



A Reading of Investment Law18-22

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Abstract:

Law 22-18 on Investment in Algeria, issued on November 20, 2022, aims to radically transform the business environment and attract both domestic and foreign investment. This law focuses on overcoming shortcomings in previous laws and providing a more attractive and clear legislative framework for investors.

It is an important step towards reforming Algeria's investment environment and promises to offer promising opportunities for investors looking to enter the Algerian market or expand their existing investments.

Keywords: Investment, business, legislation, investors, laws.

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Introduction :

Since Algeria adopted a market economy in the early 1990s, it has continuously strived to provide a suitable legislative framework for promoting investment. This has been achieved by enacting numerous laws that keep pace with developments and attract investors, especially foreign ones. This led to the issuance of Legislative Decree No. 93-12 concerning the promotion of investment, followed by Ordinance No. 01-03 concerning investment development, and Law No. 2016 concerning investment promotion. These laws included many tax and customs privileges, as well as incentives and guarantees for investors without discrimination, with the aim of encouraging and supporting both national and foreign investment.

The events of the national popular movement (Hirak) that Algeria witnessed in February 2019 prompted the Algerian state to reconsider its legislative and institutional system in response to the requirements of the next phase in the political, economic, and social spheres. This began with the issuance of a constitutional amendment in 2020, followed by the adaptation of all legislation to align with the provisions of this amendment.

In the field of investment, a new investment law, Law No. 18-22, dated July 28, 2022, was issued, along with its implementing regulations. This law introduced a set of new provisions aimed at creating an investment climate and activating the investment process. This law aims to define the rules governing investment, investors' rights and obligations, the incentive schemes applicable to investment, and its new developments. Thus, the problem lies in the following: To what extent has the Algerian legislator succeeded, with the issuance of Law No. 22-18 concerning investment and its implementing regulations, in establishing an effective climate for the investment process?

THE FIRST TOPIC : Concept and Principles of Investment

Investment is the essence of the economic process and an effective element for achieving economic development, and it has received great attention from both developed and developing countries worldwide.

Based on this, Algeria has focused on investment, as the legislator issued a new investment law to create a business climate that attracts local and foreign capital, especially since it is characterized by permanence and continuity for years to come. This makes it a "transparent" law, aiming to create an economic fabric based on the principle of mutual profit with partners, wealth creation, and the establishment of small and medium-sized enterprises to strengthen the national economy, in addition to startups and business incubators. This reflects a "political will" to create a business climate that allows for a high integration rate.



FIRST REQUIREMENT: Difinition of Investment

There are multiple definitions of investment, and below we will address each definition separately.

Firstly: Linguistic Definition of Investment

Ibn Manzur defined investment in his lexicon "Lisan al-Arab" as derived from "thamara," meaning the fruit of a tree, and "athmara al-shajar" meaning the tree bore fruit. "Athmara al-rajul" means his wealth increased, and "thamara" means wealth, or gold or silver. "Thamara malahu" means he made his wealth grow, i.e., using and operating money to achieve the fruit of this exploitation, so that this money increases and grows over time¹.

The Arabic Language Academy defined investment as: "The formation or use of capital with the aim of achieving profit in the short or long term, directly or indirectly"².

Returning to the Islamic concept, investment means increasing and developing wealth by all legitimate means with the aim of utilizing available resources in light of economic and Sharia rules, and scholars often use the terms "tanmiyah" (development) and "istinnma" (growth) in this field³.

Secondly: Attempts by Economic Scholars to Define Investment

Economic scholars have made multiple attempts to define the term "investment." The scholar "KAHN" defined it as: "an 'act' or action for a certain period, for the purpose of developing an economic activity, whether this act involved tangible or intangible assets, including industrial property, technical skill, research results, or in the form of loans"⁴.

It was also defined as: "a new addition to the existing productive assets in society with the aim of increasing output in subsequent periods, or the sum of net additions to the national wealth or to the society's capital stock"⁵.

