

Mechanisms for Stimulating and Exploiting Economic Real Estate in Algeria under Laws No 22-18 and 23-17

آليات تحفيز واستغلال العقار الاقتصادي في الجزائر بموجب القانونين 18/22 و 17/23

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Abstract:

The aim of this research paper is to demonstrate that real estate forms the basis of any investment activity. Successive legislation in this field has sought to regulate and manage the Economic Real Estate portfolio in line with the state's desire and policy to develop the utilisation of this important and strategic asset, The most recent of these are Laws No 22-18 on investment and Laws No 23-17, which sets out the conditions and procedures for granting Economic Real Estate belonging to the state's private assets for the purpose of carrying out investment projects. This is followed by implementing decrees which define investors' rights and obligations, and the guarantees and incentives accompanying these investments for both domestic and foreign investors, within the framework of protection and under the supervision of the institutional framework governing investment, alongside a strategic vision for the prospects of future investment development.

Keywords: Economic Real Estate; Guarantees and Incentive Schemes; Investment Law No 22-18; Law No 23-17.

ملخص:

الهدف من هذه الورقة البحثية هو تبيان أن أساس أي نشاط استثماري هو العقار، وقد سعت التشريعات المتعاقبة في هذا الإطار لتنظيم وتسيير حافظة العقار الاقتصادي لتتماشى مع رغبة وسياسة الدولة الرامية لتطوير استغلال هذا العقار المهم والاستراتيجي، آخرها ما تضمنه القانون 18/22 المتعلق بالاستثمار والقانون 17/23 المحدد لشروط وكيفيات منح العقار الاقتصادي التابع للأموال الخاصة للدولة الموجه لإنجاز مشاريع استثمارية. وما تبعهما من مراسيم تنفيذية ومن خلال تحديد حقوق المستثمرين والتزاماتهم، وما يتخلل هذه الاستثمارات من ضمانات وتحفيزات للمستثمر الوطني والاجنبي على حد سواء ضمن قواعد الحماية وتحت رقابة الإطار المؤسسي المسير للاستثمار، مع رؤية استراتيجية لآفاق تطوير الاستثمارات المتوقعة مستقبلا. الكلمات المفتاحية: العقار الاقتصادي؛ الضمانات والانظمة التحفيزية؛ قانون الاستثمار 18/22؛ القانون 17/23.

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Introduction:

There is no doubt that the economic and political transformations Algeria has undergone have influenced investment policy, which has seen numerous changes since the late 1980s and early 1990s; This has resulted in a vast body of legislation that has embodied this transformation, particularly in the field of Economic Real Estate management, which is a key factor given the significant role it plays in economic and social development, and its strategic role in facilitating and safeguarding investment. It has therefore become imperative to provide it with strict protection and to surround it with a set of firm guarantees that facilitate its fulfilment of the function for which it was established.

The preservation of Economic Real Estate is specified in the Master Plan for Urban Planning and Development (PDAU) for the establishment of industrial, productive, tourist and agricultural facilities. The State has intervened to regulate the location and allocation of such properties, given their national significance and important economic role, by organising and managing these areas and determining their locations. It should be noted that, within the framework of regional development plans, Economic Real Estate is allocated within the land belonging to the State's private property and designated for the completion of investment projects, in addition to land belonging to the private property of local authorities. In all cases, these property areas must be prepared to accommodate the activities for which they are intended. One of the fundamental challenges to the utilisation of Economic Real Estate is legislative inflation and the succession of numerous Laws, reflecting the legislator's attempt to establish a legal framework governing these plots. However, the results have been counterproductive: most investors to whom properties were allocated have either left them unused for many years due to their procrastination and negligence, or have diverted them to other activities. This is on the one hand, whilst on the other hand there are administrative obstacles and complex, lengthy and bureaucratic procedures. Consequently, Law No 22-18 and the subsequent regulatory decrees were introduced. Most legal scholars agreed that these would provide solutions to resolve the issues at hand and facilitate access to these schemes, given the guarantees and incentives they offer to both domestic and foreign investors. This is particularly due to its provisions on the principles of freedom and equality, the encouragement of investment, the simplification of procedures, and the implementation of numerous safeguards—both material and means of oversight over the managing bodies, in addition to Law No 23-17, which set out the methods and procedures for granting Economic Real Estate, and the subsequent implementing decrees. This leads us to the question:

How has the legislator organised the mechanisms for the management and exploitation of Economic Real Estate, particularly in light of the guarantees and incentives provided for in Law No 22-18 and Law No 23-17, along with the accompanying regulatory decrees?

