The Legal Framework of the Legislative Stability Clause in Algerian Law

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Abstract:

The condition of legislative stability is a guarantee granted by the state to investors, ensuring that the laws and regulations governing their investments will not be changed. Therefore, this topic is considered one of the important topics, and this condition has been regulated in several pieces of legislation, starting from Law No. 16/09 issued in 2016 up to the new Investment Law 22/18, which sought to attract and encourage foreign investments by providing several advantages to investors. In addition to the subject of the research related to the condition of legislative stability, which is an essential part of this law due to its importance and economic and social necessity, ensuring legal stability for foreign investors enhances the growth of the local and national economy of Algeria, as it contributes to providing a stable investment environment that attracts investments that contribute to reducing inflation and achieving the goals of the Algerian.

Keywords: *Legal Security; Stability; Foreign; Investors; National Economy.*

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Introduction:

Similar to comparative legislation in Arab countries, such as, for example, the Egyptian Investment Law No. 72 of 2017, which included the legislative stability clause to guarantee the protection of investors' rights and interests; the Moroccan Investment Law No. 19/55 issued in 2019, which includes the legislative stability clause to encourage foreign investments in Morocco; and the Tunisian Investment Law No. 2017/49 issued in 2017, which itself included the legislative stability clause to ensure legal stability for investors in Tunisia; the Algerian investment law, through its various iterations up to the new updated law No. 22/18, includes many principles and provisions aimed at ensuring legislative stability for foreign investors by not applying new laws to existing and contracted projects. This is because legislative stability is a mechanism to protect investors, the absence of which may negatively affect their rights and profits, always within the framework of reconciling contractual freedom and the sovereign right of the state.

Therefore, this research paper aims to highlight the role and effectiveness of the legislative stability clause in foreign investment contracts. Accordingly, the following problem is raised: To what extent is the legislative stability clause effective in attracting foreign investments to Algeria?

To answer this, our study relied on the analytical method by analyzing the role of the legislative stability clause according to the texts of Algerian laws and legislation, while dividing the study into the following plan:

1. **The importance of achieving legislative stability in attracting foreign investments**
   a. **The meaning of legislative stability in investment contracts**
   b. **Methods of applying the legislative stability clause in Algeria**
2. **Challenges of the legislative stability clause in attracting foreign investments**
   a. **Mechanisms for improving and enhancing the legislative stability clause**
   b. **Results of not achieving legislative stability**

1. The importance of achieving legislative stability in attracting foreign investments

Legislative stability is considered an important factor in stabilizing legal relations in various fields and legal domains. However, in areas related to development and the national economy, such as investment law, it holds particular importance due to its role in reducing potential damages resulting from its instability and from introducing any amendments, whether additions or deletions, to its legal environment. New laws are not applied during its term except according to exceptions that will be indicated later. In this regard, it is necessary to address the following points:

a. The meaning of legislative stability in investment contracts

The principle of legislative stability, or so-called legal stability, is a legal guarantee where the state commits not to backtrack or introduce amendments to the investment contract that binds it to the contracting party - the investor, whether national or foreign - to avoid damages that may be inflicted on them in case of legislative changes that could harm their interests (Oumani et al., 2021, p. 509).

The effective Investment Law 22/18, especially in Articles 48, 49, and 50, has affirmed that the effects resulting from any future revision or repeal of this law shall not apply to investments completed under this law, unless the investor explicitly requests it. Furthermore, investors can benefit from the legal stability system for a period of 10 years from the date of commencement of the investment activity, according to the implementing regulations. Analyzing the texts of this law and the intention of the Algerian legislator, we see that encouraging investment in Algeria is the goal sought by stipulating and emphasizing this clause each time. This legal protection for the rights of national and foreign investors encourages investment and the development of the Algerian economy in any circumstances that may affect it, except for the case of nationalization of investment projects, which only occurs in cases of public necessity according to Articles 48 and 51 of Investment Law 22/18. These articles allow nationalization even if it conflicts with the legislative stability clause to achieve the public interest. However, if there is arbitrary conduct between the parties to the contract, resort is made to international arbitration as a neutral mechanism for resolving investment-related disputes with fair compensation according to the market value of the project.

