

**Economic Property Portfolio and the role of the Algerian
Investment Promotion Agency in its management**

حافطة العقار الاقتصادي ودور الوكالة الجزائرية لترقية الاستثمار في ادارتها

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Abstract:

The Algerian Investment Promotion Agency plays a central role in managing economic property, as authorized by Law No. 23/17, which regulates the allocation of the State's private assets for investment projects. The Agency oversees the economic property portfolio, identifies suitable properties, and ensures a supply to support investment initiatives. Under Law No. 22/18 on investment, economic property has become a key guarantee for investors, and the Agency is also responsible for granting these assets to investors. This study examines economic property in Algeria in light of Law No. 23/19, focusing on the dual role of the Algerian Investment Promotion Agency: managing the portfolio and facilitating allocation to investors. The research highlights the processes of provision, administration, and allocation, as well as the implications of these functions on investment development, demonstrating how the Agency contributes to creating a structured and accessible framework of economic property for national investment projects.

key words: Investor, economic property, Algerian Investment Promotion Agency, granting of property, acquisition of property.

المخلص:

تلعب الوكالة الجزائرية لترقية الاستثمار دورا استراتيجيا في مجال العقار الاقتصادي، حيث منحها المشروع بموجب القانون رقم 23 / 17 الذي يحدد شروط وكيفية منح العقار الاقتصادي اتابع للأمالك الخاصة للدولة الموجه لإنجاز مشاريع استثمارية، صلاحية تسيير حافظ العقار الاقتصادي والبحث عن الأوعية العقارية من أجل خلق الوفرة العقارية لمصلحة المشاريع الاستثمارية فالعقار الاقتصادي أصبح اليوم بموجب القانون رقم 22 / 18 المتعلق بالاستثمار ضمانا من الضمانات التي يستفيد منها المستثمر والذي يعود لهذه الوكالة كذلك مهمة منحه. جاءت هذه الدراسة من أجل الإحاطة بجوانب العقار الاقتصادي على ضوء القانون 23 / 19 وكذا البحث في المهمة المزدوجة للوكالة الجزائرية لترقية الاستثمار في تسيير حافطة العقار الاقتصادي انطلاقا من عملية توفيره إلى غاية منحه وأثار ذلك .

الكلمات المفتاحية: المستثمر، العقار الاقتصادي، الوكالة الجزائرية لتحقيق الاستثمار، منح العقار، اكتساب

العقار.

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Introduction:

As part of efforts to improve the investment environment, following the crippling COVID-19 crisis which had a negative impact on the investment climate in Algeria, the national legislature repealed Law No. 16/09 on the promotion of investment¹, in favour of the current Law No. 22/18 on investment². Through this, it has reorganised the existing provisions and replaced them with new ones in order to attract as much foreign and domestic capital as possible, thereby achieving economic development and consolidating the concept of economic diversification on which the country is banking.

One of the most significant areas reorganised by the legislator is investor guarantees, with four new guarantees added that were not present in any of the previous laws, each no less important than the others.³ The guarantee regarding the granting of property, which is the subject of this research paper, is considered the most sensitive guarantee due to its connection to the most important means of realising the investment project.

As the real estate framework is considered one of the greatest obstacles facing both national and foreign investors, this guarantee was stipulated in Article 06 of Law No. 22/18 on investment. Given its importance, Law No. 23/17 was issued regarding the procedures for granting economic real estate⁴, which sets out all the conditions and procedures relating to economic real estate, in addition to a series of regulatory provisions.

These two texts entrusted the Algerian Investment Promotion Agency with the task of granting economic land, ensuring this process is conducted transparently by making all information regarding available economic land plots accessible via the digital platform for investors, which was first established under Article 23 of Law No. 22/18 on Investment.

The issue of property in Algeria is considered one of the most sensitive, as it ultimately concerns the national territory; consequently, successive governments, regardless of their ideologies, have surrounded it with an arsenal of legal texts relating to public order. The same applies to investment property, which is considered the most critical and far-reaching in terms of its treatment and economic significance. The state has had to establish a legal framework capable of striking a complex balance between protecting the Algerian property portfolio and, at the same time, utilising it in the most effective manner to achieve the economic development on which Algeria is banking outside the hydrocarbons sector by granting it to investors. This economic development depends on the legislator's ability to attract as much capital as possible; therefore, from another perspective, it is essential to create an attractive investment climate and provide facilities for investors, which is the legislator's objective in stipulating guarantees for the granting of property.

Hence, the research question is as follows:

To what extent has the legislator regulated the guarantee of property grants for the benefit of investors in a way that strikes a balance between the public interest

of the state in achieving economic development, on the one hand, and the private interest of the investor, on the other?

With regard to the methodology adopted and the attempt to answer the research question, the analytical approach has been adopted as the primary method, involving the analysis of various legal texts which, given their number and sequence, will form the basis of this study. The study will also employ a descriptive approach to define the various aspects of economic property in terms of its concept, boundaries, and the body responsible for granting and managing it, namely the Algerian Agency for Investment Promotion, which it is defined.