To address this problematic, this study employs a descriptive methodology to delineate the legal framework governing investment in Algeria. This is achieved by detailing the legal realities and procedures involved in granting investments and investment real estate. Furthermore, an analytical methodology is utilized as the cornerstone for examining legal texts, evaluating the extent to which they realize the principles of legal certainty through the application of Law N°. 18-22 and Law N°. 17-23

And To answer this question we have divided our research into two sections. In the first, we will address the mechanisms for stimulating investment in Algeria under Law No 22-18, and in the second, we will examine the mechanisms for the exploitation of Economic Real Estate and the incentives established under Law No 23-17.

Section I: Mechanisms for stimulating investment in Algeria under Law No 22-18

The Algerian legislature has adopted a new institutional framework for the management and exploitation of commercial property to streamline the procedures for granting investment licences and to monitor and oversee their implementation; this is what we shall address in the first section. In the second section, we shall examine the incentive schemes under Investment Law No 22-18. The foundation of development is investment, given its role in injecting capital and revitalising the national economy. The guarantees and incentives - particularly those designed to attract investment - provided by the legal and institutional framework governing investment form the cornerstone of any reforms.

A) subtitle: The Institutional Framework Responsible for Investment under Law No 22-18:

The investment process requires bodies to work on attracting investors, both domestically and abroad, as well as facilitating and monitoring investment procedures and examining the granting of concessions; all this within the framework of the state's ongoing efforts to bolster the public treasury and achieve the country's economic and social development through infrastructure. These bodies are set out in Article 16 of Law No 22-18 on investment, in addition to secondary bodies, all of which share the same objective.

1- The National Investment Council: Pursuant to Article 18 of Ordinance No. 01-03 on investment development¹, the National Investment Council (CNI) was established, and its organisation, composition and powers were maintained by Article 17 of Law No 22-18, as specified in Executive Decree No. 22-297.²

The Council is the highest body overseeing the investment process in Algeria under the supervision of the Prime Minister, who is responsible for matters relating to investment strategies and support policies, as well as the approval of investment agreements.³ Under this decree, the Council contributes directly to the implementation of investment legislation and meets at least once every six months. The Council comprises all ministers directly involved in investment matters and is attended by the Chairman of the Board of Directors and the Director General of the Algerian Agency for the Promotion of Investment as observers at Council meetings. It may also, where necessary, call upon any person on the basis of their competence or experience in the field of investment,⁴ and is responsible in particular for the following tasks:

- Proposing the state's strategy for investment development.
- Examining and approving the national programme for the promotion of investment and setting objectives in the field of investment development.
- Examining and approving the criteria for identifying projects of importance to the national economy.
- Determining the areas eligible for the exceptional regime, as well as studying, approving, amending and updating the list of exempt activities and goods.⁵

It is worth noting that Law No 22-18 curtailed the powers previously granted to the Council regarding the granting of concessions to investors, in order to provide adequate safeguards for investors by eliminating the bureaucratic hurdles that had previously hindered the completion of many investment projects, as all agreements concluded by the Investment Development Agency with investors had to be subject to the Council's approval.⁶ On the one hand, the expansion of the committee's membership to include all ministries and the placement of its chairmanship in the hands of the Prime Minister is seen as a means of enhancing the transparency and credibility of the Council's work.

Article 17 of the same Law No states that this Council is tasked with proposing the state's investment strategy, ensuring its overall coherence and evaluating its implementation; the Council

also prepares an annual evaluation report to be submitted to the President of the Republic, whilst the composition and functioning of the Council are to be determined by regulation.

It is also worth noting that the legislator provided, under Article 11 of this Law, for the establishment of a committee under the President of the Republic called the “Supreme National Committee for Investment-Related Appeals”. The text states that the “Committee” is tasked with ruling on appeals lodged by investors,⁷, whereby such appeals must be submitted within a period not exceeding two months from the date of notification of the decision subject to appeal, and it must rule on these appeals within one month from the date of notification; furthermore, the investor may, in addition to this, lodge a judicial appeal in this regard.⁸

2- Algerian Investment Promotion Agency (AAPI) (AAPI): Pursuant to Article 18 of Law No 18-22, it is now known as the Algerian Investment Promotion Agency (AAPI) (AAPI) and is referred to in the text as ‘the Agency’,⁹ It is a body with legal personality and financial autonomy under the supervision of the Prime Minister¹⁰ and is tasked with coordinating with the departments and bodies responsible for specific functions as set out in Article 4 of Executive Decree No. 22-298¹¹ :

