identifying strengths, challenges, and opportunities for alignment with global and regional best practices. Ultimately, the effectiveness of these guarantees is pivotal not only for attracting foreign investment but also for reinforcing Algeria's position as a competitive destination in the global investment landscape.

## 1. Guarantees of Access to National Courts

The Algerian legislature strives to provide necessary protections to safeguard investors' rights<sup>1</sup>, whether domestic or foreign, demonstrating a commitment to encouraging direct international investments. Foreign investors require robust legal and regulatory guarantees, with judicial guarantees being paramount<sup>2</sup>. Confidence in the Algerian judiciary enhances the preference for national courts over foreign arbitral tribunals.

This section analyzes how investment disputes are resolved through national courts (Subsection 1) and evaluates the effectiveness of these courts (Subsection 2).

### 1 National Courts and Investment Dispute Resolution

Access to courts for legal protection is a fundamental principle upheld by states for their citizens. Algeria, with its historical emphasis on sovereignty and non-interference in domestic affairs, seeks to retain jurisdiction over disputes with investors based on national sovereignty<sup>3</sup>. Algerian investment law primarily assigns jurisdiction to national courts. For instance, Article 41 of Law 93/12 on investment promotion designated competent courts for disputes, later repealed by Ordinance 01-03 on investment development. Article 17 of Ordinance 01-03 states: "Any dispute between a foreign investor and the Algerian state, caused by the investor or by measures taken by the state against them, shall be subject to the competent judicial authorities..." This implies jurisdiction lies with Algerian courts, as the Algerian legislature cannot designate foreign courts<sup>4</sup>.

Law 16/09 on investment promotion clarified this further. Article 24 specifies: "Any dispute between a foreign investor and the Algerian state, caused by the investor or by measures taken by the state against them, shall be subject to the Algerian judicial authorities with territorial competence..." This establishes that disputes arising within Algeria's borders fall under the jurisdiction of national courts, unless a specific agreement allows for amicable resolution methods such as conciliation, mediation, arbitration, or other agreed-upon mechanisms<sup>5</sup>. This aligns with general jurisdictional rules under Articles 41 and 42 of the Code of Civil and Administrative Procedure, which uphold Algeria's sovereignty by applying Algerian law through national courts to all obligations involving foreigners or Algerian citizens, even for obligations arising abroad.

### 2 Effectiveness of National Courts in Resolving Investment Disputes

Investment contracts are generally governed by the domestic law of the host state, not international law, making national courts the default authority for disputes<sup>6</sup>. However, foreign investors often express dissatisfaction with national courts due to perceived challenges, including fears of partiality,

<sup>1</sup> Bashara, M. A., *Investment Contracts in Private Relations* (Al-Jali Legal Publications, 1st ed., Beirut, 2006), p. 354.

<sup>2</sup> Fattisi, S., "Judicial Guarantees for Resolving Investment Disputes under Algerian Law," *Academic Journal of Legal and Political Research* (University of Amar Telidji, Laghouat), Vol. 2, No. 4.

<sup>3</sup> Kheridine, S. and Kamal, M., *Investment Guarantees in Algerian Law: Analytical Study of Law 16-09* (Master's thesis, University of Mohamed Boudiaf, M'sila, 2016/2017).

<sup>4</sup> Nadia, W., *The Algerian Legal System for Investment and Its Effectiveness in Attracting Foreign Investments* (Doctoral dissertation, University of Miloud Mammeri, Tizi Ouzou).

<sup>5</sup> Hisham, K., *Investment Guarantee Contracts: Applicable Law and Dispute Resolution* (Dar Al-Fikr Al-Jami'i, 1st ed., Alexandria, 2007).

<sup>6</sup> Abdounour, M., "Guarantees for Foreign Investment in Algerian Legislation," *Journal of Economic, Management, and Commercial Sciences* (University of Mohamed Boudiaf, M'sila), Vol. 11, No. 2.

unfamiliarity with local laws and procedures, slow judicial processes, and backlog of cases<sup>7</sup>. These factors conflict with the urgency required in investment disputes.