Thus, the legislative stability clause expresses the application of the law most favorable to the investor and, consequently, the temporal scope of the contract's application, ensuring them legal protection (Daas & Bouguetoucha , 2018 p. 176), where the terms of the contract between the investor and the state remain stable except what is explicitly excluded by a clear text.

b. Methods of applying the legislative stability clause in Algeria

As mentioned before, the legislative stability clause is a commitment by the contracting state that there will be no amendment to the legal rules regulating the investment, and that the contract shall be governed by the provisions of the law under which it was established (Akkroum, 2017, p. 658). It is a legal principle that can take the following forms:

❖ **Legislative Stability Rules:**

Legislative rules are defined as temporal freezing conditions of a legislative nature, in which the state undertakes not to amend or repeal its law applicable to the contract (Rahmane & Bouraya, p. 135). Western jurisprudence has held that legislative conditions offer more guarantees to the investor than contractual rules, because contractual or conventional stability clauses may be ruled illegal and

unconstitutional for violating subsequent mandatory rules that the national legislator may enact (Namek, p. 347).

The conditions and effects of applying this principle are determined through some main rules necessary for its application and implementation:

* **The rule of non-retroactivity**: Laws do not apply retroactively unless the law provides otherwise. For example, in 2015, the Algerian law at that time exempted foreign companies from taxes for 5 years. In 2018, a new law was issued abolishing the tax exemption. In this case, the Algerian government must respect the 5-year tax exemption that was in effect at the time of concluding the contract.
* **The rule of continuity**: This means that laws that were in force at the time of concluding the contract remain effective throughout the duration of the contract. For example, a foreign investor who bought land in Algeria in 2010, when Algerian law allowed foreigners to buy land. In 2015, a new law was issued prohibiting foreigners from buying land. In this case, the Algerian government must respect the foreign investor's rights acquired under the previous law.
* **The rule of non-cancellation**: This means that laws that were in force at the time of concluding the contract cannot be cancelled or amended without the consent of the parties. For example, an Algerian company signs a contract with a foreign company in 2012, and the Algerian law at that time stipulated that disputes would be resolved through international arbitration. In 2016, a new law was issued abolishing international arbitration. In this case, the legislative stability rule applies, and the Algerian government must respect the international arbitration clause that was in effect at the time of concluding the contract.
* **The rule of protection**: This means protecting the acquired rights of individuals and companies obtained under the laws in force.
* **The rule of transparency**: This means providing clear and accurate information about the laws and regulations related to investment.

❖ **Contractual (Conventional) Stability Rules:**

The investment contract may include a clause obligating the contracting state not to change the laws governing the investment contract except in cases of necessity, such as protecting security and public order, and considering the rights of investors. It indicates those conditions stipulated in the contract while excluding any subsequent amendments that may occur to them (Jamia & Kafrouni, 2021, p. 490).

These conditions found their source in agreements and contracts concluded by the state with foreign persons, such as the agreement concluded between Cameroon and an oil exploitation company, as stated in its Article 15, and also the example of the contract between Gabon and the company Franceville, where its Article 19 stipulated Gabon's commitment to include a special exception

in the contract for the company to benefit from previous provisions unless the company agrees to the new provisions (Rahmane & Bouraya, p. 134).

On the other hand, it is known that investment contracts are characterized by legal inequality between the parties to the contract. Therefore, the investor sees the necessity of being protected from being subject to any new legislation that may affect the rights they acquired at the time of concluding the contract with the state (Ben Ahmed , 2017, p. 530). They must be respected and implemented in good faith, with the commitment to fulfil their obligations under that agreement, and they cannot cancel or amend the agreement except with the consent of all parties and in a manner consistent with its purpose. That is, the parties must interpret the agreement in a way that aligns with the purpose for which it was concluded, while protecting the acquired rights of the parties.