- In the field of information, the service ensures the reception and guidance of the business community and raises their awareness, namely the collection and processing of information relating to institutions and investment for the benefit of investors, in addition to establishing a database detailing real estate assets available for investment, related infrastructure and available investment opportunities.
- Ensuring the operation of the digital platform for investors, fostering a favourable investment climate, and proposing all necessary measures and facilities.
- With regard to measures to promote investment, to initiate all activities that contribute to this in collaboration with national public and private institutions and bodies, as well as to establish cooperative relationships with foreign bodies to enhance opportunities for cooperation, business and partnership
- Assisting investors in completing the procedures related to their investments, by establishing a guidance and investor support unit and setting up a consultancy service, drawing on foreign expertise where necessary.
- As regards the administration of incentives, including those relating to the portfolio of projects authorised or registered prior to the enactment of the Law , noting that the portfolio of projects previously falling within the remit of the National Investment Council (CNI) was transferred to the Agency under Law No 22-18,¹² where certificates are prepared to register investments and verify their eligibility for the incentives allocated for the construction and operation phases, as well as exemption from fees.
- In the area of monitoring the progress of investment projects - Monitoring the preparation and analysis of completion statistics, facilitating cooperation with the departments responsible for investor arrangements, and simplifying the procedures and formalities for establishing companies, the conditions for their operation, and the completion of projects; it also contributes to improving the investment climate in all its aspects, in addition to handling investors’ petitions and complaints.¹³
- The Agency receives a fee for processing investment files.¹⁴

Furthermore, Law No 22-18 established a one-stop shop for major projects and foreign investment, which is the national focal point responsible for carrying out all necessary procedures to implement and support major investment projects and foreign investment. The legislator has left the qualification of major projects to be regulated by a subsequent decree.¹⁵

Given the broad scope of the Algerian Investment Development Agency’s activities, and in order to eliminate bureaucracy, simplify administrative procedures for national and foreign

investors, and bring the administration closer to the public, decentralised one-stop shops have been established at the level of each province. Article 18 of Law No 22-18 provides for the establishment of single decentralised service points, which serve as the sole point of contact for local investors and are responsible for assisting and supporting investors in completing investment-related procedures.¹⁶

With the aim of bringing the administration closer to the public, the Agency has established single windows to exercise their local jurisdiction, in addition to those responsible for major projects and foreign investments¹⁷ which includes both the single window for major projects and foreign investments, as well as the decentralised single windows representing the bodies and departments directly responsible for implementing procedures related to the following:

- Implementation of investment projects.
- Issuing decisions, licences and all documents relating to the conduct of activities associated with the investment project.
- Acquisition of property for investment purposes.
- Monitoring the obligations undertaken by the investor.¹⁸

3- The Digital Investment Platform: A digital investment platform has been established under this Law, namely the electronic tool for investors¹⁹, and its management has been entrusted to the Algerian Investment Agency. It provides all necessary information, in particular regarding investment opportunities in Algeria, property listings, incentives and benefits associated with investment, as well as all relevant procedures.

The digital platform is considered the sole point of contact for investors and the primary point of contact for all their concerns; the legislator has dedicated Articles 20 to 26 to clarifying the functions of these portals, as this platform, which is interconnected with the information systems of the bodies and departments responsible for the investment process, enables the digitisation of all procedures and the completion of all investment-related procedures online.

It also serves as a tool for guiding, supporting and monitoring investments, from the moment they are registered through to the operational phase.²⁰ This platform is a genuine asset and achievement that supports investment, as its implementation is particularly effective in the context of competition and rapid development, reflecting a relentless drive to find the most effective pathways to development.

B) subtitle: Incentive schemes under Investment Law No 22-18 :

The foundation of achieving genuine development is investment, given its fundamental role in injecting capital and revitalising the national economy. and the issue of attracting investment has become the primary concern of all sectors of society, most importantly **the legislators**, as the guarantees and incentives provided by the legal and institutional framework for investment are the cornerstone of any reforms and the achievement of development at all levels; this is what the legislator sought to achieve through Law No 22-18, particularly with regard to property granted for investment.¹⁸

1- Guaranteeing freedom of investment and equal treatment of investments: Article 3 of Law No 22-18 states that any natural or legal person, whether national or foreign, resident or non-resident, who wishes to invest is free to choose their investment, provided that all are treated with a degree of transparency and equality in the treatment of investments, including the granting of property, provided that this is done in accordance with the regulations and legislation in force.²¹

What can be observed from this text and its predecessors is that the legislator did not address international agreements, despite the fact that Algeria has signed numerous such agreements.²²

2- Guaranteeing the Protection of Investors' Property: In addition to the real estate granted under the specific schemes mentioned above, Article 10 of Law No 22-18 states that the State may exercise the right of expropriation in return for fair and equitable compensation, and this may only be done by the administration and in the cases provided for by Law.²³