Professor "OMAN Charles" defined it as: "a process undertaken by an investor with the aim of increasing the value of the resources (capital) at his disposal, which the investor uses to create and acquire new value (added value)."

Thirdly: Attempts by Legal Scholars to Define Investment

Legal scholars have offered various definitions for the term "investment" without reaching a single agreed-upon definition. Professor Turki Nour El Din defined foreign investment as any monetary or qualitative contribution made by a natural or legal person.

It can take the form of either establishing a new enterprise or contributing to the capital of an existing enterprise [23], such as those offered for privatization.



Investment has also been defined as: "the transfer of capital from abroad to host countries with the aim of achieving profit for the foreign investor, and in a manner that ensures increased production and development in the host countries" ⁶.

Investment can be defined as: "any public or private expenditure that leads to the creation or increase of real capital, and contributes to increasing the productive capacity of society."

Some defined it more broadly, considering as investment: "all movements of capital between countries, whether short-term or long-term funds, characterized by continuity, and accompanied by the intention of re-transferring capital with its return (in the form of profit, interest, or shares) to its original home" ⁷.

Others defined it as: "the provision of tangible and intangible assets by a natural or legal person for direct or indirect participation in an existing or newly established project to carry out an economic activity within a reasonable period of time."

SECOND REQUIREMENT: Principles of Investment

What distinguishes the investment law issued under Law No. 22-18 is its clarification of the major principles of investment, by explaining one of them, adding another principle, and retaining others previously known in previous laws. For the first time, the Algerian legislator dedicated an article in the investment law that includes the principles of investment, namely Article 3 thereof. The first paragraph of this article clarified the principle of freedom of investment (first), and the second paragraph for the first time stipulated the principle of equality and transparency (second).

Firstly: Clarification of the Freedom of Investment

The freedom of investment has always been and remains one of the major principles of investment in Algerian law, both within the successive legislative texts on investment and in the constitutions.

Under the enforcement of Legislative Decree No. 93-12 on investment promotion and Ordinance No. 01-03 on investment development⁸, the principle of freedom of investment was merely a legislative principle. It later became a constitutional principle with the issuance of the constitutional amendment of 2016⁹ and under the constitutional amendment of 2020¹⁰, which was applied by the investment laws of 2016 under Law No. 16-09¹¹ and currently under Law No. 22-18¹².

However, it is noted that this essential principle of investment has not been explained or clarified in any of the previously mentioned texts, except for the new text under study, Law No. 22-18. The Algerian legislator has chosen to explain who benefits from this freedom without providing a definition for the principle, and is not required to do so, as the legislator usually, as a



general rule, is not obliged to provide definitions, which remains the task of jurisprudence and the judiciary.

A close reading of Article 3, first paragraph, of the aforementioned Law No. 22-18 confirms that the Algerian legislator has focused on establishing the freedom of investment as an irreversible principle, then precisely specifying the type of person who benefits from this freedom and the basic criterion for benefiting from it, while granting this person the freedom to choose the investment they wish to engage in, in compliance with applicable laws and regulations.

In this sense, we can say that for the first time, an investment law explicitly states the person concerned by investment freedom.

In this context, the person concerned by investment freedom in Algerian law, and in application of the aforementioned article, includes natural and legal persons, whether national or foreign, whether resident in Algeria or not.

This is confirmed by Article 5, first paragraph, of the same law, which defines the investor. Therefore, the practice of investment in Algerian law is open to all persons, whether natural or legal, which can be inferred from other laws that define these persons, such as, for example, banks, financial institutions, insurance companies, exporters, and categories of enterprises, whether small and medium-sized enterprises, startups, and commercial companies of various types, etc. This applies whether these persons are private or public, national or foreign, resident or non-resident in Algeria.