❖ **Exceptions to the Application of the Legislative Stability Clause**

Balancing the interests of the state and foreign investors is not a mathematical equation because circumstances may arise that oblige the state not to maintain legislative stability in order to meet new economic or social needs. Article 106 of the Algerian Civil Code states that the contract is the law of the contracting parties, and it cannot be revoked or amended except by agreement of the two parties or for reasons provided by law. These exceptions must be clear, specific, and balanced so as not to negate the goal of legislative stability. Therefore, we mention these exceptions in:

➢ **Re-negotiation of the investment contract:**

This means the necessity for the parties to the investment relationship to commit to renegotiation to confront changing circumstances and laws (Yaaqoubat & Laajal, 2022, p. 84). We see that this aims to ensure a balance between the interests of the state and the rights of investors in case the investment contract includes a clause allowing the renegotiation of its terms upon the issuance of new legislation.

Re-negotiation is based on:

* **Request of the investor:** The investor has the right to request the application of new laws if the previous law does not serve their investment project.
* **Interest of the contracting state**: There are some exceptional cases where the state is forced to apply a new law based on the public interest if it so requires.

➢ **Exception of unforeseen circumstances or force majeure:**

The idea of changed circumstances is not a new one; it is one of the provisions included in Roman private law until it developed and became one of the principles of law. According to the principle of changed circumstances, the state cannot remain committed to fulfilling any contractual obligation if this obligation conflicts with its interest, even in the case of its commitment not to change the legislation (Yaaqoubat & Laajal, 2022, p. 83).

Thus, a new law can be applied in case of exceptional circumstances or force majeure that make the implementation of the original contract impossible. This can only occur if the following conditions are met:

* The contract is continuous or deferred in execution.

* These circumstances were unforeseeable at the time of concluding the contract.

* These circumstances lead to a burden on one of the parties to the investment contract.

* Performance is burdensome but without reaching the level of impossibility.

- **Subject or basis of the investment contract**:

This is done through the importance of the basis of the contract concluded between the state and the foreign investor, whereby the fundamental aspects of the investment contract, whether administrative or regulatory procedures, must not be compromised. It is noted that in case of a dispute regarding this, recourse is made to the judiciary or arbitration to settle it.

It should be noted that legislative stability includes the legislative and regulatory texts in force at the beginning of the investment activity and the exemptions and privileges granted to it. It does not include legal amendments related to national security, public health, or the environment.

2. Second - Challenges of the legislative stability clause in attracting foreign investments

Attracting foreign investments through the legislative stability clause is not a simple goal; it is a strategic one, where reviews and cancellations that may occur in the future are not applied to completed investments (Rahmouni & Ouali, 2020, p. 145). The state is forced, in case of breach, to compensate the investor for the loss incurred and the gain they missed that they would have achieved at that time (Ben Ahmed , 2017, p. 540), and thus it is a factor for attracting investments in Algeria (Daas & Bouguetoucha , 2018, p. 178).

Therefore, legislative stability is one of the important legislative guarantees that determine international responsibility in case of a breach of the legislative stability clause. Not adhering to it leads to results that we will detail in the following point:

a. Mechanisms for improving and enhancing the legislative stability clause

Legislative stability is one of the most important factors influencing the decisions of foreign investors to invest in a country. This means that the laws and regulations that were in force at the time of concluding the contract will not change suddenly, reducing the risks that foreign investors may face, making them more willing to invest. A country that guarantees legal stability is a safe country for investment, and thus enhancing economic relations between countries can only be

achieved through other mechanisms that reinforce the legislative stability clause, represented in:

❖ **The mechanism of transparency and equality**

The investment law primarily aims to gather and unify investment guarantees and incentives existing in numerous laws into one law and to unify investors' dealings with a single entity. This is to liberate investment from administrative and procedural restrictions and obstacles (Zine, p. 129), so that all transactions are equal.

Because one of the repercussions of legislative instability is inequality in treatment, and thus some may benefit from legislative changes at the expense of others, causing the investment law to lose its developmental goals. Refraining from discrimination in treatment is a general principle enshrined in most agreements signed by the Algerian state (Belhadj & Djilali, p. 327). According to Article 5 of the investment law, discrimination between investors based on nationality or capital ownership is not permitted, nor is discrimination in granting privileges or exemptions.

On the other hand, the field of investment requires the principle of transparency, which is clarifying all necessary legal procedures for the purpose of facilitating and encouraging investors (El Kahna, 2022, p. 52). There is no clear and specific standard, neither in international law nor in domestic law, that allows discrimination between domestic and foreign investment (Hammoutan, p. 1224).

