

The Evolution of the Legal System for Granting Land Intended for Investment in Algeria

تطور النظام القانوني لمنح العقار الموجه للاستثمار بالجزائر

Benderrah Ali Ibrahim

Aflou University Center (Algeria)
Laboratory of Legal and Economic Studies
a.benderrah@cu-aflou.edu.dz

Date of submission:14/10/2025 Date of final acceptance:25/03/2026 Date of publication :Mars2026

Abstract :

The Algerian legislator tried to set up a number of mechanisms to ensure the success of the investment process by reviewing and developing the various legal texts related to investment, attempting to eliminate the various problems associated with it.

Meanwhile, the issue of how to grant property allocated for investment and the legal developments related to this matter remained, particularly regarding the final form adopted from grants by assignment, then the concession, to an agreed form the concession convertible into an assignment.

Keywords : investment ; land ; assignment ; concession.

ملخص:

حاول المشرع الجزائري وضع مجموعة من الآليات بهدف انجاح العملية الاستثمارية من خلال مراجعة مختلف النصوص القانونية المرتبطة بالاستثمار وتطويرها، ومحاولة القضاء على مختلف الاشكاليات المقترنة بها .

فيما بقيت مشكلة كيفية منح العقار الموجه للاستثمار والتطورات القانونية المرتبطة بهذا الشأن ، لاسيما من ناحية الصيغة النهائية المعتمدة بين المنح عن طريق التنازل ثم الامتياز وصولا الى صيغة توافقية وهي الامتياز القابل للتحويل إلى تنازل .

الكلمات المفتاحية : استثمار ؛ عقار ؛ تنازل ؛ امتياز .

*Auteur correspondant : Benderrah Ali Ibrahim.

Introduction

The economic cycle is a true mirror of a country's development with investment being one of its most important mechanisms, as it necessarily influences, positively or negatively, all other aspects of life including social environmental, and other factors. Therefore, to accelerate economic growth and foster development, it is necessary to establish a favorable investment climate, based primarily on a significant margin of legal certainty in all areas related to investment, starting with the legal texts that govern them. This is the ultimate goal sought by most countries, despite the difficulties in achieving it.

The Algerian legal framework for investment has not yet fully encompassed all the rules that effectively govern this sector. This is due to the instability of the legal framework relating to this subject.

The latter reflects the procedural aspects it contains, which investors rely on to understand how to conduct their investments on the ground, whether foreign or local, and thus be aware of their rights and obligations towards the country in which they invest.

Investors always seek guarantees for their investment projects. These guarantees take the form of tax reductions, tax exemptions, and financial benefits. Among these guarantees, the most important one sought by all investors is undoubtedly the land on which their projects are located.

Therefore, the procedures associated with granting industrial real estate have always governed the essence of the relationship between the investor and the state, on the one hand, and between the investor and the various parties involved legally. They are also linked to all stages of the investment process, and have become dependent on the success of the project. Any benefit outside the scope of the land upon which the investment project is located is practically useless.

How has the Algerian legislature addressed the issue of land intended for investment?

This problematic issue gives rise to a set of questions:

- To what extent does the current political system impact investment policy in Algeria?
- What are the stages of development of the legal text related to investment in Algeria?
- How has the legal rule related to investment influenced the mechanism for granting investment property?

The approach adopted in this study is the descriptive-analytical approach, as it helps us clarify the basis upon which the Algerian legislator relied in developing the legal rule related to investment. This approach is also essential for analyzing the most important trends adopted by the legislator in this matter.

We will also benefit from the processes of linking, interpretation, and classification as basic tools for this approach, as well as the comparison we will draw from the comparative approach, which will also be used to serve this study.

To address this issue, this research will focus primarily on the mechanisms put in place by the Algerian legislature to ensure the success of the investment process. To do this, we will examine the various legal texts relating to investment and their evolution. We will focus on the most important texts, analyzing their evolution and the various procedural aspects they contain, and analyzing the associated problems (**Section I**). We will then shed light on the mechanism for granting real estate for investment purposes and the legal developments in this regard (**Section II**).

Section I : The evolution of the legal text relating to investment in Algeria

We will examine the stages in the evolution of the legal text relating to investment in Algeria, from independence to the present day, which can be divided into two major phases: the phase of socialist enterprise management **(A)** and the phase of market economy and economic openness **(B)**.

