

Guarantees granted to investors according to Law 22-18 relating to investment in Algeria

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Abstract:

The modern regulatory system for investment (such as the legislative framework in Algeria according to Law 22-18) views investment as a key driver of sustainable development. This vision is based on the principles of transparency, equality, and freedom of investment, and is managed through clear institutional mechanisms to facilitate business and provide the necessary guarantees. Investment Law No. 22-18 has enshrined new guarantees, principles, and concepts for investment in order to enhance investor confidence and make him willing to invest without hesitation.

Keywords: Law ‘Investor’ Investment ‘Guarantees.

1. INTRODUCTION

The modern regulatory system for investment (such as the legislative framework in Algeria under Law 22-18¹) views investment as a key driver of sustainable development. This vision is based on the principles of transparency, equality, and freedom of investment, and is managed through clear institutional mechanisms to facilitate business and provide the necessary guarantees.

Investment Law No. 18-22 established new guarantees, principles, and concepts for investment to bolster investor confidence and encourage them to invest without hesitation.

Perhaps the most important of these guarantees are the financial and legal guarantees, known as substantive guarantees. Alongside these, there are also procedural guarantees, including administrative and judicial guarantees.

Based on this, we pose the following question: What are the new guarantees provided to investors in Law 22-18 concerning investment in Algeria ?

To answer this question, we will address (firstly) substantive guarantees and then (secondly) procedural guarantees

First: Objective guarantees

Legal guarantees and financial guarantees are considered the most important objective guarantees, and therefore we will discuss each of them separately.

One: Legal guarantees

A- Guaranteeing freedom of investment: The principle of freedom of investment is considered a fundamental principle of investment in Algerian law. It was enshrined in the constitution, specifically in Article 43 of the 2016² constitutional amendment, which states that "freedom of investment and trade is recognized and exercised within the framework of the law." Furthermore, in the 2020³ constitutional amendment, it was enshrined in Article 61, which guarantees investment and considers it a fundamental freedom and right.

The principle of freedom of Investment means the ability of individuals to engage in the activities they want without coercion, provided that they are subject to the laws in this framework⁴. It also means organizing and developing the chosen economic activity without restriction or condition, and without obstacles and problems. In this case, it is

¹ قانون رقم 18-22 مؤرخ في 25 ذي الحجة عام 1443 الموافق 24 يوليو سنة 2022، يتعلق بالاستثمار (ج.ر. رقم 50 المؤرخة في 28 يوليو 2022).

² قانون رقم 16-01 مؤرخ في 26 جمادى الأولى عام 1437 الموافق 6 مارس سنة 2016 يتضمن التعديل الدستوري، الجريدة الرسمية للجمهورية الجزائرية / العدد 14.

³ دستور الجمهورية الجزائرية الديمقراطية الشعبية لسنة 2020، الجريدة الرسمية للجمهورية الجزائرية الديمقراطية الشعبية، العدد 82 في 15 جمادى الأولى عام 1442 الموافق 30 ديسمبر سنة 2020.

⁴ عيسى بيرم، الحريات العامة وحقوق الإنسان بين النص والواقع، دار المنهل اللبناني، بيروت لبنان، 1998، ص15.

assumed that the state, on the one hand, refrains from placing restrictions and obstacles in front of investors and works to reduce and simplify them in order to attract foreign investment, especially foreign investment to bring in hard currency and provide jobs. On the other hand, it means not favoring one investor over another, working on the principle of equality in commercial transactions. The principle of freedom of investment also means leaving market mechanisms to work freely by opening up commercial practices to all persons¹.

Through our analysis and study of previous laws, we found that the principle of freedom of investment is considered one of the major principles of investment in Algerian law. The Algerian legislator has enshrined this principle in successive investment legislation and even in the constitution. Under Legislative Decree No. 93-12² concerning investment promotion and Order No. 01-03³ concerning investment development, and currently under Law No. 22-18, this principle is explicitly reinforced in Article 3, Paragraph 1. There are no longer any obstacles for those wishing to invest, whether a natural or legal person, national or foreign, and residency in the country is not a requirement. All that is required is adherence to and respect for the provisions of Law 22-18. Therefore, the practice of investment is a legally and constitutionally guaranteed right for every person wishing to invest. In this sense, we can say that for the first time, the person concerned with freedom of investment is explicitly mentioned. Previous laws, including the most recent one, Law No. 16-09⁴, focused solely on the types of investments, explicitly mentioning the terms "national investment" and "foreign investment." It is worth noting that the Algerian legislature has now reverted to using nationality as a criterion to distinguish between national and foreign investors, and residency requirements are no longer considered restrictions or obstacles to investment. All these measures are intended to encourage both Algerian and non-Algerian investors to come and invest freely in Algeria, provided they respect the applicable laws and regulations⁵.

B- The principle of equality and transparency: The principle of non-discrimination between investors is considered one of the most fundamental concepts.

1-Regarding the principle of equality: the principle of fair and equitable treatment without discrimination between investors based on their nationality is one of the most important guarantees that can be given to the investor. It is considered one of the most important factors attracting the investor, as it protects the foreign investor from all arbitrary or discriminatory measures that the attracting state may practice. In addition, it confirms and guarantees that the foreign investor benefits from any privileges or

¹ تيورسي محمد، الضوابط القانونية للحرية التنافسية، دار هومة، الجزائر، 2013، ص 102.