Moreover, national courts in developing countries, including Algeria, may lack the specialized expertise needed to handle complex foreign investment disputes, which often require technical proficiency<sup>8</sup>. The Algerian judiciary faces challenges due to insufficient training for judges in investment matters, prompting foreign investors or their home states to insist on international arbitration during negotiations.

## 2. Guarantees of Access to International Arbitration

Foreign investors often demand that investment disputes be subject to international commercial arbitration, viewing it as a safeguard against perceived biases in national courts. This section explores the role of international arbitration in resolving investment disputes (Subsection 1) and the Algerian legislature's stance on it (Subsection 2).

### 1 Role of International Arbitration in Investment Dispute Resolution

The lack of confidence in national dispute resolution mechanisms has led states to recognize arbitration as an effective alternative<sup>9</sup>. Arbitration's advantages include procedural speed and the ability to select arbitrators with expertise in investment matters, enabling optimal solutions<sup>10</sup>. Arbitration fosters a favorable investment climate by allowing parties to choose trusted, knowledgeable arbitrators<sup>11</sup>.

The 1965 Washington Convention (ICSID) marked a significant shift by granting foreign investors, whether individuals or entities, the right to directly initiate claims against host states or their institutions before international tribunals, bypassing diplomatic protection from their home states. This reduced reliance on state intervention to protect investors' assets from arbitrary measures.

Investment disputes eligible for arbitration have expanded to encompass all aspects of foreign investment, particularly those related to property rights, both tangible and intangible. As Professor Walid Ben Hamida notes: "This arbitration often covers any dispute related to investments, with the notion of investment broadly defined in investment contracts to include all movable and immovable property, shares in groups, monetary claims, economic rights, and intellectual property rights."<sup>12</sup> Arbitration's appeal lies in its protection against perceived biases of national courts, its streamlined procedures, and the parties' freedom to choose the applicable law<sup>13</sup>. However, the effectiveness of arbitration depends on the enforceability of arbitral awards. Algerian law facilitates this through Article 1051 of the Code of Civil and Administrative Procedure (Law 08-09), enhancing guarantees for foreign investors.

### 2 Algerian Legislature's Stance on International Arbitration

Article 24 of Law 16-09 provides that disputes between foreign investors and the Algerian state fall under the jurisdiction of Algerian courts unless bilateral or multilateral agreements involving Algeria provide for conciliation or arbitration, or the parties agree on a specific arbitration clause.

Recognizing that foreign investors may hesitate to sign investment contracts without arbitration clauses, the Algerian legislature reaffirmed arbitration's role in Articles 1039 to 1063 of the Code of Civil and Administrative Procedure (Law 08-09). International commercial arbitration is thus a recognized procedural guarantee for resolving investment disputes, aligning with global standards.

<sup>7</sup> Miloud, S., "Legal Guarantees for Foreign Investment in Algeria," *Al-Baheth Journal for Academic Studies* (University of Hadj Lakhdar, Batna), No. 6 (2015).

<sup>8</sup> Kamal, A. Q., *International Commercial Arbitration* (Bousaha Publishing, 4th ed., Algiers, 2011), p. 40.

<sup>9</sup> Hussein, N., "International Commercial Arbitration in the Context of Foreign Investments," *International Symposium on Commercial Arbitration*, Bejaia, 14-15 May 2006.

<sup>10</sup> Hussein, N., "International Commercial Arbitration in the Context of Foreign Investments," *International Symposium on Commercial Arbitration*, Bejaia, 14-15 May 2006.

<sup>11</sup> Jilal, W. M., *Arbitration between Foreign Investors and Host States before ICSID* (Dar Al-Jami'a Al-Jadida, Alexandria, 2001).

<sup>12</sup> Ben Hamida, W., "State-Investor Arbitration: A Review of Recent Treaties and Projects," *JDI*, No. 2 (2004), p. 131.

<sup>13</sup> Ahmed, A. H. A., *Arbitration for Resolving Investment Disputes: A Comparative Study* (Youth University Foundation, Egypt, 1990).