A) The stage of socialist management of institutions

At that time, the issue of investment was linked to the socialist policy pursued by the political system since independence. This law defined a set of fundamental laws, including the following:

1- The Investment Law of 1963

This law is considered the first legal text addressing the issue of investment in Algeria. It was promulgated at a critical period, when the Algerian administration was still in its infancy. Thus, despite the preference given to local investment, lacking sufficient field experience, to the detriment of foreign investment, which, although it was authorized, remained the exclusive responsibility of the state, sectors deemed strategic were preserved¹.

Article 3 of the law, in its first chapter devoted to general guarantees, sets out an important principle the freedom of investment granted to foreign individuals and legal entities, subject to public policy provisions and the rules of establishment arising from laws and regulations, as well as constitutive agreements subsequent to July 1, 1962.

This legal text, promulgated in the context of the socialist approach to the management of various state institutions, which had economic repercussions, has not placed significant investments in the hands of foreign investors, for fear of their future fate. This is despite Article 5, which stipulates equality before the law, particularly in tax matters, for foreign individuals and legal entities².

This law provides a number of guarantees for investors, with authorized establishments benefiting from several advantages, the most important of which are:

- Protection against foreign competition within the framework of customs policy;
- Assistance to public financial institutions or their affiliates in obtaining the necessary loans for their equipment;
- Public procurement within the framework of public works and supply contracts;³
- Total or partial exemption from real estate transfer taxes owed by the purchaser relating to real estate acquisitions necessary for its establishment or expansion;
- Total or partial reimbursement of taxes of all kinds collected or likely to be collected on industrial and commercial profits, for a maximum period of five (05) years;
- Removal of the total or partial amounts of crops, and sensitive taxes pertaining to imported equipment and other necessary equipment in the implantation or expansion of the project;
- Replacement of the total or part of the accidents on the other equipment and their equipment.
- Reimbursement of accidental drops in recent operations, so as to maximize the suspension time for a non-exceedent period next time.⁴

This can be attributed to more principles, such as the freedom of investment and the legal status of the law, noting that there is a fiscal difference, the need for transmission at the beginning of the investment period, where other investors have failed, right to that stadium, that is. A contract for anticipatory abrogation.

2- The Investment Law of 1966

This law grants the state broader powers in the field of investment. Article 03 provides that when the state participates in mixed-economy companies by contributing to their foreign or domestic private capital, the statutes of these companies must be ratified by a decree that includes the following provisions:

- The state's option to purchase all or part of shares or stakes it does not own, and the conditions under which the state may exercise this option,
- The option to exercise the right of preemption or to approve in the event of the sale, transfer, or assignment of shares or stakes that it does not own.⁵

This law grants investors a number of privileges and financial advantages, most notably:

- Total exoneration or part of the mutation on the other side;
- Granting of a reduction in the gross excise tax on production due to the equipment fund or a refund of the tax on equipment furniture manufactured in Algeria.
- Report on the perception of the effects of work and the activity on the production line and the necessary equipment in the project, progressing towards the maximum period of production in the industry.
- Total investment, share or return to industrial and commercial benefices for a similar period, and for a monthly beneficiary annual including 20% of the capital allocated to the investment.
- Full or partial exemption from the transfer fee.
- Full, partial, or progressive exemption from property tax for a period not exceeding 10 years, taking into account the location of the establishment.
- Granting a reduced rate of the single total production tax on equipment assets, or refunding the tax related to equipment manufactured in Algeria.
- Postponing the collection of customs duties and the single total production tax on equipment assets necessary for the project, according to a maximum depreciation period.
- Full, partial, or progressive exemption from the tax levied on industrial and commercial profits for a period not exceeding five years, and for an annual profit amount not exceeding 20% of the capital allocated for investment.

Despite all the guarantees provided by this law by linking the issue of recovery in the event that the public interest requires it from the State for the establishments which benefit from the provisions of this law, such a measure can only be approved by virtue of a legislative text, subject to the payment of appropriate compensation, but the foreign investor was not motivated to enter to invest in Algeria.⁶

3- The Investment Law of 1982

This law is no different from previous laws, as Law 82-11 on National Private Economic Investment maintained the idea of directing national private economic investment within the framework of socialist policy and the provisions of the National Charter, as stated in its Article 8.⁷

The same law granted many privileges to investors. It distinguishes between benefits related to accreditation and those that include tax advantages, including:

- Total exemption from industrial and commercial profits tax for a period not exceeding five (5) years from the year in which operations began.
- Total exemption from property tax for a period not exceeding ten (10) years from January 1 of the year following the completion of construction and additional work intended for the approved activity.
- Clearance of the single gross production tax for the purchase of equipment intended for the authorized activity for the manufacture of taxable products.
- Exemption from the transfer tax provided for in Article 258 of the Registration Law regarding the purchase of real estate intended for the authorized activity.⁸

It also includes financial benefits, including:

- Repayable contributions in the form of long- and medium-term loans to finance their investments, provided that the amount of the bank loan does not exceed 30% of the authorized investment amount, except for Mujahideen and rights holders.
- Granting of short-term loans to finance operations⁹.