² المرسوم التشريعي رقم 93-12 المؤرخ في 05 أكتوبر 1993 المتعلق بترقية الاستثمار، جريدة رسمية عدد 64 صادرة بتاريخ 10 أكتوبر 1993.

³ الأمر رقم 01-03 المتعلق بتطوير الاستثمار، المؤرخ في 20 أوت 2001، ج ر ج، العدد، 47 الصادر في 22 أوت 2001.

⁴ القانون رقم 16-09 المؤرخ 3 أوت 2016 المتعلق بترقية الاستثمار، الجريدة الرسمية للجمهورية الجزائرية، العدد، 46 الصادر في 3 أوت 2016.

⁵ يحي رقية، الضمانات القانونية لتشجيع الاستثمار في ظل القانون رقم 22-18، مذكرة مقدمة لاستكمال متطلبات نيل شهادة ماستر أكاديمي حقوق-تخصص قانون خاص-جامعة غرداية، نوقشت بتاريخ: 2024/06/09، ص 37.

guarantees just like the national legislator, without any special treatment for any of them.

And with our study of previous laws, we found that this principle was enshrined in previous investment texts, but the Algerian legislator did not recognize it as a principle except in Law No. 22-18 in Article 3, Paragraph 2, thus enabling the foreign investor to benefit from all the privileges stipulated in the investment law of the host country for the investment, on an equal footing with the national investor¹.

2-Regarding the principle of transparency: It means moving away from secrecy and ambiguity in transactions. In the field of investment, it can be said that it is the method that ensures the visible follow-up of procedures from beginning to end. It is enabling investors, regardless of their legal status, to have the right to obtain all information related to how they conduct their business by the bodies supervising the accompaniment and follow-up of investment projects, and even those involved in investment operations, whether for the tax administration, the customs administration, banks, financial institutions, and others².

It was strengthened by Law 22-18 through the creation of the digital platform for the investor, the national single window for major projects and foreign investments, and the decentralized windows that existed previously, by adopting the electronic system instead of the paper system previously in use. The interest of the Algerian legislator in the principle of transparency can be emphasized through the texts of other articles of Law No. 22-18, including the provisions of some of Article 4 of Decree No. 22-298³ concerning the organization of the National Investment Promotion Agency, which includes the system of information and facilitation that the agency must follow towards investors.

As a result of the above, we found that the Algerian state has worked diligently to achieve the principle of transparency. This is evident in its adoption of digitalization, a system recently implemented by Algeria that aims to achieve transparency, eliminate secrecy and ambiguity, keep pace with technological advancements, and ensure speed and credibility in transactions, moving away from the bureaucracy that has long been a concern for investors⁴.

According to the provisions of Article 3 of Law 22-18 concerning investment, the principle of transparency and equality in dealing with investments has been enshrined. This principle, which was previously a guarantee in the repealed Investment Promotion Law, has become a fundamental pillar upon which the investment process depends. This

¹ عماد عجابي، "تكريس مبدأ حرية التجارة و الصناعة في الجزائر"، مجلة الباحث للدراسات الأكاديمية، العدد الرابع، كلية الحقوق و العلوم السياسية، جامعة الحاج لخضر، باتنة، ديسمبر، 2014، ص247.

² الكاهنة أزريل، نظرة حول جديد قانون الاستثمار لسنة 2022، المجلة النقدية للقانون والعلوم السياسية، كلية الحقوق والعلوم السياسية، جامعة تيزي وزو، المجلد 17، العدد 2، 2022، ص52.

³ مرسوم تنفيذي رقم 22-298 المؤرخ في 11 صفر عام 1444 الموافق ل 08 سبتمبر سنة 2022، الذي يحدد تنظيم الوكالة الجزائرية لترقية الاستثمار وسيرها (الجريدة الرسمية رقم 60 الصادرة في 18 سبتمبر 2022) المعدل والمكمل بالمرسوم التنفيذي رقم 24-111 المؤرخ 13 مارس 2024. (الجريدة الرسمية رقم 19 الصادرة في 18 مرس 2024).

⁴ يحي رقية، مرجع سابق، ص38.

principle is embodied through the digital platform stipulated in Article 23 of Law 22-18, as well as Article 28 of Executive Decree No. 22-298. This reflects the legislator's commitment to the effective application of this principle through fair competition and transparency in reviewing investment files, identifying entrepreneurial spirit within a comprehensive and stable framework, and improving communication between investors and the economic administration.

Despite the importance of the aforementioned principles and their effectiveness in attracting investors, there is another aspect that can be considered an obstacle for the investor and make him hesitant about investing his money in Algeria, which is the instability of laws and legislation. The investor finds himself facing a new law different from the law on which the investment contract was based, and it may not serve his interests and goals. However, the Algerian legislator, as he works hard to enact laws that provide a suitable investment climate, has not overlooked this aspect and has established a guarantee that ensures legal stability, namely legislative stability, as we will now discuss in section C.

C- Ensuring the principle of legislative stability:

The investor shall be protected from any legislative amendment that may be made to the legal rules governing investment, which may apply to all the legal rules pertaining to investment or be limited to some of them without others¹. The investor shall remain subject to the laws under which their investment projects were completed without changing, amending or canceling them unless the investor explicitly requests this.

