

The Legal Framework of Economic Real Estate in Accordance with Law 23-17

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Abstract:

Economic real estate constitutes a significant element in the investment process, as it serves as the foundation upon which the investment project will be established. It has long been considered one of the major obstacles facing the investment sector in Algeria, despite the importance given to it through a series of legal texts culminating in Law 23-17, It delineates the criteria and protocols for the allocation of state-owned private real estate to facilitate investment initiatives. Through this law, the legislator restructured the management of economic real estate by defining its concept, narrowing its scope, and identifying the bodies responsible for its management and development.

Keywords: Economic Real Estate; Investment; Agency; Management.

INTRODUCTION

Algeria has been concerned with the investment sector for decades with the aim of achieving economic development and revitalizing the national economy. To realize this, the country established an extensive legal framework; however, it has proven ineffective due to the obstacles that hindered its implementation. One of the most significant challenges has been the availability of land designated for investment, as it is considered a primary tool to attract both domestic and foreign investors to materialize their investment projects.

The land allocated for investment has undergone numerous phases depending on its legal regulation. The relevant legal texts have

been marked by inconsistency, instability, and regular repeals and amendments. The rights of investors and the sensible use of this land have both suffered as a result of this volatility. Often, the land has been misused or the projects have not been realized, either because the land was allocated to fictitious investors or to those lacking the necessary competence.

As part of the economic reforms pursued by the state, Law 22-18 concerning investment was issued, which placed great importance on economic real estate and its role in stimulating investment. In order to outline the conditions and procedures for allocating state-owned private real estate for the implementation of investment projects, Law 23-17 was enacted.

According to the law's fourth article, economic real estate is any property that the state owns or that the Algerian Agency for Investment Promotion acquires on the state's behalf and that is appropriate for housing an investment project as specified by the investment law.

It also outlines its components and the modalities of its exploitation. (2023/11/15 ، 17-23 قانون)

Study Problem:

The following key question can be used to formulate the study's problem:

Has the legislator regulated economic real estate within a framework that allows its optimal exploitation in a way that contributes to promoting investment?

To address this issue, we employed a descriptive analytical method to present the legal concepts related to the subject and to analyze the legal texts. This study follows a two-part plan as outlined below:

- First Axis: Components of Economic Real Estate
- Second Axis: Management of Economic Real Estate.

The First Axis: Components of Economic Real Estate

Law 23-17, It delineates the criteria and procedures for allocating state-owned private real estate for the execution of investment projects, along with its implementing regulations, specifies the conditions under which real estate is classified as economic and identifies the types of land included in this category, as well as those excluded from it.

The first requirement: Conditions for the Classification of Economic Real Estate

According to article 06 of Law 23-17, the following conditions must be met for real estate to be classified as economic:

- It must be part of the private property of the state: These are national properties that serve an ownership and financial function, meaning they can be privately owned after being transferred. They are not classified as public national properties, which, by their nature or purpose, cannot be privately owned. (قانون 90-30, 1990/12/01)
- The real estate must not be allocated or in the process of being allocated for any other purpose besides investment: The purpose of designating economic real estate is to execute investment projects as defined by the Investment Law.
- The real estate must be located in urbanized or potentially urbanizable sectors, as defined by urban planning tools: Urbanized sectors are defined as any land occupied by a cluster of buildings within its spatial areas, with its equipment and activities, even if the land is not fully serviced, undeveloped, or designated as green spaces or gardens, or occupied by building clusters. Potentially urbanizable sectors are those lands designated for development within a specified timeframe (قانون 90-25, 1990). However, this condition does not apply to investment projects whose nature necessitates their location outside these sectors.

These conditions clearly indicate that the classification of real estate as economic is contingent upon the fulfillment of the aforementioned requirements. These conditions are mandatory under the relevant legal text, and if they are not met, the real estate cannot be

classified as economic and thus cannot be used for investment purposes.

The Second requirement: Properties Classified as Part of Economic Real Estate

(مرسوم تنفيذي 23-486، 2023)، describes the elements of economic real estate that is state-owned private property that is suitable for concession and used to carry out investment projects. This decree, which applies articles 05 and 23 of Law 23-17, categorizes the lands constituting economic real estate into four types (قانون 17-23، 2023/11/15):