It is worth noting that the legislator had previously decided, under Law No 16-09 on the promotion of investment, specifically Article 23 thereof, which stipulates that, in addition to the rules governing expropriation and seizure—which are considered the most serious administrative acts affecting the private property of individuals by depriving the owner of his property or part thereof, even though this is only carried out in return for fair and equitable compensation—a measure which, on the one hand, provides for the acquisition of real estate, particularly in strategic locations, whilst on the other hand opens the door to the expropriation of these investors themselves, thereby threatening their legal security and the stability of their legal status. The legislator has further stipulated, pursuant to Article 13 of Law No 22-18, that any amendment or revision to the Law shall not apply to completed investments unless the investor so requests.²⁴

3-Guarantees by Investment Region and Sector: Article 26 of the same Law stipulates that investment in certain activities in particular grants the investor, in addition to tax, quasi-tax and customs incentives, other benefits listed in Article 27 of the same Law. These sectors are mining and quarrying, investment in the agricultural sector, the tourism sector, the food and pharmaceutical industries, as well as investment in renewable energy, the knowledge economy, and information and communication technology.

As for the Zones for Economic Development²⁵ scheme, the legislator has distinguished between investment locations in terms of exemptions from fees and taxes during the construction and operational phases. These zones are:

- Locations in the High Plateaus, the South and the Greater South.
- Locations whose development requires special support from the state.
- Locations possessing exploitable natural resources.²⁶

As for structural investments capable of generating wealth and creating jobs, and which have the potential to enhance the attractiveness of regions for development, they must meet the conditions set out in Executive Decree 22-302, such as the number of jobs created by the investment reaching 500 or more.²⁷

Section II : Mechanisms for the exploitation of Economic Real Estate and incentives established under Law No 23-17 :

Law No 23-17 was enacted as part of efforts to develop the investment climate in Algeria, with a view to raising the economic level and stimulating, encouraging and attracting investors, particularly foreign ones.

The most significant incentives are the mechanisms for granting Economic Real Estate through the enactment of this Law, which sets out the conditions and procedures for granting concessions on state-owned property. Subsequently, executive decrees were issued to regulate the granting process through concession contracts, with a view to optimising the use of this sector and promoting its development by streamlining the procedures for granting such concessions, given this is the cornerstone for the establishment of investment projects.

To this end, we have divided this section of the study into two parts. In the first, we examined the mechanisms for granting investment property under Law No 23-17, whilst in the second, we addressed the provisions of the concession contract for investment property.

A) subtitle: Mechanisms for granting investment property under Law No 23-17 :

By regulating and improving the overall economic policy through the enactment of Law No 23-17, the legislature has sought to enable investors to acquire state-owned Economic Real Estate designated for investment, through concession contracts that are convertible into transfers of such properties.

1 – The Conceptual Framework of the Concession Contract and Procedures for Granting It:

One of the most common and widespread contracts in the field of economic transactions is the concession contract, which is an administrative contract whose terms are set by the granting authority and the beneficiary investor with the aim of enabling the latter to manage the property using their own resources in return for the funds received.

- The Legal Definition of a Concession Contract :

The definition of a concession is set out in Article 5 of Executive Decree 94-322: “A concession contract is a contract whereby the State grants a natural or legal person the right to use a plot of land belonging to it for a specified period for the purpose of carrying out an investment project.”²⁸

In essence, a concession contract involves the granting authority entrusting the management and operation of one of its facilities to a natural or legal person who, under this grant, undertakes to manage it at their own expense and on their own account, using their own funds and labour, in return for the fees paid annually.

Law No. 23-17²⁹ introduced numerous reforms to the previous system of economic land concessions, particularly following the delegation of powers to the Algerian Investment Promotion Agency (AAPI) (API) as the body responsible for reviewing investment applications on the one hand and granting economic land concessions on the other, which creates smoothness and consistency in procedures and decisions, alongside the adoption of digitalisation, thereby facilitating the processing of both types of applications through speed, transparency and the elimination of the administrative bureaucracy that was previously rife.³⁰

– Scope of application of Law No 23-17:

Under this Law, the legislator has used the term ‘Economic Real Estate’, a designation applied to state-owned real estate, as well as private property acquired by the state through pre-emption rights and expropriation.³¹

The legislator also stipulated that such property must be granted in a developed state, as this had previously been an obstacle to the completion of many investments, with investors finding themselves having to develop these properties by connecting them to various networks at their own expense, although in most previous legislation, the property was granted for use only and not for transfer via Title Deeds, which increased the burden and hindered the start of the project, negatively affecting investment in general and the completion of projects in particular.