The legislator also provided for what is called "facilities" in Article 24. In return for their commitments, and in accordance with applicable laws and procedures, private sector investors benefit from facilities to obtain land within the limits of designated areas. Despite all these guarantees and facilities, this law did not attract foreign investment, which remained hesitant to invest in Algeria. This hesitation continued even after its repeal by Law No. 88-25, as the country's general economic policy remained unchanged.¹⁰

B- Stage of market economy and economic openness

This period was accompanied by a change in the political system and the political and economic openness enshrined in the 1989 Constitution, and before that, by the Business Orientation Law.

We will examine the legal texts adopted during this period, namely:

1- Legislative Decree n° 93/12¹¹

This legislative text was issued during the transitional period witnessed by Algeria with the approval of the Transitional Council. The Algerian economy was going through a critical phase, characterized by relative stagnation due to the political situation and the security crisis. The purpose of this text was to correct the errors that afflicted previous laws. The state adopted a reform strategy that included several economic amendments and reforms to encourage investment and address concerns related to earlier periods. Article 3 explicitly provides for freedom of investment, subject to the laws and regulations governing activities that are regulated. Approval of various investment

projects was assigned to the Investment Promotion Agency, which reports directly to the Prime Minister, according to Article 7 of the same decree.

This law requires investors to submit a specific investment declaration, in which they must provide a range of information, including the scope of activity, location, job opportunities created, technology used, investment and financing plans, and a financial assessment of the project. This declaration must also include environmental protection requirements, the estimated timeframe for investment completion, and related obligations. For regulated activities, the declaration must be accompanied by the documents required by the applicable laws and regulations.¹²

This declaration must include all supporting documents if the investor is requesting benefits. One of the most important provisions of this law, which has remained an established policy since then, is the creation of a one-stop shop bringing together the ministries and agencies involved in investment. This organization facilitates the process of submitting and monitoring investment applications for investors.

This text aims to reform the legal system regarding investment, particularly with regard to facilitating access to land intended for investment. Unfortunately, these facilities have been misused, and many plots, even located in urban areas, have been acquired for symbolic dinars and diverted from their intended purpose by fictitious investors.

2- Ordinance n° 01-03 on investment development, as amended and supplemented¹³

The legislature has adopted the same approach as the previous law, encouraging investment by offering additional incentives and strengthened guarantees, particularly in tax matters. It has maintained the one-stop shop system, which liaises with the relevant administrations and organizations to simplify and streamline the procedures and formalities for business creation and project implementation. It also ensures the implementation of the established simplification and mitigation measures.¹⁴

Through this law, the legislature also created a new body, the National Investment Council, chaired by the Prime Minister. The Council carries out several missions, including proposing an investment development strategy and priorities, as well as investment incentives to support significant developments. It also rules on various investment-related agreements and determines the benefits granted in connection with these investments.¹⁵

To strengthen the confidence of foreign investors, Article 14 of this law explicitly stipulates that foreign individuals and legal entities are treated in the same manner as Algerian individuals and legal entities with regard to investment-related rights and obligations. All foreign individuals and legal entities are treated equally, subject to the provisions of agreements concluded by the Algerian state with their country of origin.

3- Law No. 16-09¹⁶

On investment promotion, as amended. This law was enacted in an attempt to address the dismal failure of previous legislative systems, following the disappearance of numerous industrial assets. As a result, the CALPILRE Committee was abolished, while the mandate of the National Investment Support Agency (ANDI) was expanded.

Due to the non-implementation of this law, the suspension of the previous one, and the freezing of the work of national and local committees, governors were granted broad powers to allocate industrial properties, in accordance with a 2015 Prime Ministerial instruction. This period

was marked by a significant decline in real estate intended for investment, whether industrial, agricultural, or even touristic.

4- Law n° 22-18 relating to investment

The practical reality has proven extremely difficult, particularly in terms of reaching a consensual legal text that satisfies all stakeholders in the investment process in Algeria. This process has been subject to repeated amendments, which has negatively impacted the stability of the legal text relating to investment. This has undoubtedly had a significant impact on establishing a solid foundation for embodying the true meaning of investment in Algeria.