- Industrial Real Estate: This includes developed lands located within industrial zones, activity zones, and lands belonging to technological parks.
- Tourism Real Estate: This comprises developed lands located within tourist expansion zones and tourist sites.
- Urban Real Estate: Article 05 of Executive Decree 23-490, which creates, coordinates, and governs the activities of the National Agency for Urban Real Estate, defines it as "the total of urbanized or potentially urbanizable lands covered by an urbanization tool, representing the boundary between urban and rural areas." According to planning and urbanization tools, economic urban real estate is "any real estate belonging to the state's private property located in urbanized or planned-to-be-urbanized sectors, and capable of accommodating an investment project as defined by the Investment Law." It comprises developed areas inside the limits of new cities, as well as areas set aside for the promotion of commercial real estate and other developed areas that are part of the state's private property—23 (مرسوم تنفيذي 23-490، 2023). Grounds inside the limits of new cities, grounds set aside for the promotion of commercial real estate, and other developed lands that are part of the state's private property are all considered urban real estate.
- Real Estate Assets Belonging to Public Economic Institutions: These assets are divided into two categories. The first consists of remaining real estate assets, which are properties belonging to dissolved public institutions (العزیز، 2019، صفحة 50). Properties that are not required for the operations of governmental economic entities fall under the

second category of excess real estate assets. Among them are (مرسوم تنفيذي 23-486، 2023) :

- Real estate that was neither used nor allocated at the time of the publication of Law 23-17.
- Real estate whose usage does not align with the social purpose of the institution.
- Independent real estate or separable portions of larger real estate complexes owned by public institutions or the state, which are not necessary for their activities.
- Real estate removed from the core activities of public institutions due to changes in its purpose or legal nature, as determined by planning and urbanization tools.
- Real estate that the public institution has offered for sale on the market.
- As of the publishing date of Law 23-17, real estate situated within industrial zones that belonged to the zone's promotional authority and was accessible, has been reintegrated into the state's private property.

It should be emphasized that the lawmaker has broadened the definition of economic real estate to encompass all lands and properties that, due to their categorization and character, can help meet the needs of investors while also fostering a variety of investment initiatives.

The third requirement: Lands Excluded from Economic Real Estate

In accordance with Law 23-17's Article 03, the legislator excluded a group of properties from the definition of economic real estate, which are not subject to its provisions due to their special nature. Some of these lands cannot be exploited, while others are subject to specific legal regimes for each category. These excluded lands include:

- State-owned private property that is used for agriculture or that is allocated for such purposes.
- Properties found in mining regions.
- Lands located in areas designated for hydrocarbon exploration and production, as well as those inside the protective zones of gas and electrical facilities.

- State-owned private property lands designated as aquaculture activity zones.
- Lands located within the perimeters of archaeological sites and historical landmarks.
- Lands designated for real estate development benefiting from state subsidies.
- Lands belonging to the private property of the state designated for the execution of public investment projects.

The Second Axis: Management of economic land

The main responsibility for managing economic land falls to the Algerian Investment Promotion Agency (AIPA). However, in order to provide economic land that is appropriately prepared for the investment project it will host, other agencies have been established alongside AIPA, specifically to handle development tasks.

The first requirement: Algerian Investment Promotion Agency

The AIPA is established under Articles 16 and 18 of Law 22-18 on Investment (2022 ، قانون 22-18) , in place of the previous National Agency for Investment Development as the organization in charge of investments. It was officially created through Executive Decree 22-298, which outlines the organization and functioning of the AIPA, as amended and supplemented (2022 ، مرسوم تنفيذي 22-298). According to Article 02 of the decree, the AIPA is a public organization that functions under the Prime Minister's direction and has administrative, legal, and financial autonomy. It is anticipated that this structure will strengthen its role. According to Article 02 of the decree, the AIPA is a public organization that functions under the prime minister's direction and has administrative authority, legal identity, and financial autonomy. It is anticipated that this structure will strengthen its role, particularly in coordination with various administrative bodies under other ministries (ميلود و مقلاتي، 2023، صفحة 107).

First section: Organization of the Algerian Investment Promotion Agency

Executive Decree 22-298's Article 05 states that a Board of Directors oversees the agency and a General Director manages it. Additionally, the agency uses single-window offices to conduct business, which are divided into the Single Window for Major Projects and Foreign Investments with national jurisdiction, and

decentralized single-window offices with local jurisdiction for investments outside the scope of the major projects window. These are created within the organization in response to need, at the general director's suggestion, and with the board of directors' and supervisory authority's consent.

The only intermediaries for investors are the single-window offices. Their duties include receiving investors, registering investments, managing and following up on investment files, and assisting investors in dealings with relevant authorities and administrations. To facilitate the processing of requests for economic land for investors, the single-window office includes representatives from various departments, such as: Tax Administration, Customs Administration, the National Commercial Registry Center, Urban Planning Services, authorities responsible for investment land, Environmental Services, Employment and Labor Agencies, and the Social Security Funds for both employees and self-employed workers.

Additionally, representatives from other investment-related administrations and agencies can be involved when necessary. These representatives are responsible for executing procedures related to acquiring investment land, implementing investment projects, issuing decrees and licenses, and any other documents related to the operation of the investment project, while monitoring the commitments made by the investor (مرسوم تنفيذي 22-298، 2022).