As for the structure, the study has been divided into two sections: the first concerns the conceptual framework of economic property, and the second relates to all aspects of the process of granting economic property and its monitoring, as follows:

Section I: The Concept of Economic Property

- A) Definition of Economic Property and its Legal Scope
- B) Mechanisms for Acquiring Economic Property

Section II: Granting of Economic Property

- A) Procedures for Granting Economic Property
- B) Consequences of Granting Economic Property

Section I: The Concept of Economic Property

One of the first observations that can be made regarding Law No. 23/17, which sets out the conditions and procedures for granting economic property belonging to the State's private assets for the purpose of carrying out investment projects, is its elaboration of the conceptual framework for economic property, which was lacking in previous legislation, particularly Decree No. 08/04, which sets out the procedures for granting concessions on land belonging to the State's private property for the purpose of carrying out investment projects, which has since been repealed.

Accordingly, this study will address the concept of economic property in the first section, and the procedures for its acquisition by the State in the second section.

A) The Concept of Economic Property:

Algeria has long paid close attention to the issue of property across successive governments, with a significant body of legislation aimed at ensuring the optimal management of the property sector in the context of investment. Therefore, the task of regulating the property market has long been, and remains to this day, a priority for the country, given the impact this task has on the investment climate in Algeria. This section will define the concept of economic property by defining it in the first subsection and determining its scope in the second.

1- Definition of Economic Property:

Reference will be made to certain jurisprudential and legal definitions in order to arrive at a proposed definition:

Mohamed Bouchoucha defined it as: “a part of the general real estate pool that embodies the provisions intended to meet the needs of the investor”.⁵

It can also be defined as the totality of land and everything permanently and firmly attached to it, as well as everything allocated to serve the property, including the remaining real estate assets belonging to local public institutions, in addition to the surplus owned and held by the public institution in the context of productive activity.⁶

From a legal perspective, economic property was first defined in Article 04 of Law No. 23/17, which sets out the conditions and procedures for granting economic property belonging to the State’s private assets for the purpose of carrying out investment projects,⁷ where it stipulates that:

“Economic property: any real estate belonging to the State’s private property and/or other private property acquired by the Algerian Investment Promotion Agency on behalf of the State in exchange for hosting an investment project within the meaning of the law on investment.”

Accordingly, in accordance with the legal definition and the jurisprudential definitions outlined above, the concept of economic property revolves around those real estate assets intended for investment that fall within the scope of the State’s private property, whether actual or surplus.

In reality, it is not possible to provide an exhaustive definition of economic property without considering its legal scope, a matter which we have chosen to address in the following section given its importance.

2- The Scope of the Economic property:

In fact, a review of Law No. 23/17—and indeed all preceding texts, particularly Decree No. 06/11, which sets out the conditions and procedures for granting concessions⁸ as well as Decree No. 08/04, which repealed the 2006 text, we find that the legislator was keen to define the scope of economic property and became even more so through the current Law No. 23/17 of 2023, whereby we can deduce this scope either from Article 04 itself, which defines economic property, or from Articles 02 and 03 thereof, where Article 02 specifies the components of economic property whilst Article 03 excludes certain properties from being considered of an economic nature.

Consequently, the scope of economic property is defined by identifying the authority empowered to acquire and grant it, its purpose, and its legal nature as part of the State’s private property in general; its scope is also determined by its components and contents, as well as the land excluded from it.

First: The authority empowered to manage the economic property portfolio

With the enactment of Law No. 23/17, the task of acquiring and granting economic property has become the responsibility of the Algerian Investment Promotion Agency in its capacity as the representative of the State. The legislator has thus resolved all previous

issues concerning the management and granting of economic property, in which the Committee for Site Selection and Investment Promotion previously played a significant role.

This committee was established by Decree No. 06/11, which set out the conditions and procedures for granting concessions and transferring land belonging to the State's available assets for the purpose of carrying out investment projects⁹ until 2015, when the legislature, through Decree No. 15/261 containing the Supplementary Finance Act¹⁰, the role of this committee and left the task of granting economic land to the governor without referring to the obligation to consult this committee, as had previously been the case. However, the legislator decided to revive this committee under Law No. 19/14 containing the Finance Act for the year 2020,¹¹ and after some back-and-forth, the legislator ultimately abolished it in favour of the Algerian Agency for Investment Promotion under the current Economic Property Law No. 23/17.

Second: The purpose of granting economic property

Economic property is granted solely for the purpose of carrying out investment projects within the meaning of Law No. 22/18 on investment, as confirmed by the legislator in Articles 1 and 4 of Law No. 23/17 on economic property, where the legislator used the phrases ‘... to carry out investment projects...’ and ‘...suitable for an investment project ...’.