This Law was introduced by an amendment to³², whereby such properties are granted equipped with the necessary roads and various networks. The investor may commence the project immediately upon obtaining the concession, and the task of developing these properties has been

entrusted to three specialised public agencies responsible for the industrial sector (³³), the tourism sector (³⁴), and the cultural sector.³⁵

This development involves connecting the sites to various networks, as well as preparing the land and roads. These agencies also oversee the management of the real estate stock allocated to this sector prior to the enactment of this Law, where a database is established at the Algerian Investment Promotion Agency (AAPI) to catalogue all designated real estate assets offered for concession, subject to verification of their legal status. If the properties were granted for use within the framework of investment and were subsequently reclaimed as part of clearance operations, these properties must be definitively cleared, free from any dispute, and included among the properties available for allocation by the Algerian Agency for Real Estate Promotion,³⁶ In addition to verifying their ownership and their status as state-owned property, as well as their status in relation to urban planning and development schemes.³⁷

Article 2 of Law No 23-17 lists the developed land belonging to the State's private property, which falls into three categories:

- Properties belonging to the State's private property:

These are the properties specified in Decree 08-04 which are developed and fall within activity zones and industrial zones, as well as land located within new cities and belonging to for tourism expansion zones and tourist sites, in addition to developed land belonging to technology parks.³⁸

Another category of property is residual real estate assets: these are properties belonging to public institutions that have been dissolved and surplus real estate assets.

-Privately owned commercial property:

Among the new provisions adopted under the new Law No 23-17 is the inclusion of privately owned properties, where concessions may be granted and investment projects carried out on them.

This is carried out through expropriation in accordance with the approved economic policy, subject to the conditions set out in Article 13 of Executive Decree 23-486,³⁹ . However, this procedure is not applied where no suitable property is available within the State's private property portfolio, in accordance with Article 8 of Law No 23-17,⁴⁰ The State may acquire any property owned by private individuals provided that it is suitable for an investment project; ownership is then transferred under an administrative contract concluded by the State Property Directorate, after which it is granted to private investors within the framework of planned projects.

This acquisition falls within the compulsory procedures under which property is acquired, but this procedure differs in terms of procedures and conditions from Expropriation for Public Utility.⁴¹

It is based on the principle of public interest and is guaranteed by a Law that clarifies its procedures and conditions, granting the person whose property is expropriated fair and equitable compensation that satisfies them; otherwise, they may challenge the decision in court.⁴² Furthermore, the acquisition of property in this manner differs from the procedure of seizure, as it is temporary in nature.

Given that this form has not been precisely defined and the legislator has not clarified the method of expropriation, grant and compensation, nor the conditions governing all of this - but has merely mentioned them briefly in the aforementioned texts - it is initially observed that this is a procedure that undermines the principle of legal certainty for owners, as the Algerian Constitution guarantees property rights under the Constitution.

- Economic Real Estate acquired through the right of pre-emption:

The provisions on pre-emption are governed by the Civil Code (⁴³), and the State intervenes to acquire economic real estate belonging to private individuals in the event of their disposal of such property in any form, even by way of a gift, as stated in Article 17 of Executive Decree 23-486.

Article 18 of the same decree states that the real estate covered by this measure comprises all economic real estate from which private individuals have benefited in any of the forms previously stipulated, and these properties must be located within the defined boundaries of industrial zones, business parks, tourism development zones and tourist sites, as well as properties situated within technology parks and the vicinity of new towns.⁴⁴

This measure is implemented, pursuant to Article 19 of Executive Decree 23-486, by the Algerian Investment Promotion Agency (AAPI) (AAPI) on behalf of the State.

Notaries are periodically notified of every transfer of such properties. It should also be noted in this aspect of the legal framework that there is a lack of clarity regarding the procedures followed for pre-emption under this provision, the deadlines set for each procedure, and the absence of a clear role for the notary in this process. Does their role end with the mere notification? Or does he complete the transfer process?

2- Procedures for granting Economic Real Estate under Law No 23-17:

This Law introduced numerous new provisions and conditions for the granting of Economic Real Estate through transferable concession contracts.

- Conditions for benefiting from Economic Real Estate under Law No 23-17:

Article 5 of Law No 22-18 relating to investors states that any natural or legal person, whether a national or a foreigner, resident or non-resident.⁴⁵ may benefit from Economic Real Estate by submitting an application via the relevant digital platform operated by the Algerian Investment Promotion Agency (AAPI) (AAPI).⁴⁶

Registration on the electronic platform is considered a formality; the granting of the Economic Real Estate concession is subject to a decision between the Algerian Investment Promotion Agency (AAPI) (AAPI) and the investor, and the expiry of the prescribed appeal period.⁴⁷ The legislator has made it mandatory to carry out registration procedures at the land registry office.⁴⁸

In addition to these conditions, the general conditions for concluding any contract, such as consent, must be met. Pursuant to Article 23 of Executive Decree 09-152, which contains the model terms and conditions for the granting of concessions by mutual agreement, consent forms the basis of the agreement concluded between the investor and the granting authority, This is in addition to the eligibility requirements imposed on the contracting investor under Article 40 of the Civil Code, and the subject matter, which is limited to the investment project for the investor and the plot of land granted for investment purposes.⁴⁹

- How the Economic Real Estate is granted :

The development of Economic Real Estate intended for investment is overseen by public agencies responsible for monitoring and managing the real estate supply available to investors wishing to invest.