Or, if these amendments are in the investor's favor and do not harm their financial interests, it is illogical to undertake investment projects under specific laws that provide legal and judicial guarantees and grant considerable advantages and incentives that attract investors and were the reason for their interest in investing in Algeria, only to then be surprised by amendments or repeals of these laws that negatively affect the fate of their investments, unless these amendments are in the investor's favor and at their request².

This is intended to encourage and reassure both domestic and foreign investors, attracting them to invest and giving them the sense of legal security that any investor seeks. We found that it was as if the state had frozen its right, as an entity and as a sovereign state, to exercise its legislative and regulatory powers by not making any amendments, repealing, or applying any new laws in this area. The investment remains subject to the contract concluded with the investor, within the framework of the law under which it was concluded³. From the above, we found that the condition of legislative stability includes two types of rules, which are as follows:

1-Legislative rules: These are the legislative texts that came in the body and core of the laws of the state, according to which the state undertakes not to amend or cancel the

¹ السامرائي دريد محمود، الاستثمار الأجنبي، المعوقات والضمانات، ط الأولى، مركز الدراسات الوحدة العربية، لبنان، ص13.

² يحي رقية، مرجع سابق، ص38.

³ عصام محمد عبد الباسط، حرية الاستثمار والتجارة، أطروحة لنيل شهادة دكتوراه علوم في إطار مدرسة الدكتوراه، فرع الدولة والمؤسسات العموميات، كلية الحقوق والعلوم السياسية، سعيد حمدين، جامعة الجزائر 1 بن يوسف بن خدة، 2021/2020، الجزائر، ص69.

investment contract or the laws related to investment in general, and that the new law does not apply to the contract concluded between the two parties or previous investments¹.

2-Agreement Rules: These mean that the state is obligated not to amend or change the contractual provisions, unless there is an agreement stipulating otherwise².

As for the position of the Algerian legislator on legislative stability, he worked to enshrine the guarantee of legislative and legal stability within the various laws related to investment and also within the bilateral agreements related to investment. The Algerian state has strived to ensure that these laws are not merely ink on paper and that they find their way to implementation.

This principle was stipulated starting with Legislative Decree No. 93-12 relating to the promotion of investment, and it remained in the same position even after the cancellation of this decree by virtue of Order No. 03-01. Through our analysis, we found that the Algerian legislator clarified the method by which the investor expresses his desire for the rules and provisions of the new law to apply, and therefore the investor must explicitly request that the provisions of the new law apply to his investment contract concluded between him and the state that attracts him. Article 15 of Order 03-01 (repealed) also contained the same content as Article 39, as the new text did not contain any changes to the old text. It is noted from these two articles that the Algerian legislator has enshrined the principle of legislative guarantee in the investment law by refraining from any action that would change the content and conditions of the concluded investment contract, and he did not stop at this amount, but gave a broader guarantee represented in the possibility of benefiting from the new legislation. Law 16-09 relating to the promotion of investment (repealed) included this condition in Article 22 thereof.

According to Article 22 of the aforementioned law, the principle rests on two pillars:

-**The first pillar:** the general rule, which stipulates that no new investment law can be applied to investment contracts concluded under the old law. The investment remains subject to the agreed-upon contract.

- **The second pillar:** an exception to the general rule, which occurs when an investor explicitly requests to be subject to the new rules established by the new legislation. The legislator embodied this principle in Article 13 of Law 18-22.

It is noteworthy that the Algerian legislator did not make any fundamental changes to the text of the aforementioned article, in addition to the President's confirmation in a press conference that this law will not be amended for more than ten years. This ensures

¹عبد الرزاق رحموني، عبد اللطيف والي، شرط الثبات التشريعي كضمانة في عقود الاستثمار، منشور في المجلة الجزائرية لقانون الأعمال العدد الثاني، جامعة المسيلة، الجزائر، ديسمبر، 2020، ص143.

²إقمولي محمد، شروط الاستقرار التشريعي المدرجة في عقود الدولة في مجال الاستثمارات، منشور في المجلة النقدية للقانون و العلوم السياسية، العدد، 1، جامعة تيزي وزو، الجزائر، 2006، ص98.

legal and legislative stability and thus gives investors a sense of security and reassurance¹.

Two : Financial guarantees

A- Guarantee of Intellectual Property Rights: The guarantee of the protection of intellectual property rights was enshrined in the aforementioned Algerian Constitution of 2020, under the text of Article 74, paragraph three, which explicitly states that all intellectual property rights are protected by law, in addition to the laws specific to the protection of intellectual property, including the Copyright and Neighboring Rights Protection Law 03-05², and the Patents Law No. 03-07³.