Article 5 of Law No. 22/18 on Investment defines the main types of investment as follows:

- Establishment investment: relating to the establishment of activities for the production of goods or services
- Expansion investment: relating to increasing production capacity
- Rehabilitation investment: addressing technological backwardness and reviving an activity that has been suspended for at least three years
- Transfer of activities from abroad: the process whereby an entity governed by foreign law transfers all or part of its activities from abroad to Algeria.

Third: The nature of economic property and its components

Based on an analysis of Law No. 23/17 concerning the conditions and procedures for granting economic property belonging to the State's private assets for the purpose of carrying out investment projects, economic property belongs to the State's private property, which is its original form; it is provided by the Algerian Investment Promotion Agency through acquisition from private property and other mechanisms specified by law; economic property also includes residual and surplus real estate assets.

The legislator has defined residual property in Article 4(3) of Law No. 23/17 as property belonging to local public institutions, whilst the main types of surplus property are specified in Article 4 of the same law.

This typically refers to property in excess of the needs of public economic facilities, the most important of which are:

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- Immovable property that was unused or had not been allocated as at the date of publication of Law No. 23/17,
- Immovable property
- that does not serve the social purpose of the institution,
- Immovable property that is independent or separable from real estate complexes, or that belongs to public institutions or is state-owned and is not necessary for their operations,
- Immovable property whose use has been changed by urban planning measures and which falls outside the scope of the public institution's main activity,
- Immovable property offered on the market at the initiative of public institutions,
- Immovable property located within industrial zones that have been reintegrated into the State's private property and constitute the assets of the regional development authority.

The task of identifying surplus real estate assets has been entrusted to a special committee comprising:¹²

- the Wali or his representative as chair,
- the Director of State Property,
- the Director of Land Surveying and Property Registration,
- the Director of Industry,
- the Director of Energy and Mines,
- the Director of Public Works,
- the Director of Transport,
- the Director of Tourism and Traditional Crafts,
- the Director of Urban Planning, Architecture and Construction,
- the Director of the Decentralised One-Stop Shop of the Algerian Investment Promotion Agency,
- the Director of Agricultural Services,
- a representative of the community concerned or the holding company,
- a representative of the institution responsible for the recovery process.

The committee may also call upon any qualified person to assist.

This composition is notable for its local character, as it comprises personnel with local expertise; consequently, a committee exists at the level of each province, which enhances control and the effectiveness of its tasks in identifying and managing the portfolio of surplus real estate assets. It also comprises all vital sectors related to the economic property, whether urban, industrial or tourism-related.

Fourth: Land excluded from the economic property portfolio

Despite the broad scope of economic property, which encompasses all land suitable for investment projects, the legislator has excluded certain categories of land from this scope. This exclusion does not, in fact, originate from Law No. 23/17 on economic property, as it has long been established in the preceding laws.

By examining the provisions of Article 3 of the current Law No. 23/17, the text of Article 2 of Decree No. 06/11—which sets out the conditions and procedures for granting concessions and transferring land belonging to the State’s private property and intended for investment projects—as well as Article 2 of Decree No. 08/ 04, which repealed Decree 06/11, we find that the legislator has retained certain categories of land exempted under the current new Law No. 23/17, whilst adding new ones. The latter consist of:

- Land belonging to the State’s private property intended for the implementation of public commercial projects,
- Land belonging to the State’s private property intended for the development of aquaculture activity zones.
- As for the rest of the list, it remains unchanged from the previous texts, with only minor changes in wording, namely:
 - Agricultural land or land designated for agricultural use belonging to the State’s private property,
 - Land located within mining areas,
 - Land located within areas designated for the exploration and exploitation of hydrocarbons and the protection of real estate facilities,
 - Land situated within the vicinity of archaeological sites and historical monuments,

The legislator has dispensed with the exception provided for in Decree No. 06/11 concerning tourist sites, both in Decree No. 08/04 and in the current text, the provisions of which confirm that the Economic Property Fund covers tourist property, contrary to what was the case under Decree No. 06/11, The task of developing such property has been entrusted to a new agency that did not previously exist: the National Agency for Tourist Property.

B) Allocation of Economic Property:

The Algerian Agency for Investment Promotion plays a crucial role in the process of providing economic property for investment purposes. In the event that economic property is unavailable, the Agency resorts to individuals through legal procedures and regulatory provisions, as defined by Law No. 23/17, which include: the acquisition of property, pre-emption rights, and the expropriation of private property for the public interest, which will be addressed in three successive sections.

1- Allocation of economic property through acquisition:

This mechanism is considered the primary method for the Algerian Investment Promotion Agency to procure economic property. It is regulated by the legislator in Articles 13 to 16 of Chapter Two, entitled: “Conditions and Procedures for the Acquisition by the Algerian Investment Promotion Agency of Economic Property in Private Ownership” of Executive Decree No. 23/486, which defines the components of economic property belonging to the State’s private property intended for the implementation of investment projects and eligible for the granting of concessions.¹³

The process of acquiring property from private ownership is carried out by means of an administrative contract drawn up by the regionally competent State Property Authority,¹⁴ and it is incumbent upon the Algerian Investment Promotion Agency, in its capacity as the State's representative, to pay a price for the acquisition of the property equivalent to its market value as determined by the State Property Authority.¹⁵ The process concludes with the incorporated property being added to the State's private property.