As for accessing the relevant property, this is done by submitting an online application to the departments of the Algerian Agency for Investment Promotion, where applications are processed via the project evaluation network.⁵⁰

Once the investor has completed a form providing a description of the investment project - including a detailed description of the project, the type of activity, the location, and the required floor space, as well as the project's financing arrangements, total cost, value of the contribution, and loan amounts - and if the project is accepted by the agency, the applicant confirms their selection and pays the registration fee for their application in exchange for a issued by the online portal.⁵¹

B) subtitle: Provisions of the concession contract relating to the property granted under Law No 23-17:

The concession contract relating to the property granted under Law No 23-17 establishes rights and obligations for the contracting parties.

1- Rights of the investor and the granting authority:

The concession contract granted under Law No 23-17 confers numerous rights upon the investor, in return for which the granting authority is granted other rights, as set out below:

- Rights of the investor:

The investor benefiting from a concession contract for investment property is granted several rights set out in Law No 23-17 and Executive Decrees 23-486 and 23-48, including:

- **Benefit from a building permit:** Pursuant to Article 14 of Law No 23-17, the concessionaire is entitled to a building permit for the buildings they intend to construct on the property subject to the concession.⁵²
- **Establishment of a Formal Mortgage:** In addition to the above, the beneficiary may also obtain loans secured by the real right arising from the concession grant; they may also mortgage the buildings constructed or to be constructed on the granted property, which serve as real security for the loans obtained.⁵³
- **Conversion of the concession contract into a Title Deed:** The concession contract is converted into a Title Deed following the submission of an application by the investor to the Algerian Investment Promotion Agency (AAPI) (AAPI), in accordance with Article 17 of Law No 23-17. This transfer is based on the commercial value of the property on the date the concession was granted, less any royalties paid by the investor.⁵⁴

- Rights of the Granting Authority:

The rights granted to the investor are matched by rights granted to the granting authority by virtue of its legal status as the supervisory authority.

- **Monitoring and Oversight:** The primary objective of stimulating investment and granting property rights is the investor's success in establishing and fully completing their project, and this can only be achieved through supervision and monitoring by the Algerian Investment Promotion Agency (AAPI) (AAPI). This is achieved by monitoring the investment and the investor from the very first day of the grant, with the investor being supported through on-site inspections and site visits to the project.

In addition, periodic reports on the progress of the project are required, through monitoring the completion of works and adherence to the deadlines granted, which is one of the tasks of the technical committee.⁵⁵

- **Amendment and Termination of the Contract:** The Law grants the granting authority the power to amend the contract concluded between itself and the investor, at its sole discretion and without the need for the investor's consent, based on its regulatory role in ensuring the

requirements of the public interest and the management of public facilities through decisions it issues in this regard.⁵⁶

The granting authority also has the right to terminate the investment contract in the event that the investor breaches the terms or conditions of the contract, in accordance with Article 17 of the same Executive Decree 23-487.

2- Obligations of the Investor and the Granting Authority

The concession contract sets out obligations as well as rights for both the investor and the granting authority, which are listed below:

- Obligations of the Investor

The investor's obligations stem from their desire to demonstrate their intention to complete and ensure the success of their project, and these obligations are limited to the following:

- Adherence to Deadlines and Timelines for completing the project in accordance with the terms and conditions relating to the project, except in cases of force majeure.

- The investor must not Altering the Designated Use of the property covered by the investment contract, as this is subject to authorisation from the Algerian Investment Promotion Agency (AAPI) (AAPI); maintaining the investor's intended economic use promotes stability and paves the way for further investment.⁵⁷

- In addition to the above, the investor undertakes not to Transfer the Right granted to them to invest in the property.

- An annual rental fee must be paid.⁵⁸

- The investor must submit reports every six months during the project implementation period, detailing the progress of the project.

- Notify the Algerian agency that the construction phase of the investment project has been completed and that the project has entered the operational phase.⁵⁹

2- Obligations of the Granting Authority:

The granting authority has obligations regarding the management of the Economic Real Estate, in its capacity as supervisor, monitor and manager thereof. These obligations include the following:

- Granting the property to the eligible investor after assessing whether the conditions for this have been met; this grant shall be made under a concession contract that is transferable by assignment.

- Clarifying and establishing accurate databases on property availability for investors via the online portal.

- Complying with the statutory deadlines set for the grant, monitoring the collection of royalties, and the completion and handover of the projects.