Consequently, the Algerian legislature, through Law No. 22-18 of July 24, 2022, relating to investment¹⁷, attempted to reform what could be reformed in this regard. Perhaps the most notable element of this law is the implementation of the digitalization process that has accompanied the development of public services in Algeria, as well as the benefits it offers, such as the simplification of procedures and the rapprochement of the administration with citizens, including investors, who have long suffered from administrative bureaucracy that has hampered the implementation of many strategic and national projects, despite compliance with the required legal conditions. Through this law, the Algerian legislator attempted to establish a digital policy to support investment in Algeria, as evidenced by the creation of a digital platform for investors, in accordance with the provisions of Article 23 of the same law.

This platform, updated in accordance with this law, will have a significant impact on the monitoring of industrial real estate, from its granting to the final implementation of the investment project. This point will be addressed in the second part of our study.

Section II : Legal Developments in the Granting of Investment Real Estate in Algeria

This part will provide clear answers to many questions related to our topic, including how the Algerian legislature addresses the issue of granting investment real estate. We will focus on the procedures for granting investment real estate concessions before Law 22-18 (A), then on the procedures for granting investment real estate concessions under Law 22-18, in accordance with Law 23/17 (B).

A) Procedures for Granting Investment Real Estate Concessions before Law n° 22-18

The focus will be on the period following the 1989 Constitution, marked by an opening to investment and the opening of the field to private and foreign investment. In accordance with the provisions of Legislative Decree n°93-12, the concession application was submitted to the aforementioned Investment Promotion and Support Agency (CLAIP). These procedures are identical to those provided for in Decree 01/03, which, after submission of the application, forwards the concession application to the competent governor, who issues a granting decision. Based on this decision, the concession contract is then drawn up.

Consequently, the submission of investment applications during this period remained subject to bureaucratic procedures, both at the national and local levels, monopolized by governors.

However, the method of transferring real estate for symbolic sums was placing an increasing burden on the state budget. The legislature therefore amended this decree through Ordinance 06-11, adopting the public auction method to remedy the situation. However, this practice met with reluctance from investors, who had previously witnessed transfers of such properties for symbolic dinars. The legislature therefore quickly amended this law through Ordinance No. 08-04, adopting the method of granting concessions by mutual agreement. It also changed the name of the

committee authorized to grant investments from the Committee for Local Assistance and Investment Promotion (CLAIP) to the Committee for Assistance in the Location and Promotion of Investments and Land Regulation (CALPILRE), while retaining the same powers and a virtually identical composition.

Ordinance n°08-04 marked a real estate revolution at the time by adopting the concession method as the new method of obtaining industrial property. Article 15, amending the first paragraph of Article 3 of Ordinance n° 04-08, stipulates that: "...concessions are granted on the basis of specifications by mutual agreement on land belonging to the private domain of the State, made available to public establishments and bodies and to natural or legal persons under private law, for the purposes of investment projects and in compliance with the applicable town planning rules. » In accordance with Law 11-11, which includes the Supplementary Finance Law for 2011, concessions are now granted only by mutual consent, in accordance with Article 3. This is confirmed by Article 5 of the same law¹⁸, which stipulates that concessions by mutual consent are granted by decision of the Governor, upon the proposal of the Committee for Assistance in the Identification of Sites, the Committee for Assistance in the Location and Promotion of Investments and Land Regulation, (CALPILRE), on land belonging to the private domain of the State, the remaining real estate of dissolved public institutions, the remaining real estate of public economic institutions, as well as land belonging to industrial zones and activity zones. Alternatively, concessions are granted upon the proposal of the body responsible for the management of the new city on land located within the perimeter of the new city. Alternatively, concessions are granted on the basis of the approval of the National Agency for Tourism Development on land belonging to the tourism expansion zone, after approval by the competent minister of the sector.¹⁹

However, a lack of transparency is a negative phenomenon associated with investment in Algeria, particularly with regard to procedures. Although the concession period is estimated at 33 years and is renewable, the desire to own, which remains rooted in the general mentality of Algerian investors, is a procedure that many find unacceptable.

Despite the incentives and tax breaks offered to investors, particularly in the southern regions, and the establishment of industrial zones in many parts of the country, the northern regions remain the primary destination for these investors due to their proximity to ports and the availability of necessary infrastructure, especially railway lines, unlike other regions. As these problems continue to worsen, they pose a significant obstacle to serious investment in Algeria.