To avoid falling into the same difficulties that surrounded previous laws (El Kahna, 2022, p. 45), it included explaining and clarifying some concepts specific to investment (El Kahna, 2022, p. 48). In this sense, we say that for the first time, the investment law stipulates the explanation meant by investment freedom, which includes natural and legal persons, whether national or foreign, and whether resident or non-resident in Algeria (El Kahna, 2022, p. 50). This also reinforced the principle of equality by giving a precise definition for the first time in previous legislations of the investor referred to by the new investment law 22/18, so as not to be confused with inequality between investors in procedures or incentives.

❖ **The role of the legislative stability clause in preventing investment disputes**

The legislative stability clause plays an effective role in preventing disputes that may arise from state contracts (Jamia & Kafrouni, 2021, p. 501). It is a legislative or conventional guarantee through which the state seeks to attract investments. Therefore, the contractor also seeks the necessity of having this principle in the contract to avoid the risks and damages resulting from legislative changes that may occur to them (Oumani et al., 2021, p. 509).

Stipulating legislative stability in investment laws limits misunderstanding and different interpretations and facilitates the settlement of disputes if they occur. In addition, it aims to guarantee the protection of foreign investors' rights

from nationalization or expropriation through procedures and measures aimed at avoiding the occurrence of disputes between investors, with the necessity of conducting prior negotiations between investors and the government to clarify expectations and requirements and providing clear and accurate information about the laws and regulations related to investment.

From this perspective, Algeria has undertaken several regulatory measures concerning international arbitration, both at the level of national legislation and international agreements (Belhadj & Djilali, p. 330).

b. Results of not achieving and enhancing legislative stability

The lack of legislative stability affects investment by creating a state of legal confusion, through:

❖ **Weak confidence of foreign investors**

On the one hand, legislative instability reduces investment, especially foreign investments, due to the investor's fear of the law changing, leading to slowed economic growth and fluctuations affecting the gross domestic product. On the other hand, it increases the complexity of legal and administrative procedures, making them unclear and unpredictable.

The multiplicity of procedures, lack of clarity in decisions, and slowness in work performance have produced the phenomenon of bureaucracy, which has become associated with public administration, causing it to flounder in manifestations of corruption (Barakat & Mourad, 2019, p. 140). Bureaucracy is one of the most important obstacles to achieving economic projects for private investors, making them abandon the idea of investing in Algeria (Koudiri & Belghith, p. 542).

Therefore, the state commits not to introduce amendments to the legislative and regulatory framework governing completed investments when amending or repealing laws related to investments, serving their benefits, while allowing the possibility of benefiting from the new legislation if it includes greater or broader guarantees (Belhadj & Djilali, p. 328). The multiplicity and instability of laws is a factor that repels investors (Koudiri & Belghith, p. 541), so legislative stability was necessary for it.

❖ **Weak economic and social development of the state**

Economists have considered infrastructure a key element for productivity through its impact on gross output (Ratoul & Ben Zidane, p. 181). For the state to benefit from various types of investment, it must invest in roads and airports as one of the pillars (Ratoul & Ben Zidane, p. 182). They are considered the foundations of modern economies and have a multiplied effect on achieving sustainable economic growth (Ratoul & Ben Zidane, p. 190), especially if we are facing fragile laws and instability of their legal provisions - lack of legislative stability.

Legislative stability can attract foreign investments through their impact on economic growth, and thus not stimulating it leads to not creating an environment for investment businesses, making the investor confident in the Algerian economy.

Conclusion:

From the above, we conclude that legislative stability provides an attractive investment climate for investors, and is an important principle regardless of their nationality alike, after they enter into investment projects enabling them to make other investment decisions with full confidence. The guarantee of not applying new laws retroactively leads to an increase in foreign investments, contributing to the growth of the national economy and improving the investment environment, making it more attractive to foreign investors. Therefore, we offer some recommendations that contribute significantly to achieving legislative stability of investment laws for its economic and social objectives, including:

Recommendations:

* To enhance transparency and clarity in legislation, it is necessary to avoid frequent amendments to laws and avoid ambiguity by consulting with investors before issuing new laws.