- Enabling investors to Changing the Nature of the Activity or make alterations to it through the relevant licences, and allowing them to Changing the Beneficiaries of the investment.

- Granting investors Title Deeds to the properties upon completion of the projects.⁶⁰

Conclusion:

As part of efforts to improve the investment climate in Algeria, the authorities have established investment mechanisms, namely Law No 18-22 on investment and Law No 23-17.

Property designated for economic activity plays an important role in the development of the national economy. Although Algeria possesses a significant portfolio of such properties, the vast array of repealed, amended Laws and regulations, as well as the executive decrees and decisions issued to regulate and manage them, has failed to prepare and allocate these resources to

accommodate investment projects, particularly given Algeria's availability of raw materials and labour. These texts have only served to increase the confusion, compounded by Pervasive Bureaucracy which has paralysed this vital sector, despite the clear political will, particularly with regard to the concession system.

Nevertheless, it has occasionally proved effective in accommodating certain investment projects, which have often contributed significantly to reducing unemployment and establishing successful ventures; however, its scope remains limited in the absence of supporting legislation and legal certainty that encourages both foreign and domestic investment, a situation which the legislator sought to remedy through Law No 22-18 and Law No 23-17 and their regulatory provisions. We have finally arrived at a set of conclusions, which we summarise as follows:

- Investment requires bodies that work to attract investors from within the country or abroad to facilitate and monitor investment procedures, consider the granting of concessions, and achieve the country's economic and social development through the necessary infrastructure.

- Laws No 22-18 and 23-17 introduced a series of reforms, safeguards and incentives for domestic and foreign investors, in the context of freedom of investment and equality among investors, whilst supporting investments carried out in regions of national and strategic importance.

- The Algerian Investment Promotion Agency (AAPI) (AAPI) has been authorised as the body responsible for reviewing investment dossiers and granting economic land concessions, which ensures the smooth and consistent handling of procedures and decisions, particularly with the adoption of digitalisation, whilst also granting economic land concessions to investors who have prepared the necessary infrastructure.

- The property shall be transferred to the investor upon confirmation of the project's completion, and contracts to this effect shall be concluded between the granting authority and the investor.

We finally arrive at the following set of recommendations:

- Implementing oversight mechanisms and enshrining them in Law through specialised legal and financial On-site Monitoring Committees to monitor the progress of works and oversee the investor at every stage of the investment, whilst addressing any concerns that may arise at the highest levels.

- Work to Reclaiming Properties, including those that have been relinquished, in the event of non-performance of contracts or Investors' Delay in Fulfilling Obligations, and incorporate them into the property portfolio available for planned projects.

- Effectively promoting the use of the digital platform to reduce travel, save time, and gradually phase out traditional paper-based processes, thereby streamlining procedures and facilitating access to investment property in general and industrial property in particular.

- Applying the principles of legal certainty and the legitimacy of legal texts, and repealing provisions that conflict with the country's higher interests, particularly in relation to openness to foreign investment, especially the Assignment of Real Estate, which conflicts with Article 13 of the Algerian Constitution, which stipulates that no part of the national territory may under any circumstances be ceded or relinquished.

- Supporting successful projects whilst granting the right to amend contracts in favour of the investor or their successor, whether regarding the granting of property or the provision of guarantees and concessions.