However, the guarantee of protecting intellectual property rights was not enshrined in the successive legal texts for investment. It was first enshrined in Investment Law 22-18 in Article 9 thereof. Intellectual property was defined by some jurists as legal rules established to protect intellectual creativity contained within tangible works (intellectual and literary property) or to protect the intangible elements of industrial and commercial projects (industrial property)⁴, and it relates to protecting the intellectual creations of individuals. Returning to what we said previously, Investment Law 22-18 included a new guarantee that did not exist previously. This enshrinement is considered a continuation of the state's protection of investor property in its two traditional forms, represented by tangible property such as real estate and movable property, and intellectual property, represented by the moral rights that the investor owns and uses in his investment projects, whether they are moral rights such as copyright and related rights, or industrial rights such as patents, trademarks, and others⁵. Also, there is the importance of protecting these rights and what may result from them in terms of imitation or theft. Economic literature has shown a positive correlation between intellectual property rights and improving the foreign investment environment, based on the fact that foreign direct investment is one of the most important means of attracting foreign capital through multinational companies investing abroad, which possess the financial, administrative, and technical capabilities to finance their projects. This is only possible through the availability of attractive factors in the host countries, including the existence of effective protection for the intellectual property of companies and institutions wishing to invest.

B- Guaranteeing the investor's ownership: Expropriation is defined as "the procedure taken by the state or one of its public bodies to expropriate specific real estate assets in exchange for compensation granted to their owners⁶."

¹ يحي رقية، مرجع سابق، ص41.

² الأمر رقم 05-03 مؤرخ في 19 جمادى الأولى سنة 1424 ال موافق 19 جويلية 2003 يتعلق بحقوق المؤلف و الحقوق المجاورة، ج ر ج ج، العدد، 44 الصادر في 20 جويلية 2003

³ الأمر رقم 07-03 مؤرخ في 19 جمادى الأولى سنة 1424 ال موافق 19 جويلية 2003، يتعلق ببراءات الاختراع، ج ر ج ج، العدد 44، الصادر في 20 يوليو 2003.

⁴ مؤيد زيدان، حقوق الملكية الفكرية، الجامعة الافتراضية السورية، الجمهورية العربية السورية، 2014، ص2.

⁵ الكاهنة إزريل، مرجع سابق، ص 53.

⁶ زياد فيصل حبيب، المزايا والضمانات التشريعية للاستثمار الأجنبي في قوانين الاستثمار العربية -دراسة تحليلية مقارنة- 2، دار النهضة العربية، القاهرة، 2014، ص 267.

The principle of non-interference with private ownership of investments was previously enshrined in Legislative Decree No. 93-12 and was confirmed in Order No. 01-03 and then in Law 22-18 in Article 10 thereof, and the term “requisition” was used instead of the term “expropriation”.

According to the aforementioned Article 10, expropriation from an investor is not permitted. This is the general rule, but every general rule has an exception. The exception here lies in the possibility of expropriation for public benefit, as the public interest takes precedence over private interest. In this case, the state is obligated to provide fair and just compensation for any resulting damages. From the above, the most important characteristics of expropriation for public benefit become clear¹:

- 1It is an exceptional method.
- 2It is a coercive method.
- 3Its objective is to achieve the public interest.
- 4It is carried out in exchange for fair and prior compensation.

Expropriation for the public good takes three forms: seizure, nationalization, and confiscation. However, in nationalization, the state is obligated to pay appropriate compensation, unlike in confiscation, where no compensation is provided.

The state has reserved this right for itself, but international law has placed multiple restrictions on the state’s right to expropriate property, the most important of which is the obligation not to violate the principle of equality and non-discrimination. The rules of international law, by consensus of international conventions, stipulate that foreign investments may be subject to nationalization, expropriation and confiscation procedures, provided that there is no discrimination between the national investor and the foreign investor and that they are subject in terms of procedures and conditions to the same provisions, so that the goal of the procedure is only to achieve a public benefit².

C- Guarantee of the transfer of capital and its returns: The freedom to transfer funds means that there are no restrictive conditions limiting the transfer of investment assets and their returns abroad, in addition to the transfer of proceeds resulting from assignment or liquidation and the rest of the revenues, which may be in cash or in kind. It is considered one of the most important guarantees that attract the investor, as any investor may wish to transfer his money abroad freely and without any difficulties or obstacles that may prevent him from doing so. This is what was stipulated in Legislative Decree 93-12³ (repealed) and was confirmed by Order No. 01-03⁴ and by Law No. 16-

¹ طفياني مخطارية. نزع الملكية العقارية من أجل المنفعة العامة في التشريع الجزائري، مجلة تشريعات التعمير والبناء، جامعة تيارت-الجزائر العدد الرابع ديسمبر، 2017 ص 257.

² نواره حسين، المنفعة العمومية شرط لنزع ملكية المستثمر الأجنبي: دراسة مقارنة، مجلة كلية القانون الكويتية العالمية، كلية الحقوق و العلوم السياسية، جامعة مولود معمري، تيزي وزو، الجزائر، العدد 30.

³ المرسوم التشريعي 93-12 يتعلق بترقية الاستثمار في الجزائر، السالف الذكر.

⁴ الأمر رقم 01-03 المتعلق بتطوير الاستثمار في الجزائر السالف الذكر.

09¹ with the same content. Then Law 22-18 came with new concepts, as the legislator tried to remedy the existing shortcomings and gaps.