Regarding the status of resident and non-resident, Article 5, first paragraph, of the aforementioned Law No. 22-18 refers to the provisions of exchange laws, specifically Article 125 of the Money and Credit Law No. 03-11, which defines them as follows:

a - **Resident:** is any natural or legal person whose main center of economic activity is in Algeria, i.e., any Algerian or foreigner engaged in production, distribution, or investment activities within Algerian territory.

b - **Non-resident:** is any natural or legal person whose main center of economic activity is outside Algeria.

Secondly: Regarding the Principle of Transparency

The principle of transparency is considered one of the fundamental principles introduced in the field of law following the social and economic developments witnessed by societies. It is emphasized as an absolute necessity for regulating transactions that occur in society. From this perspective, it initially means the right or freedom to access documents and publicize procedures related to decision-making and the method of conducting deliberations .

This concept emerged with the development of information dissemination to individuals in societies for the purpose of their benefit in dealing with various active entities in society,



whether the administration or institutions, etc. The inclusion of the principle of transparency has expanded to several areas, including the economic field, due to its importance in enabling economic operators to access all procedures and documents related to their activities, in the name of integrity in dealings by all administrations that oversee the control and support of these operators, and even the institutions that support them, by moving away from secrecy and ambiguity in dealings¹³.

In the field of investment, it can be said that the principle of transparency means enabling investors, regardless of their legal status, to have the right to obtain all information related to the method of conducting their activities from the bodies supervising the support and follow-up of investment projects, and even those involved in investment operations, whether for the tax administration, customs administration, banks, financial institutions, etc., by clarifying all legal procedures, whether legislative or regulatory, that must be followed to facilitate and encourage investors to engage in investment¹⁴.

THE SECOND TOPIC : The Legal Framework of Investment Law in Algeria

The new legal framework for investment in Algeria aims to create an attractive environment for investors by simplifying procedures, providing strong guarantees, and offering multiple incentives and advantages commensurate with the nature and size of the investment, with a focus on transparency and freedom of initiative.

FIRST REQUIREMENT :Laws Related to Investment

Some economic legislation in Algeria was amended a few months ago, and among the most prominent of these amendments is the investment law. Order 03-01 concerning the development of investment, its climate, and its operating mechanism was issued in August 2001. This was subsequently amended by Order 08/06 of 2006, then Law No. 09/16 dated August 3, 2016, related to investment promotion, and then Law 22/18.¹⁵

The concept of investment within the framework of the aforementioned Order includes the acquisition of assets in the field of creating new activities, expanding production capacities, restructuring and rehabilitating the capital of public institutions, and contributing to them. The new concept also includes full and partial privatization operations and investments included within the framework of granting concessions or licenses. The novel aspects of this legislation are as follows:

- Equality between local and foreign investors.
- Elimination of discrimination between public and private investment.
- Establishment of a decentralized one-stop shop in the form of a National Agency for Investment Development (AMDI), encompassing all investment-related bodies and issuing licenses. This important agency possesses legal personality and financial independence and plans to open branches and representative offices abroad.



- AMDI provides all administrative services and information related to investment to interested resident or non-resident investors and informs them of the decision to accept or reject the granting of requested advantages or incentives within a maximum period of 30 days from the date of filing the application.
- Ensuring investors' compliance with their commitments during the period of exemption from certain taxes and fees.
- The institution is concerned with incorporating all institutions responsible for granting the necessary land areas for industrial, tourism, and service investments. This Order is highly important because the granting of real estate was previously done in an uncoordinated and unclear manner.
- Establishment of a fund to support investments, managed by AMDI, which finances special or exceptional concessions.
- The new legislation allows for the possibility of assignment or transfer of ownership for investment.
- To remove bureaucratic obstacles and facilitate administrative procedures for local and foreign investors, a one-stop shop was established to provide the best facilities for investment operations.
- Within the agency, there are always offices of the agency itself, as well as offices of the Customs Administration, the Bank of Algeria, the Commercial Register, National Property, Taxes, Urban Planning, Environment, Employment, and the municipal popular assembly officer where the agency's headquarters are located.
- The provision of one-stop shop services is subject to investor management, with the exception of filing the investment declaration and requesting benefits.