Ordinance n° 06-11 is the law that established the new system, which is the concession, then Law°11-11 of July 18, 2011, relating to the supplementary finance law for 2011, established the new concept of concession contract as the sole formula for obtaining real estate intended for investment. This law amended Articles 3 and 5 of Ordinance n° 08-04, which defines the conditions for granting concessions on land belonging to the private domain of the State and intended for the realization of investment projects.

B) Procedures for granting investment real estate concessions under Law n°22-18

Following the promulgation of Law n° 22-18 on investment, which established a new policy on investment in general, particularly with regard to the simplification of legal procedures, the issue of the treatment of real estate intended for investment remained unresolved. This issue was resolved by the promulgation of Law n°23-17, which defines the conditions for granting economic real estate belonging to the private domain of the State and intended for the implementation of investment projects.²⁰

We will discuss everything related to this law as follows.

1- Focus on the terminological aspect

Through this law, the legislator attempted to address the definitional aspect to precisely define the terms related to real estate intended for investment through Article 4 of Law 23-17, which are as follows:

1.1- Economic property: Any real estate property belonging to the state's private property and/or any other private property acquired by the Algerian Investment Promotion Agency for the benefit of the state, eligible for an investment project within the meaning of the law relating to investment.

Law n° 23-17 stipulated that this property must meet a set of conditions, namely:

- Be part of the state's private property,
- Not allocated and not in the process of being allocated,
- Be located in sectors that are developed or planned for development, as defined in the planning and development instruments, with the exception of investment projects whose nature requires them to be located outside these sectors.²¹

This property, which is part of the state's private property and intended for investment projects, is being prepared by public agencies specializing in industrial, tourism, and urban real estate. These agencies are also responsible, each in its own capacity, for managing the availability of the property allocated to them.²²

1.2 Prepared property: Any real estate property belonging to the state's private property that is equipped with the various roads and networks necessary to allow its use.

1.3 Remaining real estate assets: Available real estate belonging to dissolved public institutions.

1.4 Surplus real estate assets: Real estate not necessary for the activity of the public economic institution, particularly:

- Real estate that is not exploited or has not been allocated for any purpose at the date of publication of this law.
- Real estate that is not independent or separable from larger real estate complexes, owned by public institutions or owned by the state and not necessary for their activities.
- Real estate whose purpose has changed due to urban planning instruments and is no longer part of the primary activity of the public institution.
- Real estate offered on the market at the initiative of the public institution.

They are also considered surplus real estate assets.

- Real estate properties located within the industrial zones that constitute the property of the authority developing the zone and that are available at the date of publication of this law and that have been reintegrated into the state's private property and are subject to the provisions of this law.

2-The legal nature of the land subject to investment and the exceptions thereto

Article 2 of Law 23-17 defines the nature of the land subject to investment projects, which can be classified as follows:

- Prepared land belonging to industrial zones and activity zones,
- Prepared land located within the perimeter of new cities,
- Prepared land belonging to tourism expansion zones and tourist sites,
- Prepared land belonging to technology parks,
- Remaining real estate assets belonging to dissolved public institutions,
- Surplus real estate assets belonging to public economic institutions,
- Land intended for commercial real estate development,
- Other prepared land belonging to the state's private property.

However, Article 3 of the same law exempts certain lands from investment, namely:

- Agricultural lands or lands for agricultural purposes belonging to the state's private property,
- Lands located within mining areas,
- Lands located within hydrocarbon exploration and exploitation areas and areas protected by electrical and gas facilities,
- Lands belonging to the state's private property intended to accommodate areas for aquaculture activities,
- Lands located within the perimeters of archaeological sites and historical monuments,
- Lands intended for real estate development benefiting from state subsidies,
- Lands belonging to the state's private property intended for the implementation of public investment projects.

3- Defining the powers of the Algerian Agency for Investment Promotion in the Real Estate Sector

Law 23-17 defines the powers of the Algerian Agency for Investment Promotion in the Real Estate Sector. It is tasked, through its single window and with a mandate from the state, with the following:

- Deciding, in consultation with the relevant sectors, on the extent of real estate availability for the purpose of developing it by the competent public agencies in the field of industrial, tourism, and urban real estate.
- Managing and promoting the register of economic real estate portfolio for the purpose of granting concessions.
- Maintaining and updating the register of economic real estate capable of forming the real estate offer for investment, including the characteristics of each real estate property.
- Making all information on real estate availability available to investors via the investor's digital platform.
- Acquiring, on behalf of the state, any privately owned property that is capable of hosting an investment project.
- Granting economic real estate belonging to the state's private property to investors in the form of a consensual concession, convertible into an assignment.
- Monitoring and accompanying investors until their investment projects are completed.