Through our reading of Article 8 of Law 22-18², we found that the legislator did not specify whether the investor concerned with this guarantee is a national or a foreign resident or non-resident, so he left the field open to all investors. This is an application of the principle of equality between investors. The investor was also authorized to transfer the investor's capital and returns, whether in the form of cash shares or in-kind shares. As for cash shares, they are cash funds, and a condition was placed on them that they be imported through the banking system in a free currency priced by the Bank of Algeria. As for in-kind shares, they are means, equipment, or machinery used in his investment project, and it was stipulated that they be imported from abroad in order to be subject to transfer. This guarantee was also adopted in the Monetary and Credit Laws, particularly Order No. 03-11³ in Article 126 thereof. Several regulatory laws were also issued clarifying the method of transferring capital to carry out any economic activity abroad through Regulation No. 14-04⁴, which specifies the conditions for transferring capital abroad under the title of investment abroad by economic operators subject to Algerian law.

The Algerian legislator did not stop at that, but rather enshrined this guarantee in the legal arsenal related to investment, which, since its beginning, has been keen on this guarantee until the issuance of Law No. 22-18, which worked to expand this guarantee and granted greater and more comprehensive freedom to the foreign investor abroad in financial transfers abroad through banking in convertible currency, in accordance with the provisions of the Bank of Algeria system⁵.

The legislator did not merely guarantee the transfer of the investor's capital, but went further by granting the foreign investor the right to transfer the returns on investment, whether they were profits, interest, or other returns he had made from his investment. Consequently, the investor has the right and complete freedom to transfer the returns on investment, after paying the taxes due to the state if he has not benefited from tax exemptions. The guarantee of transfer stipulated in the above article⁶ also includes the net real income resulting from the transfer and liquidation of investments of foreign origin, even if its amount exceeds the capital invested at the beginning.

The procedures for implementing this article are determined by regulation, in accordance with paragraph 5 of Article 8 of Law 22-18. It is noteworthy that the Algerian state has worked diligently to provide a free economic climate to attract

¹ القانون رقم 09-16 المتعلق بترقية الاستثمار السالف الذكر. ألغى القانون رقم 09-16 بموجب قانون الاستثمار الجديد (القانون رقم 18-22) الصادر في 24 يوليو 2022.

² قانون رقم 18-22 المتعلق بالاستثمار السالف الذكر.

³ أمر رقم 11-03 مؤرخ 27 جمادى الثانية عام 1424 الموافق 26 غشت سنة 2003، يتعلق بالنقد والقرض، ج ر ج ج، العدد 2، الصادرة في 27 أوت 2003.

⁴ النظام رقم 14-04 مؤرخ في 5 ذي الحجة عام 1435 الموافق ل 29 سبتمبر 2014، المحدد لشروط تحويل رؤوس الأموال إلى الخارج من طرف المتعاملين الاقتصاديين الخاضعين للقانون الجزائري، ج ر ج ج، العدد 63 الصادرة في 22 أكتوبر 2014.

⁵ يحي رقية، مرجع سابق، ص 45.

⁶ المادة 8 من القانون رقم 18-22 المتعلق بالاستثمار السالف الذكر.

investors. This is reflected in the aforementioned guarantees enshrined by the Algerian legislator, expressing the state's genuine and serious commitment to change. We will continue to study and analyze another type of guarantee in the second section.

Second: Procedural guarantees

The legislator did not merely establish the substantive guarantees mentioned above, but also created procedural guarantees of great and essential importance, which in turn are divided into judicial guarantees and administrative guarantees.

One : Judicial guarantees

A-High National Commission for Investment Recourses- In French- (Haute Commission Nationale des Recours liés à l'Investissement)

The Algerian legislator stipulated the creation of a supreme committee in charge of appeals in the field of investment in the text of Article 11 of Law 22-18 relating to investment, as well as Article 2 of Presidential Decree No. 22-296¹, which establishes a supreme national committee for appeals (**High National Commission for Investment Recourses**) at the Presidency of the Republic, tasked with deciding on appeals submitted by investors to redress grievances against them.

The composition of this committee is governed by the aforementioned presidential decree and is as follows:

*A representative of the Presidency of the Republic, as Chairperson;

*A judge from the Supreme Court and a judge from the Council of State, nominated by the Supreme Judicial Council;

*A judge from the Court of Accounts, nominated by the Council of Judges of the Court of Accounts;

*Three (3) independent economic and financial experts, appointed by the President of the Republic.

The committee may seek assistance from any individual whose expertise can contribute to its members. Committee members are appointed by presidential decree for a three-year term, renewable once. Committee members receive compensation for attendance and participation; the amount and procedures for payment are determined by executive decree. The committee is provided with a secretariat. The committee approves its internal regulations during its first meeting².

The committee shall meet whenever necessary and shall decide within one month from the date of notification. The deliberations of the committee shall not be valid unless at least two-thirds of its members are present. The decisions of the committee shall be approved by a majority vote of the members present. In the event of a tie, the vote of the

¹مرسوم رئاسي رقم 22-296 مؤرخ في 07 صفر عام 1444 الموافق ل 04 سبتمبر سنة 2022، الذي يحدد تشكيلة اللجنة العليا الوطنية للطعون المتعلقة بالاستثمار و سيرها ج، ر، ع، ع، 60.

²المادة 11 من القانون 22-18، مرجع سابق.

chairman shall be decisive¹. The committee shall have the authority to review the administrative documents relating to the investment projects in dispute.