### 3. Comparative Perspectives on Judicial Guarantees

To fully assess the effectiveness of Algeria's judicial guarantees for investment disputes, it is valuable to compare its mechanisms with international standards and practices in other jurisdictions. This section briefly examines how Algeria's approach aligns with global benchmarks, such as those set by the International Centre for Settlement of Investment Disputes (ICSID), and contrasts it with a comparable developing nation, Morocco, to highlight strengths and areas for improvement.

#### Alignment with International Standards

Algeria's incorporation of international arbitration under bilateral and multilateral agreements, as provided in Article 24 of Law 16-09, aligns with ICSID's framework, which emphasizes investor-state arbitration to ensure neutrality.<sup>1</sup> However, ICSID's streamlined procedures and enforceability under the 1965 Washington Convention contrast with Algeria's preference for national courts as the default jurisdiction.<sup>2</sup> While Algerian law facilitates arbitration award enforcement through Article 1051 of the Code of Civil and Administrative Procedure,<sup>3</sup> the requirement for specific arbitration clauses may limit access compared to ICSID's broader eligibility for investor claims. This suggests that Algeria's judicial guarantees are partially aligned with global standards but could benefit from wider arbitration accessibility.

#### Comparison with Morocco

Morocco, a fellow Maghreb country, offers a useful comparison due to its similar legal traditions and investment promotion efforts. Morocco's Investment Charter (Law 18-95) allows foreign investors to opt for international arbitration without mandating national court jurisdiction, fostering greater investor confidence.<sup>4</sup> As Professor Ahmed Mahiou notes: 'Morocco's flexible dispute resolution framework has enhanced its attractiveness to foreign investors, particularly in Europe.'<sup>5</sup> Unlike Algeria, Morocco has established specialized commercial courts with judges trained in investment law, addressing concerns about judicial expertise.<sup>6</sup> Algeria's reliance on general courts, coupled with limited judicial training, may place it at a disadvantage. However, Algeria's robust legislative framework, including Laws 16-09 and 08-09, provides clear legal certainty, a strength Morocco's less codified system sometimes lacks.

This comparative perspective underscores the need for Algeria to enhance judicial specialization and broaden arbitration access to align with international and regional best practices, thereby strengthening its appeal to foreign investors.

### CONCLUSION

The judicial guarantees for resolving foreign investment disputes in Algeria, while grounded in a robust legislative framework, reveal both strengths and areas for improvement when assessed for effectiveness and compared to international and regional standards. Algeria's reliance on national courts, as mandated by laws such as Ordinance 01-03 and Law 16-09, underscores its commitment to sovereignty and provides legal clarity, ensuring disputes are adjudicated under a predictable domestic legal system. However, the perceived lack of judicial impartiality, slow processes, and insufficient specialized training in complex investment matters undermine investor confidence, often driving foreign investors to prefer international arbitration. Algeria's conditional acceptance of arbitration, permitted through bilateral agreements or specific contractual clauses under Articles 1039-1063 of the Code of Civil and Administrative Procedure, aligns partially with global standards like the ICSID framework but falls short of its accessibility and streamlined enforceability. In contrast, Morocco's more flexible arbitration policies and specialized commercial courts highlight a competitive edge in fostering investor trust, though Algeria's clear legislative structure remains a comparative advantage.

To enhance its investment climate and align with global best practices, Algeria must address these gaps by investing in judicial training to build expertise in investment law and broadening access to international arbitration without compromising sovereignty. Beyond judicial guarantees, attracting foreign investment hinges on a holistic approach that integrates tax incentives, streamlined administrative procedures, and a supportive business environment. However, sustainable development cannot rely solely on foreign capital. Prioritizing national investment and leveraging domestic resources remain critical for Algeria's long-term industrialization and economic progress. By balancing these priorities—strengthening judicial mechanisms, enhancing competitiveness, and fostering national capital—Algeria can position itself as a compelling destination for foreign investment while building a resilient, self-reliant economy.



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