- Contribute to the preparation of construction tools for the purpose of expressing investment needs.²³

The agency also consults with the governors to identify investments eligible for obtaining economic real estate, taking into account the specificity of the activities developed or to be developed at the national and local levels within the framework of the objectives set.²⁴

It prepares a report every three (3) months on the outcome of activities, in addition to the annual report, which is sent to the Prime Minister or the Head of Government, as the case may be, as stipulated in Article 10 of Law 23-17.

The law explicitly mandates this agency with the task of directing economic property belonging to the state's private property, which has been authorized to manage under the provisions of this law, to investment projects only. It is also obligated to return any property whose purpose has been changed to the state.²⁵

Hence, the responsibility that was previously placed on the national and local committees related to investment development was transferred, under the new investment law, to the Algerian Agency for Investment Promotion.

It is now the agency responsible for granting economic real estate under the new name, and it is also responsible for the process of recovering these properties in the event of an illegal change of their destination.

4- Excluding the purification of industrial property from the agency's jurisdiction.

Unacceptable from a practical standpoint, especially as we previously noted, due to numerous cases of investors straying from the scope of their approved projects, the agency, through its offices, cannot monitor projects granted under previous eras. Therefore, Article 24 of Law 23-17 stipulates that the purification and monitoring of industrial property is granted to a special committee, headed for this purpose by a decision from the governor, to monitor and purify investment projects for which a concession was licensed prior to the issuance of this law by a provincial decision, or established by a concession contract or written authorization issued by the governor, which resulted in the commencement of project implementation based on a building permit and reached at least 20% of the project's total area. The committee is chaired by the governor or his representative and consists of:

- The president of the provincial people's group or his representative,
- The president of the municipal people's assembly of the municipality within whose territory the investment is located, or his representative,
- A representative of the Algerian Investment Promotion Agency,
- The director of state property,
- The director of land surveying and real estate 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 mining.

This committee may also be expanded, if necessary, to include other provincial services, is specifically responsible for the following:

- Monitoring the implementation of investment projects,
- Issuing a warning to the concessionaire to address any violations of the legislation and the obligations set forth in the specifications attached to the concession contract. In the event of ineffectiveness, the concession waiver procedures shall be initiated before the judicial authorities at the initiative of the regionally competent Director of State Property.
- Decide on requests submitted by concessionaires regarding a change of activities based on justified objective reasons.
- Decide on requests submitted by concessionaires regarding changing the name of the beneficiary from a natural person to a legal entity or the legal form of the company benefiting from the concession for the purpose of completing pending investment projects, provided that the original concessionaire retains a majority of the shares until the actual completion of the project, obtaining the certificate of conformity, and entering into service.
- Prepare a bimonthly report to be sent to the Algerian Agency for Investment Promotion.²⁶

5- Establishing the final formula for granting investment-oriented property.

This law relies on a new formula, namely granting a concession by mutual consent, convertible into a transfer, in exchange for the concessionaire paying an annual rental fee, as stipulated in Paragraph 2 of Article 14 of Law 23-17. This formula was not created suddenly, but rather was based on previous experiences, which we can clearly state have failed in dealing with investment-oriented property in this matter.

Economic land is granted by the Algerian Agency for Investment Promotion, with the authorization of the State, through the single window for the benefit of investors, in the form of a consensual concession, convertible into an assignment in accordance with a standard specifications book determined by the regulations, and which includes general administrative clauses and special clauses that take into account the strategic orientations and their impact on the field of economic and social development.

This concession is granted by a decision issued by the Algerian Investment Promotion Agency, after the appeal deadlines stipulated in the Investment Law have been exhausted. The concession is for a period of thirty-three (33) years, renewable for investment projects, with the exception of lands intended for commercial real estate development, for which the terms and conditions for granting the concession are determined by legislation.

The deadlines for completing the investment project for which the concession, which can be converted into assignment, has been granted must be consistent with those specified in the Investment Law.