What is noticeable about this panel is that the majority of its members are judges and experts specializing in their field and in the right and appropriate place for them, which undoubtedly ensures its effectiveness in resolving the dispute presented to it and its commitment to neutrality and objectivity, in addition to speed in resolving the dispute². This is in contrast to what it was under Executive Decree No. 19-166³, where the latter was of a ministerial nature, consisting of representatives of several ministries: a representative of the Minister of the Interior and Local Authorities, a representative of the Minister in charge of Justice, representatives of the Minister in charge of Finance, a representative of the ministry concerned with the appeal (who in turn changes with the subject of the appeal), in addition to a representative of the National Investment Development Agency. This may lead the investor to question the credibility of the rulings issued by this committee. It is not logical, in the case that the agency that issued the decision on which the appeal was based should issue the ruling, as it is essentially an adversary.

The headquarters of the committee is considered to be the same as the headquarters of the Presidency of the Republic⁴. It was provided, by virtue of Presidential Decree No. 22-296⁵, with its own secretariat. Previously, the committee did not have its own headquarters or secretariat, so it used to meet at the headquarters of the ministry in charge, and its secretariat was with the authority in charge of investment.

As for the appeal procedures that fall on the investor, he must, at most, submit the appeal in accordance with the legal deadline set at a maximum of 15 days, which can be extended to two months, starting from the date he is notified of the decision of the **Algerian Investment Promotion Agency**⁶.

Also, the investor must submit a prior administrative grievance to the agency within one month from the date he is notified of the decision being grieved, and it must be decided by the Director General of the agency within a period not exceeding 15 days from the date of its receipt⁷. The appeal must be individual and signed, including the personal information of the appellant (his name and title, and a memorandum reviewing the facts, events, and means). The appeal is sent to the Supreme Appeals Committee (**High National Commission for Investment Recourses**) directly or via the investor's digital platform.

Regarding the procedures the committee adheres to:

¹ المادتين 9 و 12 من المرسوم الرئاسي ، 22-296 ، مرجع سابق .

² يحي رقية، مرجع سابق، ص 47.

³ المادة 3 من [المرسوم التنفيذي رقم 19-166](#) المؤرخ في 29 ماي 2019 المتضمن لتشكيلة لجنة الطعن المختصة في مجال ترقية الاستثمار وتنظيمها وسيرها ، ج ر ، العدد ، 37 لصادرة في 9 يونيو 2019.

⁴ المادة 11 من القانون 22-18 السالف ذكره.

⁵ الفقرة الأولى من المادة 5 من المرسوم الرئاسي ، 22-296 السالف ذكره.

⁶ الفقرة الأخيرة من المادة 6 من المرسوم الرئاسي ، 22-296 السالف ذكره .

⁷ المادة 7 من المرسوم الرئاسي ، 22-296 السالف ذكره .

- Reviewing appeals submitted by investors.
- Summoning representatives of the relevant departments and bodies concerned with the subject of the appeal, as well as the investor, to hear their perspectives.
- The committee chair sends a copy of the appeal file to the relevant authority, which must respond to the committee within ten (10) days of receiving the file¹.
- The committee's decision is final and cannot be reviewed again by the committee. However, the investor may appeal to the courts against decisions of the agency, for example, in its capacity as an administrative body².
- The committee's decision is communicated to the concerned parties by any means, provided that this does not exceed eight (8) days from the date of its pronouncement³.
- Every six months, the committee submits a report to the President of the Republic on its activities and on the recurring problems facing investments, and, where necessary, provides recommendations for addressing them⁴.

Appeals are sent to the committee within a period not exceeding two months from the date of notification of the decision subject to objection, and it must rule on these appeals within a period not exceeding one month from the date of notification⁵.

B- Arbitration as a mechanism for resolving investment disputes :

Arbitration is one of the means of resolving disputes. It is an exceptional method based on the will of the parties, where the disputants resort to it to resolve the dispute without the competent court. Arbitration is an ancient method, and its primitive form was the approved method for resolving disputes between disputants⁶.

Arbitration is an alternative system to formal litigation. It is a special contractual legal means for resolving disputes that arise between contracting parties in civil and commercial matters only. Choosing this path is only done with a sound and free will that includes a prior written agreement on their desire to resort to arbitration and end their disputes through this type of litigation and in accordance with its provisions. The agreement to arbitrate may be implicit, where the parties accept to be bound by the terms of a model contract, and this model includes an arbitration clause⁷. According to Article 1039 of the Code of Civil and Administrative Procedure in Algeria⁸,

¹المادة 11 من المرسوم الرئاسي ، 22-296 السالف ذكره

²تنص المادة 11 فقرة أخيرة من القانون رقم 22-18 السالف ذكره على : "ويمكن للمستثمر ،زيادة على ذلك ، أن يرفع في هذا الشأن طعنا قضائيا أمام الجهات القضائية المختصة طبقا للتشريع المعمول به..

³المادة 13 من المرسوم الرئاسي ، 22-296 السالف ذكره.

⁴المادة 14 من المرسوم الرئاسي ، 22-296 السالف ذكره.

⁵المادة 11 من قانون، 22-18 مرجع سابق.

⁶خالد كمال عكاشة، دور التحكيم في فض منازعات عقود الاستثمار، الطبعة الولي، دار الثقافة للنشر والتوزيع، عمان، 2014، ص40.