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- 1-Article 18 of Decree No. 01-03, dated 20 August 2001, on the development of investment, Official Gazette No. 47, published in 2001.
- 2-See also Executive Decree No. 22-297, dated 8 September 2022, defining the composition and functioning of the National Investment Council (CNI), Official Gazette No. 60, published in 2022.
- 3- Tizir Youssef, The Legal Framework for Freedom of Investment in Algerian Legislation, Master's thesis in Law No, University of Algiers, 2011, p. 38. And Article 2 of Executive Decree No. 22-297, cited above.
- 4-Articles 3 and 4 of Executive Decree No. 22-297, cited above
- 5- Walid Amari, Lectures on Investment Law No, Faculty of Law No, El Hadj Lakhdar University, Batna, 2021, p. 29.
- 6- Radia Amgaran, Investment Guarantees under Law No 22-18, p. 3422.
- 7-Executive Decree No. 22-296, dated 4 September 2022, defines the composition and functioning of the National High Commission for Investment Appeals, Official Gazette No. 60, published in 2022
- 8- See Article 17 of Law No 22-18, dated 24 July 2022, relating to investment, Official Gazette No. 50, published in 2022.
- 9- See Article 18 of the aforementioned Law No 22-18.
- 10-Article 2 of Executive Decree No. 22-298, dated 8 September 2022, sets out the organisation and functioning of the Algerian Investment Development Agency, Official Gazette No. 60, published in 2022.
- 11-Article 4 of the aforementioned Executive Decree No. 22-298 sets out the Agency's functions in specific points regulated in Articles 5 to 17 of the same decree, subject to the supervision of its management, which is overseen by a Board of Directors chaired by the Prime Minister and comprising representatives from several ministries.
- 12- Article 39 of Law No 22-18, cited above.
- 13- Walid Amari, op. cit., p. 31.
- 14-See Article 18 of Law No 22-18, cited above.
- 15-See Article 19 of Law No 22-18, cited above.
- 16-Article 20 of Law No 22-18, cited above.
- 17-Article 18 of Executive Decree No. 22-298, cited above.
- 18-See Articles 21 and 22 of Law No 22-18, cited above.
- 19- Article 27 of Executive Decree No. 22-298, cited above.
- 20- See Article 23 of Law No 22-18, cited above.
- 21-Article 3 of Law No 22-18, cited above.
- 22- Radia Amgaran, Investment Guarantees under Law No. 22-18, Academic Journal of Legal and Political Research, Vol. 07, No. 01, University of Algiers 01, 2023, p. 3413.
- 23-Article 10 of Law No 22-18, cited above.
- 24-Article 13 of Law No 22-18, cited above.
- 25- See in this regard Executive Decree 22-301, dated 08-09-2022, which sets out the list of sites in regions to which the State attaches particular importance in the field of investment, Official Gazette No. 60, published in 2022.
- 26-Articles 27 to 32 of Law No 22-18, cited above.
- 27-Radia Amgaran, op. cit., p. 3420. See in this regard Executive Decree No. 22-302, dated 8 September 2022, which sets out the criteria for the eligibility of structural investments and the procedures for benefiting from operational advantages and value chains. Official Gazette No. 60, published in 2022.
- 28-Article 5 of Executive Decree 09-152, dated 2 May 2009, setting out the conditions and procedures for granting concessions on land belonging to the State's private property and intended for the implementation of investment projects, Official Gazette No. 27, published in 2009.

29-Law No No. 23-17, dated 15 November 2023, which sets out the conditions and procedures for the allocation of state-owned commercial property for the purpose of carrying out investment projects, Official Gazette, Issue No. 73, 2023.

30-Mohamed Al-Amin Salakh, Lectures on the Valuation of Industrial and Tourist Real Estate, University of Hama Lakhdar, El Oued, academic year 2024-2025, p. 64.

31-Article 4 of Law No 23-17, cited above.

32-Article 4 of Law No 23-17, cited above.

33-Executive Decree 23-488, dated 28 December 2023, establishing the National Agency for Industrial Property and regulating its organisation and operation, Official Gazette No. 85, dated 2023.

34-Executive Decree 23-489, dated 28 December 2023, establishing the National Agency for Tourism Property and regulating its organisation and operation, Official Gazette No. 85, published in 2023.

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36-These properties are placed at the disposal of the Algerian Agency for the Promotion of Investment through a handover report signed in the presence of the Director of the State Property Directorate and the Provincial Director of the Agency's One-Stop Shop; see Article 3 of Executive Decree 23-286 dated 28 December 2023, which defines the components of economic property.

37-Mohamed Al-Amin Salakh, op. cit., p. 65. See Article 7 of Law No 23-17, cited above.

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41-Mohamed Lamine Selkh, op. cit., p. 68.

42-Law No 91-11, dated 27 April 1991, relating to expropriation for public utility, Official Gazette No. 21, published in 1991; see in this regard Samati Sharifa, Bousaha Najat, 'The Impact of Expropriation for Public Utility on Legal Certainty in Algerian Legislation', published in the Journal of Legal and International Research, Vol. 6, No. 3, University of Lakhdar El Oued, 2022.

43 -See Articles 794 et seq. of the Algerian Civil Code, governing the rules on pre-emption.

44- Article 18 of Decree 23-486, cited above.

45- Article 5 of Law No 23-17, cited above.

46 - The website of the Algerian Investor Platform: www.invest.gov.dz.

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48-Article 75-58 of the Algerian Civil Code.

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50-Executive Decree 23-487 of 28 December 2023, concerning the conditions and procedures for granting a concession convertible into a transfer of economic property belonging to the State's private domain for the purpose of carrying out investment projects, Official Gazette 85, published on 2023.

51- Ibid., Article 6.

52-Tarek Khannouch, Imad al-Din Barakat, op. cit., p. 662, referring to Article 14 of Law No 23-17, cited above.

53-Article 14 of Law No 23-17, cited above; this does not include granted property, as it remains the property of the State until the concession contract is converted into a transfer, at which point the property becomes the property of the investor; see Executive Decree 23-487.

54- See Articles 17 and 20 of the aforementioned Law No 23-17.

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