Second section: Tasks of the Algerian Agency for Investment Promotion

As a key player in the investment process, being the gateway for investor (كوسام، 2022، صفحة 100), the legislator assigned the agency wide-ranging responsibilities across several areas (مرسوم تنفيذي 22-298، 2022):

–In the area of information: The agency is responsible for receiving investors, collecting the necessary documents to provide a better understanding of investment-related laws and regulations, processing and disseminating this information by any means, and integrating it into information systems to provide investors with the essential data for preparing their projects. It also establishes databases concerning business opportunities, resources, and potential capacities at the local

level, and coordinates with relevant administrations and bodies to create a database on the availability of land designated for investment.

- In the area of facilitation: Particularly regarding the procedures for acquiring economic real estate, the agency manages the investor's digital platform and evaluates the investment climate, proposing measures to improve it. It also provides all necessary information on investment opportunities, especially concerning real estate offerings, incentives, benefits, and investment-related procedures.
- In the area of investment promotion and investor support: To encourage investment in Algeria, the organization starts initiatives with both governmental and private organizations both locally and abroad. At the municipal and national levels, it creates and suggests a plan, designs operations to mobilize the necessary capital for executing these plans, and establishes and maintains business relationships and cooperation with similar foreign entities. It facilitates communication between investors, enhances business and partnership opportunities, organizes services to assist investors, guides them through other administrations, and provides consulting services, with the option of utilizing external expertise when necessary.
- In the area of managing incentives: Investment registration certificates must be issued by the agency, which is also in charge of making any necessary modifications. Additionally, it confirms that registered investments are eligible to receive the offered incentives, endorses the lists of goods and services eligible for incentives provided by the investor, and identifies structuring projects based on the criteria and regulations in force. Furthermore, it creates reports on the start of the operating phase and produces the development agreements specified in article 31 of the Investment Law, determines the duration of the exploitation benefits granted to the investment, and manages the transfer or sale of goods and services that benefited from incentives. The agency is also tasked with issuing decisions on the withdrawal of incentives and preparing certificates of exemption from value-added tax.

- In the field of observation: To make sure that investors keep their promises, the organization works with the appropriate authorities and bodies. It also handles complaints and petitions submitted by investors and develops a system for monitoring, listening to, and following up on registered investments.
- The agency is the only authority responsible for allocating economic real estate from state-owned private property to facilitate investment initiatives, through a mutually agreed concession, which can be converted into a sale. At the concession holder's request, the agency turns the concession into a sale in compliance with the relevant laws and regulations.

In order to provide concessions on state-owned private property, the agency oversees and promotes economic real estate. Regarding the distribution of available land for development by public agencies in the industrial sector, it confers with pertinent sectors, tourism, and urban real estate sectors. It also collaborates with the provincial governors to identify investments eligible for economic real estate, taking into account the specific activities to be developed at the national and local levels, in line with the established goals. The agency maintains and updates a database of economic real estate available for investment, detailing the characteristics of each property. It gives investors access to all pertinent information about available real estate through a digital platform, helps create urban planning tools to communicate investment needs, purchases any private property on behalf of the state that can host an investment project, and exercises the state's pre-emption right over any private property that can host an investment project.

Moreover, in accordance with article 24 of Law 23-17, the agency, within a provincial committee, purifies economic real estate hosting authorized investment projects prior to the issuance of this law. This includes land granted through a provincial decision, concession contract, or written authorization from the governor, where only 20% of the project has been initiated based on a building permit.

The second requirement: Agencies Responsible for Economic Real Estate Development

According to article 7 of Law 23-17, economic real estate must be developed by public agencies specializing in industrial, tourism, and urban real estate.

First section: National Agency for Industrial Real Estate

Established by Executive Decree 23-488, this agency replaced the National Agency for Mediation and Land Regulation. It is a public entity of an industrial and commercial character, with legal personality and financial autonomy, operating under the supervision of the Minister of Industry. The agency is responsible for the development and internal connection of industrial real estate, such as roads and various networks. It also ensures external connections for roads and networks in industrial zones, activity areas, and technological parks in coordination with the relevant sectors. Additionally, the agency is tasked with rehabilitating industrial zones and activity areas, managing, operating, monitoring, and maintaining their shared spaces and facilities. It keeps and updates a registry of industrial real estate and the economic operators located in industrial zones and activity areas. The agency also protects and maintains the common spaces of the industrial real estate it manages (مرسوم تنفيذي 23-488، 2023).

Furthermore, in accordance with articles 8 and 9 of the same decree, the agency can undertake additional tasks, including creating industrial and commercial real estate, developing multi-service activity spaces with structures and/or industrial buildings for rent according to the needs of companies and investors, either independently or through partnerships. It may also act as a project manager for any programs and operations entrusted to it by the state, particularly in land development.