It is noted that, with regard to the price of the property, the legislator has left the authority to determine it to the regionally competent State Property Authority without affording the concerned property owners the opportunity to negotiate or resort to amicable arbitration, which would have helped avoid any future disputes. Consequently, the acquisition is an exercise of public authority carried out by the Algerian Investment Promotion Agency as the representative of the State.

2- Exercise of the Right of Pre-emption:

The right of pre-emption is a privilege granted to the pre-emptor to take the place of the buyer in the sale of the property.¹⁶

Law No. 23-17, as well as its implementing decree No. 23-486, grants the Algerian Investment Promotion Agency the authority to exercise the right of pre-emption as a pre-emptor, and this right is considered one of the most important mechanisms for acquiring economic property and meeting the needs of investors. According to the same text, pre-emption applies to two types of property: either that relinquished by the beneficiary of the economic property, or that belonging to persons governed by private law, whether natural or legal persons.¹⁷ Furthermore, the Algerian Investment Promotion Agency must ensure that these lands are suitable for investment projects and are situated within industrial zones and activity zones, including expansion areas, tourist sites and technology parks, and encompass the surroundings of new cities, in accordance with Article 18 of Executive Decree No. 23/ 486, which defines the components of economic property belonging to the State's private assets intended for the completion of investment projects and eligible for the granting of concessions.

Since notaries are responsible for contracts relating to all real estate transactions, they have been entrusted with the task of periodically informing the Algerian Investment Promotion Agency of all transactions at their level concerning real estate that may be subject to the exercise of the right of pre-emption.¹⁸

As is the case with the acquisition mechanism, the exercise of the right of pre-emption by the Algerian Agency for Investment Promotion takes the form of an administrative contract drawn up by the regionally competent State Property Authority, so that the property is incorporated directly into the State's private property.

3- Acquisition of economic property through expropriation:

Executive Decree No. 23/486, which defines the components of economic property, did not address the mechanism of expropriation alongside the mechanisms of acquisition and pre-emption; however, this was rectified by Executive Decree No. 23/490,

which provided for the establishment, organisation and operation of the National Agency for Urban Property,¹⁹ Article 10 refers to the expropriation of private property for public benefit within the framework of the urban property development process, and its fourth paragraph stipulates that:

"... the Agency shall, where necessary, make use of the direct effects of the reclassification of real estate and the exercise of the right of pre-emption or expropriation for the public benefit..... for the purpose of urban property development".

It is worth noting that procedures for the expropriation of private property for public benefit in the field of economic property remain governed by Law No. 91/11,²⁰ as no other specific procedures have been stipulated.

Section II: Granting of Economic Property

The legislator has introduced, through Law No. 23/17, which sets out the conditions and procedures for the grant of economic property belonging to the State's private assets intended for the completion of investment projects, and its applicable provisions, in particular Executive Decree No. 23/487, which sets out the conditions and procedures for the grant of a concession convertible into a transfer,²¹ a set of arrangements relating to the granting of economic property. These consist of a series of procedures primarily entrusted to the Algerian Investment Promotion Agency, representing the State on the one hand, and the investor on the other. These procedures normally culminate in the granting of a concession on the economic property, which entails obligations on both parties that must be respected.

Accordingly, this section will address the procedures for granting economic property in the first subsection, followed by a discussion of the consequences of such a grant in the second subsection.

A) Procedures for the Granting of Economic Property:

The procedures for granting economic property revolve around the application for entitlement (Sub-section 1), the processing of the application (Sub-section 2), and, finally, the outcome of this processing, which is usually the granting of the property (Sub-section 3).

1- Application for the Granting of Economic Property:

Following the adoption of a digitalisation policy in the investment sector pursuant to Article 23 of Law No. 22/18, through which the legislator established the digital platform for investors under the management and supervision of the Algerian Investment Promotion Agency, facilitating investment, including applications for the grant of economic property by investors, is now carried out through new procedures previously unknown under the traditional administration. These new procedures aim to simplify the application process for investors.

In this context, it is the responsibility of the Algerian Investment Promotion Agency to publish a list of economic properties actually available on the platform.

Article 6 of Executive Decree No. 23/487 sets out the procedure for submitting an application, whereby the applicant must first register by filling in the specific information in the fields on the digital platform relating to their investment project, namely:

- The planned activity
- The location and area of the property they have chosen
- The financing plan, which is a financial study of the project covering estimated costs, the source of personal contributions and the source of financial loans
- Completion of the form containing the project description.