⁷لزهري بن سعيد، التحكيم التجاري الدولي، دار هومة للطباعة والنشر والتوزيع، بوزريعة، الجزائر، ص 14.

⁸قانون رقم 08-09 مؤرخ في 18 صفر عام 1429 الموافق 25 فبراير سنة 2008، يتضمن قانون الإجراءات المدنية والإدارية، الجريدة الرسمية للجمهور للجمهورية الجزائرية /العدد 2.

international arbitration is any arbitration that concerns disputes at the international level between two or more countries and is related to economic interests. It is noted from this article that the legislator relied on the economic standard to determine the internationality of arbitration, and therefore arbitration is not considered international if its subject matter is not commercial interests that are the subject of the dispute between two or more parties.

The application of international commercial arbitration rules requires a dispute to arise between parties bound by an arbitration agreement or clause established beforehand or after the dispute has emerged. Investment contract disputes arise not only because one party breaches its contractual obligations, but also because the state takes unilateral legislative or regulatory measures that significantly affect the investment contract that binds it to the foreign investor, and especially the possibility of settling disputes through arbitration¹.

The Algerian legislator's stance on arbitration is evident in Article 12 of Law 22-18 concerning investment, mentioned above, through the possibility of resorting to international courts as an exception via arbitration, unless it pertains to public order. Our reading of the aforementioned Article 12 also reveals two exceptions to national courts: the first is in cases where the Algerian state has concluded bilateral or multilateral agreements related to conciliation and arbitration; and the second is in cases where there is an agreement with the investor stipulating a settlement that allows the parties to agree on private arbitration.

Arbitration, unlike other alternative dispute resolution mechanisms, plays an important role in attracting investors and dispelling their concerns about resorting to national courts, their fears that the latter may not be efficient, and doubts about its integrity and objectivity. Also, the new matter stipulated in the aforementioned Article 12 is the conclusion of an agreement with the Algerian Investment Promotion Agency, which acts in the name and on behalf of the state, allowing the parties to resort to arbitration as an alternative mechanism for resolving investment disputes².

Two : Administrative guarantees

Establishing an investment project and starting a new economic institution is not easy, especially with regard to administrative procedures that have become a source of anxiety for investors and are considered an obstacle to achieving their projects. Therefore, through the Algerian Investment Promotion Agency (AAPI)³, work has been done to facilitate administrative procedures for completing investment projects, and this is also considered a guarantee for any investor who may hesitate to invest his money due to bureaucracy and administrative corruption.

It is noteworthy that Law 22-18 concerning investment introduced a new window alongside the existing local decentralized one-stop shops: the one-stop shop for major projects and foreign investments.

¹ عبد العزيز خليفة، المنازعات الإدارية ضوابط التحكيم في منازعات العقود الإدارية، دار الكتاب الحديث، مصر، 2008، ص22.

² يحيى رقية، مرجع سابق، ص 51.

³ *The Algerian Agency for Investment Promotion* <https://aapi.dz/en/accueil-en/> July 10, 2026 at 11 :15

A- The one-stop shop with national Competence for major projects and foreign investments :

It was created under Article 18, Paragraph 3 of Law 22-18 and is with the Algerian Investment Promotion Agency and was defined under the text of Article 19 of the same law, where the One-Stop Shop for Major Projects and Foreign Investments was defined as having national jurisdiction and accompanying investors in implementing projects whose value exceeds 2 billion Algerian dinars and projects established by foreigners.

Therefore, it is clear that the One-Stop Shop for major projects and foreign investments has a national character, given its importance in monitoring and accompanying huge investments of national importance as well as foreign investments. It works to unify procedures and facilitate the monitoring and accompanying of this type of investment. Major projects are defined in Article 4 of Executive Decree No. 22-299¹ as investments whose amount is equal to or exceeds two billion Algerian dinars.

Foreign investments are defined as investments whose capital is wholly or partially owned by foreign natural or legal persons and benefit from the guarantee of transferring the invested capital and the resulting returns. Therefore, the legislator has established this window for foreign investors due to the strong impact of this type of investment on the national economy.

B- Decentralized One-Stop Shops with local Competence :

The decentralized One-Stop Shops serve as the sole point of contact for investors and are exclusively local in scope. They are also responsible for assisting and guiding investors in completing investment-related procedures, particularly for investments that do not fall under the purview of the One-Stop Shop for major projects and foreign investments.

The One-Stop Shop, dedicated to local projects, supports only national investors in realizing their projects. At the level of each central structure, a One-Stop Shop is established, encompassing all departments and bodies involved in investment. Its purpose is to provide the necessary administrative services for investment, ensure communication with relevant departments and bodies to streamline and simplify project implementation procedures, and oversee the execution and facilitation of these procedures².

The importance of these one-stop shops is evident in the following:

- Fast processing of files.
- Saving time and effort.
- Receiving the investor, registering the investment, and following up on investment files.

¹مرسوم تنفيذي رقم 22-299 مؤرخ في 8 سبتمبر 2022، يحدد كفايات تسجيل الاستثمارات أو التنازل عن الاستثمارات أو تحويلها و كذا مبلغ و كفايات تحصيل الإتاوة المتعلقة بمعالجة ملفات الاستثمار، ج ر ، العدد، 60 الصادر 18 سبتمبر 2022.