Second section: National Agency for Tourism Real Estate

Established by Executive Decree 23-489, this agency replaced The National Agency for Tourism Development. Article 02 of the decree characterizes it as a public entity of an industrial and commercial nature, endowed with legal personality and financial autonomy, and subject to the oversight of the Minister of Tourism. The agency's primary task is to develop and internally connect tourism real estate with roads and various networks. It also ensures external connections with roads and networks in tourist expansion

zones and sites, coordinating with relevant sectors. Additionally, the agency prepares urban planning tools related to tourist zones, and in coordination with the Algerian Agency for Investment Promotion, it rehabilitates, defines, and demarcates tourist expansion zones and sites. The agency manages, operates, monitors, and maintains the shared spaces of these areas, as well as ensures their protection (فضيلة، 2020، صفحة 26). It is also responsible for maintaining a registry of tourism real estate and the economic operators located in tourist expansion zones and sites.

According to articles 6 and 7 of the same decree, the agency, when necessary, can undertake development and internal connection operations for roads and various networks on land belonging to public national properties or private entities. It can also create commercial real estate and develop multi-service activity spaces with structures and/or buildings for rent according to the needs of companies and investors, either independently or through partnerships, or by acting as a project manager (مرسوم تنفيذي 23-489، 2023).

Third section: National Agency for Urban Real Estate

Established by Executive Decree 23-490, This agency is a governmental entity of an industrial and commercial character, with legal personality and financial autonomy, and functions under the supervision of the Minister of Urban Planning. The legislator assigned it broader responsibilities compared to the two previous agencies. Its primary task is to identify, mobilize, and develop urban real estate in accordance with regional planning directives and urban development tools. By implementing these tasks, the agency ensures the management of areas designated for urbanization nationwide. It also undertakes development works to produce urban real estate that is ready for construction, fully equipped, and free from any restrictions or obstacles. Additionally, the agency prepares a real estate strategy to create a land reserve in line with the National Regional Planning Scheme and assumes responsibility for research, planning, and management of urban real estate.

In the area of investigation, according to article 9 of Executive Decree 23-490, the agency is responsible for conducting a general inventory of urban real estate potential based on regional planning and urban development tools, using data provided by state property services, land surveys, and the land registry. It also establishes

geographic information systems and creates a database linked to its field of activity. The agency conducts studies to monitor and oversee urban real estate and real estate market indicators, identifying trends and directions to anticipate any expansion or saturation, and plan for the establishment of new human settlements.

In terms of mobilization, the agency creates a land reserve for the state by mobilizing state-owned land designated or converted for urbanization. It defines intervention zones related to projects of national, public, or general interest. To achieve this, the agency may exercise its right to preempt or expropriate for public utility and profit directly from real estate property reclassification procedures. Furthermore, by carrying out development plans for the establishment of new settlements or intervention plans within urban renewal operations, the agency expands the mobilized land reserve (مرسوم تنفيذي 2023، 490-23).

In terms of administration, the organization gives the Algerian Agency for Investment Promotion access to the land reserve of economically viable urban real estate that is meant for development, as well as all information pertaining to its availability in developed regions and other lands. Additionally, it oversees the state's promotion of real estate and urban land development in order to carry out the activities outlined in multi-year intervention programs, as outlined in articles 13 and 14 of (مرسوم تنفيذي 2023، 490-23).

Conclusion:

At the end of this research, we arrive at the following findings and recommendations:

Study Results:

- The legislator has clarified the concept of economic real estate by defining its conditions and components, covering various types of land categorized into industrial, tourism, and urban zones. This approach facilitates investor choice of real estate according to the nature of their investment activity, thus attracting more investors.
- In addition to industrial real estate, which has been given significant importance and priority in previous legal texts, equal importance has also been assigned to both tourism and urban real estate, thereby creating diversity in investment sectors. However, despite the importance of investment in

agricultural real estate, the legislator has excluded it from the components of economic real estate, leaving it governed by specific legal texts.

- Assigning the Algerian Agency for Investment Promotion the task of managing economic real estate and making it the sole gateway for investors is a positive step toward removing administrative obstacles that have burdened investors in past years, thus encouraging investment.
- The presence of agencies responsible for the development of economic real estate by providing all necessary infrastructure will contribute to creating a sufficient supply of real estate to meet investor needs, especially if development is implemented with high standards in practice.
- Although there have been legal violations by many investors, leading to the depletion and misuse of economic real estate, Law 23-17 and its implementing regulations lack any penal provisions to criminalize such violations.

Study Recommendations:

- Ensure the principle of legislative stability and avoid frequent amendments to legal texts to reassure investors, reduce their concerns, and encourage investment.
- Activate the work of agencies responsible for the development of economic real estate and expedite the establishment of the National Agency for Urban Real Estate.

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