2- Processing the application for an economic property grant:

In the same manner, the application is processed digitally by the Algerian Agency for Investment Promotion, which must respond within a period not exceeding 15 days, calculated from the date of expiry of the 30-day period for the publication of the list of properties with economic potential.²²

The legislator has adopted a selective approach to investment projects for the allocation of economic property, whereby the investment project achieving the best result is selected based on the evaluation grid set out in Annex No. 01 of Executive Decree No. 23/487. This consists of criteria relevant to the application, the weighting of each criterion, the reference score, the reference index, the value according to the index, and the corresponding score.

For example, the criterion of the nature of the activity: coefficient 5, reference points 20–60; there are three priorities, for each of which there is a value according to the index and the corresponding score.²³

The content of this selection grid was determined on the basis of Article 14 of Law No. 17/23 on economic property, which stipulated the principle applicable to the granting of property, whereby strategic orientations and their impact on economic and social development are taken into account; the same principle was previously stipulated under Order No. 08/

04, which sets out the conditions and procedures for granting concessions on land belonging to the State's private property for the purpose of carrying out investment projects²⁴, Article 7 of which stipulates the priority criteria for selection, namely:

- Projects of national importance
- those contributing to meeting national housing demand
- those generating significant employment or creating added value
- those contributing to the development of deprived or isolated regions.

3- Outcomes of the Application for the Grant of Property:

The processing of an application for the grant of property results in one of two outcomes: the first is the approval of the application for the grant of economic property, and the second is rejection; the focus here is on the first scenario. Approval of the grant takes place in two stages:

- The initial stage
- The final stage: granting the concession, which is transferable to a transfer of rights, and this is dealt with in two separate points:

First: The preliminary stage of accepting the grant of economic property

At this stage, after the candidate has been successful and has obtained the best result based on the evaluation grid, the Algerian Investment Promotion Agency prepares a provisional decision in accordance with the template set out in Annex 2 of Executive Decree No. 23/ 487, which cannot be considered final until the deadline for appeal before the National Higher Committee for Investment Appeals has expired,²⁵ which is set at 15 days from the date of notification of the decision to refuse the concession. However, this period only applies after the candidate has lodged an appeal with the Algerian Agency within one month of the date of notification of the contested decision, and the Director of the Agency must rule on the preliminary appeal within 15 days of receiving it.²⁶

Second: Granting of economic property concessions

The process of granting economic property concessions in Algeria has undergone certain changes introduced by various previous regulatory texts compared to the current Law No. 23/17 on economic land concessions, specifically in three areas:

- The authorities responsible for granting economic property concessions
- Forms of concession
- Duration of the concession

Under Decree No. 06/11, which sets out the conditions and procedures for granting concessions and transferring land,²⁷ the granting of economic property was carried out by means of a concession licence, or through transfer by public auction or by mutual agreement, either by decision of the governor or by regulation of the National Investment Council, depending on the nature of the investment.²⁸ The concession period was 20 years, renewable without any limit on the number of renewals. However, under Law No. 08/04, which repealed Order No. 06/11, the period became 33 years, renewable twice, with a maximum duration of 99 years.²⁹ Concessions awarded by public auction fall within the remit of either the Minister of Tourism, the Minister responsible for Industry and Investment Promotion, or the Minister responsible for Regional Development, depending on the nature of the property, or by decision of the governor,³⁰ whilst concessions granted by mutual agreement may only be issued by the Council of Ministers upon a proposal from the National Investment Council.³¹

Under Law No. 23/17, the concession, which is transferable by assignment, is granted by decision of the Algerian Agency for Investment Promotion following the expiry of the appeal period³² as mentioned in the previous point. As for the drafting of contracts, this falls within the remit of the regionally competent State Property Services, which are required to comply with an 8-day deadline for this purpose, calculated from the date of receipt of the file from the Algerian Investment Promotion Agency via its one-stop shop, which consists of:³³

- Identity document

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- Final decision

- Signed terms and conditions: the beneficiary investor is summoned by the Agency to sign these in accordance with the model attached to Annex IV of Decree No. 23/487, the Basic Law on Legal Entities

- Commercial register.

The term is 33 years, renewable without any limit on the number of times, unlike the provisions of Law 08/04.

B) Consequences of the Grant of the Economic Property:

The grant of the economic property to the investor and the subsequent approval of their project entail a set of rights and obligations which they are bound to fulfil, subject to a range of measures which the Algerian Investment Promotion Agency may impose upon them.

Within the framework of granting a concession that is transferable to a cession, the investment remains subject to supervision and monitoring in order to benefit from the cession in accordance with the law.

Accordingly, this section will first define the rights and obligations of the beneficiary investor in the first subsection, and then discuss the monitoring of the investment and the possibility of the investor benefiting from the cession in the second subsection.