* The existence of ambiguity in the formulation of articles related to legislative stability and nationalization opens the door to different interpretations. The possibility of nationalization as an exception may discourage investors if public necessity is not defined precisely.

* Obliging the state with the legislative stability clause in investment contracts necessitates obligating the determination of the scope and duration of application of this clause.

* Activating international arbitration strongly, balanced with activating an independent judicial environment as mechanisms for resolving investment disputes.

* To enhance confidence between the state and investors, it can be said that maintaining the state's investment reputation and providing necessary information to investors can achieve greater attraction of investments.

* Legislative stability does not mean rigidity and lack of amendment, as circumstances may change and it may fall outside its scope of application.

And thus, we present the following **suggestions**:

* Enhancing international cooperation in the field of investment to attract foreign investments.

* The state and the contracting investor party must adhere to the principle of good faith in applying the legislative stability clause and avoid any arbitrary practices.

* Periodic review of the effectiveness of applying the legislative stability clause to assess the extent of its effectiveness in achieving the desired objectives and amending it when necessary.

* The laws and regulations covered by the legislative stability clause must be specified, and the scope of application of the legislative stability clause must be expanded.

Bibliography:

1. Akkroum, A. (2017). The Legislative Stability Clause as a Guarantee for the Foreign Investor in Algeria. *Journal of the Professor-Researcher for Legal and Political Studies, 4*(2).
2. Barakat, E., & Mourad, N. (2019). The Administrative Investment Climate and its Impact on Attracting Foreign Investments. *Journal of the Department of Legal and Political Research and Studies, 3*(6).
3. Belhadj , S., & Djilali , M. (n.d.). The Main Guarantees Granted to Foreign Investors in Algerian Legislation. *Journal of Legal and Political Thought, 5*(1).
4. Ben Ahmed , E.-H. (2017). The Legislative Stability Clause between Embodiment of Legal Security and the Interest of the State in Algerian Investment Law. *Journal of Legal and Political Studies, 2*(5).
5. Daas , H., & Bouguetoucha , W. (2018). The Principle of Legislative Stability as a Guarantee for Investment in Algeria. *Algerian Journal of Law and Political Science, 3*(5).
6. El Kahna , A. (2022). A Look at the New Investment Law of 2022. *Critical Journal of Law and Political Science, 17*(3).
7. Hammoutan, M. (n.d.). The Legal Framework for Investment in Algeria – A Comparative Study between Algerian and French Law. *Journal of Legal and Political Research, 7*(1).
8. Jamia, S., & Kafrouni, K. (2021). The Legislative Stability Clause in State Contracts (A Preventive Means to Avoid Investment Disputes). *Tishreen University, 5*(43).
9. Koudiri, K., & Belghith, A. Incentives and Obstacles to Foreign Investment in Algeria. *Al-Ibdae Journal, 11*(1).
10. Namek, I. (s.d.). The Legislative Stability Clause and the Most Favorable Law for the Investor and their Role in Attracting Foreign Investments – A Comparative Analytical Study. *Journal of the Kuwait Global Law School*.
11. Oumani, K., Allaq , A., & Ben Chenouf , F. (2021). The Principle of Legislative Stability and its Impact on Attracting Foreign Investments. *Algerian Journal of Law and Political Science, 6*(1).
12. Rahmane , A., & Bouraya , D. (n.d.). Including the Legislative Stability Clause in the Investment Contract as a Mechanism to Attract Foreign Investors in Algeria. *Al-Baybane Journal for Legal and Political Studies, 4*(2).
13. Rahmouni, A., & Ouali, A. (2020). The Legislative Stability Clause as a Guarantee in Investment Contracts. *Algerian Journal of Business Law, 1*(2).
14. Ratoul, M., & Ben Zidane, F. (n.d.). The Role of Investment in Infrastructure in Achieving Sustainable Growth – Study of China's Experience. *Journal of Law, Human Sciences, and Economic Studies, 30*(4).
15. Yaaqoubat, S., & Laajal, Y. (2022). The Oil Legislative Stability Clause between the Requirements of Legal Security and Changing Circumstances of Implementation. *Law and Policy Notebooks, 14*(3).

16. Zine, M. (n.d.). Reality and Prospects of Investment Policy in Algeria. *Journal of North African Economics*(2).