The concession entitles its holder to obtain a building permit. The concession also entitles its holder to establish a mortgage on the property right arising therefrom. Concession contracts are prepared, upon the request of the Algerian Agency for Investment Promotion, by the competent state property services in the region, on the basis of the concession granting decision attached to the specifications book signed by the investor.²⁷

The investor mentality in general, and in Algeria in particular, is aligned with the notion of ownership of the property being invested, which is incompatible with the concession formula. Furthermore, the assignment formula previously, has proven unsuccessful due to the introduction of fraudulent elements and the illusory exploitation of the property. Therefore, the currently adopted formula, the concession convertible into a concession, is a consensual formula, in our view, because it guarantees the state the right to reclaim its land in the event of a violation of the conditions granted to the investor. At the same time, it instills reassurance in the investor, on the other hand, to invest their money in this property and invest in it with all seriousness, as they are certain of the ultimate outcome of this land ownership.

6- Digitize the process of granting land for investment purposes as a new legal mechanism.

The principle of freedom of investment is among the most important principles enshrined in this law. This principle has neither been addressed nor clarified in previous investment laws, with the legislator relying on a clear explanation of its foundations and main applications.²⁸

The mechanism for granting real estate, based on clear procedural transparency, constitutes one of the most important applications of the principle of freedom of investment. This is why this law emphasizes this point, in addition to the principle of equality, which is also enshrined in it. There can be no discrimination between foreign and local investors when acquiring real estate for investment, despite a clear policy that encourages local investment, without being to the detriment of foreign investment. This transparency can only be ensured through effective digitalization.

Law 23-17 has digitalized the process of obtaining investment real estate, as it requires any natural or legal person, national or foreign, resident or non-resident within the meaning of the investment law, who wishes to benefit from the provisions of this law, to register their application via the digital platform for investors managed by the Algerian Investment Promotion Agency, which is considered the only way to file.²⁹

The Algerian Investment Promotion Agency processes applications for economic property grants registered on the investor's digital platform in accordance with the provisions of this law. These digital procedures are covered by the provisions of Executive Decree No. 23-487 of December 28, 2023, which sets the terms and conditions for granting a concession convertible into a transfer of economic property belonging to the state's private property intended for the implementation of investment projects³⁰. This is particularly true in Article 6, which requires applicants to submit their application through the investor's digital platform by initial registration, which consists of completing the fields related to their investment project on the digital platform, namely:

- **The intended activity,**
- **The location and area of the selected real estate property,**
- **The financing plan (estimated project cost, amount of private contribution, and amount of financial loans)**
- **Completing the form containing the project description.**

The initial automated processing of the information entered by the candidate enables them to determine whether their project has been accepted.

After the project is accepted, the candidate confirms their selection and registers their application against a preliminary registration certificate issued by the investor's digital platform.

This is confirmed by Article 7 of the same decree, which stipulates that the economic property grant application is processed digitally, using a project evaluation network and the extent to which this network overlaps with the real estate property selected by the candidate.

Based on the results of this processing, the investment project with the best score according to the evaluation network is selected, and a provisional decision is issued in its favour. This decision cannot be used to claim a concession contract³¹.

Conclusion

The lack of an effective and clearly defined legal framework guaranteeing complete transparency for investors is one of the main obstacles to developing a sound investment policy in Algeria. Furthermore, the instability of investment laws does not provide the security sought by investors, even if they provide significant incentives and privileges, raising concerns about their dispersion or occasional amendments.

The investment process as a whole is a reflection of transparency, starting with the procedures for obtaining investment properties, the properties available, and the outcome of applications submitted by owners which often remain unanswered for years. Even the one-stop shop has not ensured the required transparency as it remains an organization with limited powers in many areas.

Therefore, to ensure the legal soundness of investment, it is necessary to restore the lost trust between investors and the state. This can only be achieved by addressing the real estate component which is the mirror of investment and the best guarantee of its success.

Indeed, what can be considered a consensual formula has been reached, which is currently adopted for granting real estate intended for investment in Algeria. It is the concession that can be converted into an assignment. Thus, the state guarantees the implementation of the project on the granted land, and the investor guarantees his money when he obtains the explicit assignment from the state on the project land.

Based on the above, we propose the following:

- Study the idea of transferring powers to the Algerian Agency for the Promotion of Investments (AAIPI) in matters of investment aid, as this would not affect legal certainty in the investment sector and would help consolidate the stability of legal rules in this area. It is well known that governors have broad powers over the executive branch, unlike provincial agencies.
- Address the procedure for appeals for unconstitutionality introduced by the constitutional revision of 2016 and maintained by that of 2020, which is open to individuals against legislative or even regulatory provisions that are contrary to the Constitution. Thanks to this genuine mechanism for preserving rights and freedoms, particularly in matters of investment, any aggrieved citizen can appeal any violation of the law, whether legislative or regulatory. Encouraging this initiative and publicizing this mechanism is essential, as it constitutes a real guarantee of legal stability in the field of investment in Algeria.
- Accelerate the publication of the legal text relating to the digital platform for investors, provided for in Article 23 of Law n° 22-18, as it will make it possible to effectively monitor the results of investments, particularly in terms of protecting economic assets against any looting or fraud acts that have undermined the investment process in Algeria.