1- Rights and obligations of the investor under the granted concession:

The rights of the investor benefiting from the concession will be addressed first, followed by their obligations in the second point:

First: Rights of the Beneficiary Investor

Article 14 of Law No. 23/17 on economic property sets out the key benefits granted by the concession contract to the beneficiary investor, as confirmed by Article 13 of Executive Decree No. 23/487, which sets out the conditions and procedures for granting a concession convertible into a transfer of economic property belonging to the State's private assets, intended for the completion of investment projects, namely:

- Acquisition of property ownership

- Issuance of a building permit

- Establishment of a mortgage

- Transfer of the concession right to the investor's heirs in the event of the investor's death

a. Acquisition of the property:

Upon delivery of the concession contract drawn up by the regionally competent State Property Authority, the acquisition of the economic property by the beneficiary investor is formalised by a report drawn up by the one-stop shop of the Algerian Agency for Investment Promotion.³⁴

b. Obtaining a building permit:

The concession contract entitles the investor to obtain a building permit in order to construct their project and develop the property with the various buildings and facilities necessary for the project's completion, thereby facilitating the commencement of the operational phase.

c. Establishment of a mortgage:

The mortgage referred to here is not a formal mortgage on the economic property itself, but rather a mortgage on the real right arising from it, as the mortgage does not relate to the plot of land on which the concession is established, which remains part of the State's private property until the concession is converted into a definitive transfer.³⁵

The previous, repealed text No. 08/04 authorised the creation of a formal mortgage in favour of lending bodies such as banks, whether on the real property right subject to the concession or on the buildings to be constructed thereafter, as security for loans within the framework of the project's implementation,³⁶ This is the same provision that applied even under Order No. 06/11, which sets out the conditions and procedures for granting concessions and transferring land belonging to the State's private property intended for the completion of investment projects, now repealed.

d. Transfer of the concession right to heirs in case of the investor's death:

This provision was not included in the texts preceding Executive Decree No. 23/487, where the legislator expressly provided, in Article 18 thereof, that heirs or rightful claimants may benefit from the concession right in the event of the holder's death; they may, whenever they so wish, or in the event of any dispute or when acting as agents to reclaim the property, assert their right to enforce the concession right in their favour.

Second: The investor's obligations under the concession agreement

The concessions are precisely defined in the terms and conditions agreed between the investor and the Algerian Agency for Investment Promotion; however, the legislator has stipulated the most important of these both in Law No. 23/17 relating to economic property and in Executive Decree No. 23/487, and they may be summarised as follows:

- Maintaining the economic purpose of the property,
- Completion of the project within the specified timeframes,
- Non-letting of the granted property,
- Payment of a rental royalty.

a. Maintaining the economic purpose of the property:

An examination of Law No. 23/17 on economic property and its regulatory provisions, particularly Executive Decree No. 23/486 and 23/487, it quickly becomes clear that compromising the economic purpose of the property is a red line, given its importance in the field of investment and its role in achieving the country's economic development. It is therefore natural to emphasise this by making it an obligation incumbent upon the beneficiary,

whereby the investor undertakes not to alter it or use the property, or any part thereof, for purposes other than those set out in the terms of reference, and remains bound to maintain this even after the project's completion; however, the legislator has granted the investor the possibility of making changes subject to authorisation from the Algerian Investment Promotion Agency.³⁷

b. Completion of the project within the specified timeframes:

In this context, a distinction must be made between the concession period, set at 33 years and renewable, the period during which benefits under the incentive schemes are enjoyed (which usually ranges from three to ten years), and the deadline for completing the project itself. Law No. 23/17 on economic property refers to Law No. 22/18 on investment regarding the deadlines for completing the investment project, which must comply with those specified in the Investment Law.³⁸

For all types of investment provided for in the Investment Law, such investments must be completed within a period not exceeding three years, extended to five years for investments of a structural nature. The period shall run from the date of issue of the building permit, if the project so requires, or from the date of registration of the investment with the Algerian Investment Promotion Agency, with the possibility of extending the period by 12 months, renewable once, unless the project's completion exceeds a certain progress threshold.³⁹ The investor must comply with this deadline, failing which the concession contract may be terminated and the concession may not be granted subsequently.

c. Prohibition on leasing the granted property:

In accordance with Article 13 of Law No. 23/17 on economic property, the concessionaire may not, throughout the period of completion of their investment project, lease the property, on pain of termination, unless they can prove the actual completion of the project; However, they may do so if they prove the actual completion of the project, notwithstanding this provision.

d. Obligation to pay rent:

The obligation, which is transferable by way of assignment, requires the beneficiary investor to pay an annual rent calculated from the date the investment enters into operation, as determined by the Algerian Investment Promotion Agency. The amount is determined on the basis of property market prices and is updated in the event of the concession being revoked.⁴⁰

2- Monitoring of the Investment and the Possibility of Converting the Concession into a Transfer:

This section addresses the process of monitoring the investment under the concession agreement (firstly), followed by a discussion of the natural conclusion of the concession agreement, namely its conversion into a transfer (secondly).