The Director General of the Agency may, for the operation of the one-stop shop, take all practical and organizational measures, especially those that facilitate investors' completion of procedures for obtaining legally required documents in this area and within legal deadlines

SECOND REQUIREMENT:Executive Decrees Complementing Law 22-18

To implement Law 22-18, several executive decrees have been issued clarifying the application mechanisms and details related to investment. Among the most prominent are:

Executive Decree No. 22-299 dated September 8, 2022: This relates to the registration of investment with the Algerian Agency for Investment Promotion and the issuance of a certificate to the investor accompanied by a list of goods and services eligible for benefits. This decree aims to simplify administrative procedures related to initiating investment projects in Algeria and facilitate investors' access to the benefits and incentives provided under the new investment law.

Executive Decree No. 22-300 dated September 8, 2022: This specifies the list of activities not eligible for the benefits defined under the sectoral regime. This decree aims to clarify the areas



excluded from incentives and privileges granted to investments in certain sectors, helping investors understand the legal framework more clearly and direct their investments toward sectors eligible for benefits.

Executive Decree No. 22-302 dated September 8, 2022: This specifies the criteria for qualifying investments eligible for the "Structured Investments Regime," which can benefit from state support (such as partial or full coverage of development works and basic infrastructure). For example, the criteria specified in this decree might include the number of direct jobs created (e.g., 500 jobs or more), or the investment amount (e.g., 10 billion Algerian Dinars or more).

The decree also clarifies how these structured investments benefit from the advantages granted during the exploitation phase.

The decree stipulates the possibility for structured investments to benefit from state support, which may include partial or full coverage of development works and basic infrastructure necessary for the project's realization. This is usually done under an agreement concluded between the investor and the Algerian Agency for Investment Promotion (AAPI) after government approval. The decree also specifies the evaluation grids used to assess these investments.

In short, this decree focuses on supporting large-scale investment projects with significant economic and social impact by establishing clear criteria for benefiting from special incentives and state support.

Conclusion:

What distinguishes Investment Law No. 22-18, which has been studied, is its inclusion of a set of provisions and concepts that were not clear or precisely organized in previous laws, especially the clarification of certain principles, advantages, and incentives, and the establishment of special systems, while assigning another role to the bodies supervising investment, most notably the Algerian Investment Promotion Agency. It also retains what was stipulated in Law No. 16-09 regarding some advantages and guarantees desired by investors, such as the freedom to transfer capital, legislative stability or consistency of investment law texts, dispute resolution through mediation, conciliation, or arbitration, and the right to appeal against decisions issued against them before the Appeal Committee established for this purpose, not to mention obtaining fair and equitable compensation in case of inappropriate measures taken by the state.

Furthermore, this law removed some issues that had caused widespread criticism under previous laws, namely the right of pre-emption that was stipulated by Law No. 19-06 and the partnership rule that was enshrined by finance laws. Thus, the Algerian legislator has included in the new law everything that investors demanded by adopting a different approach from what was prevalent in previous laws.



We have reached the following conclusions:

- The new law issued is a law drafted according to a distinctive economic approach that falls within the state's policy of genuinely seeking everything that can bring wealth to the Algerian economy and attempting to create jobs, i.e., comprehensive national development.
- The law also retained the restrictions imposed on investment, namely the necessity of protecting the environment, public health, and competition, with the addition of the element of the necessity of transparency of accounting, fiscal, and financial information.
- The guarantees previously granted to investors under previous investment laws, such as the principle of equality and transparency, have been maintained.

We have reached the following suggestions:

- Training and qualifying the human element involved in investment work to increase their efficiency, capabilities, and skills.
- The need for a stable economic environment built on clear rules to enable the promotion of private sector activity in Algeria and the promotion of domestic investment.
- The need to alleviate problems by focusing on alternatives related to the development and promotion of enterprises and alleviating their problems related to taxes, social security, and guarantees.
- Taking into account the regional system and its resources and qualifications, and guiding investors according to their preferences.

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