Citations:

- ¹ Law n° 63-277 relating to investment, Official Journal of the Algerian Republic, No. 53 of 02/08/1963, p. 774.
- ² Same reference, same page
- ³ Article 9 of Law n° 63-277 on Investment Official Journal of the Algerian Republic, No. 53 of 1963, previous reference, p. 774
- ⁴ Article 10 of Law n° 63-277 on investment, same reference, pp. 774-775.
- ⁵ As stipulated in Article 3 of Ordinance n° 66-284 of 15/09/1966 relating to the law on investments, Official Journal of the Algerian Republic, No. 80 of 17/09/1966, p. 1202.
- ⁶ Article 08 of Ordinance n° 66-284 of 15/09/1966 relating to the law on investments, same reference, p. 1204.
- ⁷ Law n° 82-11 relating to national private economic investment of 21/08/1982, Official Journal of the Algerian Republic, No. 34 of 24/08/1982, p. 1692.
- ⁸ Article 21 of Law 82-11, same reference, p. 1696.
- ⁹ Article 22 of Law 82-11, same reference, p. 1696-1997.
- ¹⁰ Law 88-25 Relating to the orientation of national private economic investments of 07/12/1988, Official Journal of the Algerian Republic, No. 28 of 07/13/1988, p. 1031.
- ¹¹ Legislative Decree n° 93-12 of 10/05/1993 relating to the promotion of investments, Official Journal of the Algerian Republic, No. 64 of 10/10/1993, p. 03.
- ¹² Article 04 of Legislative Decree n°93-12, Official Journal of the Algerian Republic, No. 64 of 1993, previous reference, p. 04.
- ¹³ Article 08 of Legislative Decree n° 93-12, same reference, p. 05.
- ¹⁴ Ordinance n° 01-03 relating to the development of investments of 20/08/2001, Official Journal of the Algerian Republic, No. 47 of 22/08/2001, p. 04.
- ¹⁵ Article 25 of Ordinance n° 01-03 relating to the development of investments of 20/08/2001, Official Journal of the Algerian Republic, No. 47 of 2001, previous reference, same reference, same page.
- ¹⁶ Article 19 of Ordinance No 01-03 relating to investment development dated 08/20/2001, same reference, p. 7.
- ¹⁷ Official Journal of the Algerian Republic, No. 46 of 03/08/2016, p. 1.
- ¹⁸ Law n° 22-18 relating to investment of 07/24/2022, Official Journal of the Algerian Republic, No. 50 of 07/28/2022, p. 05
- ¹⁹ Law n°11-11 on the supplementary finance law for the year 2011, Official Journal of the Algerian Republic, No. 40 of 20/07/2011, p. 04
- ²⁰ Law n°23-17 of 15/11/2023, establishing the terms for granting economic real estate belonging to the private domain of the State intended for the realization of investment projects, Official Journal of the Algerian Republic, No. 73 of 16/11/2023, p. 5.
- ²¹ Article 06 of Law n° 23-17, Official Journal of the Algerian Republic No. 73 of 2023, previous reference, p. 07.
- ²² Article 07 of Law n° 23-17, same reference, same page.
- ²³ Article 08 of Law n° 23-17, same reference, same page.
- ²⁴ Article 09 of Law n° 23-17, same reference, same page.
- ²⁵ Article 11 of Law n° 23-17, same reference, same page.
- ²⁶ Article 25 of Law n° 23-17, same reference, page 09.
- ²⁷ Article 14 of Law n° 23-17, same reference, page 07-08.
- ²⁸ Kahina Arzil, "A Look at the New Investment Law for 2022," Critical Review of Law and Political Science, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, Volume 17, Issue 2, Algeria, 2022.p.49.

²⁹Article 12 of Law n° 23-17, Official Journal of the Algerian Republic No. 73 of 2023, previous reference, p. 07.

³⁰ Executive Decree n°23-487 of 12/28/2023 setting out the terms and conditions for granting a transferable concession for economic real estate belonging to the state's private property intended for the implementation of investment projects, Official Journal of the Algerian Republic No. 85 of 12/30/2023, p. 9.

³¹ Ibid, p.11.

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