Firstly: Monitoring of the Investment under the Concession Agreement

In the context of investment monitoring, the government has assigned all professional departments according to their areas of expertise and their relationship to the investment. In the field of granting economic property under concession, the Algerian Agency for Investment Promotion plays a key role, ensuring the monitoring of project implementation and the collection of various statistical data on their progress. The same applies to the National Property Administration, which ensures that the economic purpose of the granted property is maintained throughout the concession period.⁴¹

Consequently, any failure on the part of the beneficiary or any breach of their obligations during the concession period entitles the Algerian Investment Promotion Agency to unilaterally terminate the concession after issuing two formal notices through its single point of contact, served by a bailiff. The first notice shall be for a period of two months from the date of service, followed by a second notice in the same manner and within the same timeframe; upon the expiry of this period, the Agency shall issue a decision to terminate the concession, whereupon the competent regional State Property Authority shall draw up the contract terminating the concession.⁴²

The legislator has included, in Article 24 of Law No. 23/17 on economic property, a specific provision concerning investment projects for which the concession was granted prior to the enactment of this law, either: a provincial decree, a concession contract, or a written authorisation from the governor. In such cases, oversight falls within the remit of the regionally competent governor through a monitoring committee established for this purpose by his decision, and the Algerian Agency for Investment Promotion has no role in this regard.

This committee is composed of the following members⁴³:

- The wali or his representative as chair,
- the President of the Provincial People's Council or his representative,
- the President of the Municipal People's Council of the municipality within whose territory the investment is situated or his representative,
- a representative of the Algerian Investment Promotion Agency,
- the Director of State Property,
- the Director of Land Surveying and Cadastral Registration,
- the Director of Industry,
- the Director of Urban Planning and Construction,
- the Director of Tourism,
- the Director of Agricultural Services,
- the Director of Energy and Mines.

The committee may expand its membership to include any other provincial department.

Secondly: the expiry of the concession by assignment

An investor benefiting from a concession may request its conversion into an assignment.

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The conditions that must be met for this request to be accepted are set out in Article 15 of Executive Decree No. 23/487, namely:⁴⁴

- Compliance with all obligations imposed on the investor,
- Actual completion of the investment project in accordance with the specifications,
- Obtaining a certificate of conformity,
- The project must have entered the operational phase, as determined by the legally competent authorities and bodies,
- The mortgage encumbering the real property rights arising from the concession must be lifted,
- The current value of the property at the time the concession was granted must be paid, taking into account the royalties paid.

The applicant shall submit an application to the National Agency for Investment Promotion, which is responsible for formalising the conversion of the concession into a transfer within three months of the date of receipt of the application. The transfer contract shall be drawn up by the regionally competent State Property Authority at the request of the Agency through its one-stop shop within a period not exceeding 15 days from the date the file is forwarded to it.

Although the legislator has been meticulous regarding deadlines at the various stages of property allocation, and even those relating to the publication of the list of available properties on the digital platform, it has not set a clear deadline for the Agency to transfer the file of an applicant for a transfer from the Algerian Agency for Investment Promotion to the State Property Authority, and has merely set an overall deadline for the process of three months.

Conclusion:

At the conclusion of this research paper, we cannot but commend the Algerian state's efforts in the field of investment in general, and specifically in the area of economic property, which is the subject of this paper. It can be said that there are advanced laws that are consistent with one another, namely Law No. 22/18 on investment and Law No. 23/17 on economic housing, where economic housing, given its importance, is considered one of the guarantees for investors, as stipulated for the first time under Article 6 of the new Investment Law No. 22/18. In response to the issue at hand, it can be said that the national legislature has achieved the desired balance between the public interest of the state—represented by the achievement of economic diversification and, consequently, economic development in the medium and long term— and the private interest of the investor by overcoming the most significant obstacle hindering investment and individual initiatives, namely granting property through smoother and more flexible procedures compared to what was previously the norm.

The degree of caution required under Law No. 23/17 on economic property, as well as its implementing provisions, is to be regarded as natural given the profound significance of property, which forms part of the country's territory and thus necessitates

this level of caution, especially as the investors concerned and beneficiaries of property grants are not limited to nationals but also include foreign investors. The legislator has taken care to precisely define the procedures and methods for granting property, and has also taken care to clarify the parameters, limits and components of the economic property framework.

Bibliography:

¹ - Law No. 16/09, dated 3 August 2016, on the promotion of investment, Official Gazette No. 46, repealed.

² - Law No. 22/18, dated 24 July 2022, on investment, Official Gazette No. 50.

³ - This concerns the guarantee for the grant of the property that is the subject of this research paper, the guarantee of exemption from foreign trade procedures and bank settlement, the guarantee of intellectual property, and the guarantee of appeal before the Higher Committee for Investment Appeals and its proceedings.

⁴ - Law No. 23/17, dated 15 November 2023, concerning the procedures for granting economic property, Official Gazette No. 5.

⁵ - Mohamed Bouchousha, 'The Role of the State in Providing Economic Property for the Establishment of Small and Medium-sized Enterprises', *Journal of Administrative and Financial Sciences*, University of El Oued, Vol. 2, No. 1, June 2018, p. 428.