²عجة الجبالي، الكامل في القانون الجزائري للاستثمار، دار الخلدونية، الجزائر، 2006، ص 321.

- Accompanying investors to relevant departments and agencies.
- Involving agency staff in meetings, as representatives of all bodies and departments directly related to investment. This ensures the smooth running of the investment process, saves time, and facilitates finding solutions to problems and obstacles that may arise. This is achieved by issuing direct orders to their respective departments to address any problem immediately, given that their superiors are members of these one-stop shops. All decisions, documents, and licenses related to the implementation and operation of the investment are handed over¹, and they are obligated to intervene with their original departments or agencies to overcome any potential difficulties faced by investors. Documents submitted by representatives of the relevant departments and agencies at the one-stop shop are binding on those departments and agencies².

The one-stop shop, located in one place, includes, in addition to agency staff, representatives from the Urban Planning Department, the Customs Administration, the Tax Administration, the National Commercial Register Center, the bodies responsible for real estate intended for investment, the Environmental Department, the bodies responsible for labor and employment, the social security funds for salaried and self-employed workers, and representatives from other bodies and departments related to investment and responsible for implementing the procedures related to the following:

-Registering investment projects, the document related to practicing the activity related to the investment project.

-In addition to obtaining the property intended for investment and following up on the commitments undertaken by the investor³.

Therefore, the one-stop shop is considered an effective mechanism for promoting investment, especially as it addresses various administrative obstacles that hinder the implementation of investment projects. Furthermore, it is within the purview of representatives of the departments and bodies represented in the one-stop shop to intervene with the central and local authorities of their respective departments and parent organizations in order to facilitate the resolution of any potential difficulties and obstacles that investors may encounter⁴.

C- Creating a digital platform for investors :

It was established under Article 23 of Law 22-18 mentioned above. It is run by the Algerian Investment Promotion Agency and is under the supervision of the Prime Minister. It is entrusted with the task of presenting investment opportunities, presenting real estate assets intended for investment, presenting incentives and advantages, in addition to related procedures.

Therefore, the digital platform for the investor is the electronic tool for guiding and accompanying investments. It thus constitutes the tool that guarantees the transparency

¹المادة 21 من المرسوم التنفيذي رقم 22-298 (المؤرخ في 08 سبتمبر 2022، والذي يحدد تنظيم الوكالة الجزائرية لترقية الاستثمار وسيرها)، السالف ذكره.

²المادة 22 من نفس المرسوم.

³يحي رقية، مرجع سابق، ص 54.

⁴يحي رقية، مرجع سابق، ص 55.

of procedures, their follow-up, and investor support, with the aim of improving communication with investors, facilitating procedures, and allowing direct and immediate exchange between the agents of the relevant departments and bodies. It also allows for adapting the procedures to be followed according to the type of investment and the type of requests¹.

This platform was created to embody the Algerian state's orientation towards adopting digitalization and keeping pace with the technological development taking place in the world, and to adopt the electronic system instead of the paper system in dealing with investments, starting from the registration of investments to their implementation and during their period of operation. And to improve communication between investors and administrations to ensure transparency of the procedures that must be carried out, and the methods of examining and processing investor files, and to allow investors to follow up on the submission of their files remotely, and to improve public service in terms of appointments, employee productivity and quality of service provided, and to contribute to improving the performance of public facilities, and making them more effective, and to organize effective cooperation between the departments concerned with investment, and to allow direct and immediate exchange between the employees of the departments and bodies concerned².

The objectives of the platform, according to the aforementioned "Executive Decree No. 22-298" in Article 28 thereof, are as follows :

- Facilitating and streamlining the process of establishing companies and investments.
- Improving communication between investors and the economic administration.
- Ensuring transparency in the procedures to be followed and the methods for reviewing and processing investor files.
- Expediting the processing and review of investor files by the relevant department.
- Enabling investors to track the progress of their files remotely.
- Improving public service in terms of scheduling, staff efficiency, and the quality of service provided.
- Enhancing the performance of public facilities and making them more accessible and easier for investors.
- Organizing effective cooperation between the departments of the administration involved in investment activities.
- Facilitating direct and immediate communication between staff of the relevant departments and agencies.

¹بحي رقبة، مرجع سابق، ص 56.

²المادة 27 وما بعدها المرسوم التنفيذي رقم 22-298 المؤرخ في 11 صفر عام 1444 الموافق ل 08 سبتمبر سنة 2022، الذي يحدد تنظيم الوكالة الجزائرية لترقية الإستثمار وسيرها، السالف ذكره.

It is concluded here that the digital platform has an essential and effective role in investment, from registering investment projects to monitoring and directing them. It works to remove the material aspect from all procedures related to investment via the Internet, and it also ensures easy and smooth communication between the investor and the entity responsible for the investment.

Conclusion

What is noticeable from this study, which included the most important guarantees stipulated in Law 22-18 relating to investment in Algeria, is the existence of a real political will to implement laws that would attract investors and the attempts of the Algerian state to provide a suitable investment climate by being aware of all the problems that may face the investor and putting solutions to them, as well as providing the necessary guarantees that would give a feeling and sense of security that makes the investor or the person wishing to invest to proceed and take up investment projects with enthusiasm and without fear, in a way that serves the investor's own interest and the state's economic interest.

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