⁶ - Mounira Ben Ghroug, Masouda Mazari, 'economic property: A Mechanism for Encouraging Investment and Economic Legislation Strategy', *Journal of Law and Political Science*, Ibn Khaldoun University, Tiaret, Vol. 1, No. 1, March 2023, p. 12.

⁷ - Law No. 23/17, source cited above.

⁸ - Decree No. 06/11, dated 30 August 2006, setting out the conditions and procedures for granting concessions and transferring land belonging to the State's private property for the purpose of carrying out investment projects, Official Gazette No. 53. (Repealed).

⁹ - Decree No. 06/11, dated 30 August 2006, setting out the conditions and procedures for granting concessions or transferring land belonging to the State's available property intended for the implementation of investment projects, source as previously mentioned. It is worth noting that this committee was established by Executive Decree No. 07/120, repealed by Executive Decree No. 10/20 dated 12 January 2010, which provided for the organisation of the Committee for Site Selection, Investment Promotion and Land Regulation, as well as its composition and functioning, Official Gazette No. 4, which reorganised it and redefined its functions.

¹⁰ - Order No. 15/01, dated 23 July 2015, containing the Supplementary Finance Act for the year 2015, Official Gazette, No. 40.

¹¹ - Law No. 19/14, dated 11 December 2015, containing the Finance Act for the year 2020.

¹² - Article 06 of Executive Decree 23/486, dated 28 December 2023, defining the components of the economic property belonging to the State's private property for the implementation of investment projects and eligible for concession, Official Gazette, No. 85.

¹³ - Source cited above.

¹⁴ - Article 15 of Executive Decree No. 23/486, source cited above.

¹⁵ - Article 14 of Executive Decree No. 23/486, source cited above.

¹⁶ - Article 794 of Order No. 75/58, dated 25 September 1975, containing the Civil Code, Official Gazette, No. 78, as amended and supplemented.

¹⁷ - Article 23 of Law No. 23/17, source cited above, and Article 17 of Executive Decree No. 23/486, source cited above.

¹⁸ - Article 19 of Executive Decree No. 23/486, defining the components of economic property belonging to the State's private assets intended for the completion of investment projects and eligible for the granting of concessions, source cited above.

¹⁹ - Executive Decree No. 23/490, dated 28 September 2023, establishing the National Agency for Urban Property, Official Gazette No. 85.

²⁰ - Law No. 91/11, dated 27 April 1991, which sets out the rules relating to expropriation for the public good, Official Gazette No. 21.

²¹ - Executive Decree No. 23/487 of 28 December 2023, setting out the conditions and procedures for granting a transferable concession for the transfer of economic property belonging to the State's private assets for the purpose of carrying out investment projects, Official Gazette No. 85.

²² - Article 4 of Executive Decree No. 23/487, source cited above.

²³ - See Annex No. 01 of Executive Decree No. 23/487, source cited above.

²⁴ - Cited above.

²⁵ - Presidential Decree No. 22/296 dated 4 September 2022, determining the composition and functioning of the National Higher Committee for Investment Appeals, Official Gazette, No. 60.

²⁶ - See Articles 6, 7 and 8 of the aforementioned Presidential Decree No. 22/296.

²⁷ - Ibid.

²⁸ - See Article 4 of the aforementioned Order No. 06/11.

²⁹ - Article 4 of the aforementioned Law No. 08/04.

³⁰ - Article 5 of Law No. 08/04, cited above.

³¹ - Article 6 of Law No. 08/04, cited above.

³² - Article 14 of Law No. 23/17 on economic property, cited above.

³³ - Article 11 of Executive Decree No. 23/487, cited above.

³⁴ - Article 12 of Executive Decree No. 23/487, source cited above.

³⁵ - Article 13, final paragraph, of Executive Decree No. 23/487, source cited above.

³⁶ - Article 11 of Order No. 08/04, which sets out the conditions and procedures for granting concessions on land belonging to the State's private property and intended for the completion of investment projects, now repealed, as previously mentioned.

³⁷ - See Article 15 of Law No. 23/17, source previously mentioned

³⁸ - Article 14 of Law No. 23/17 on economic property, source cited above.

³⁹ - Article 32 of Law No. 22/18 on investment, source cited above.

⁴⁰ - Article 16 of Law No. 23/17 on economic investment, source cited above.

⁴¹ - Article 2 of Executive Decree No. 22/303 of 8 September 2022, concerning the monitoring of investments and the measures to be taken in the event of non-compliance with acquired duties and obligations, Official Gazette, No. 60.

⁴² - Article 17 of Executive Decree No. 23/487, cited above.

⁴³ - Article 24 of Law No. 23/17, source cited above.

⁴⁴ - Articles 15 and 16 of Executive Decree No. 23/487, which sets out the conditions and procedures for granting a concession convertible into a transfer of economic property belonging to the State's private assets for the purpose of carrying out investment projects, source cited above.