

Investment guarantees according to Amendment 22-18

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Abstract:

The Algerian legislator has worked to enhance the investment climate by enacting Law No. 22-18, which represents a comprehensive legal framework aimed at attracting local and foreign investments through a set of guarantees and incentives. This study seeks to analyze the legal and economic guarantees provided by this legislative text, focusing on mechanisms for investor protection and the simplification of administrative procedures. The research also examines the impact of these guarantees on the competitiveness of the Algerian economy, compared to successful international experiences in this field.

Keywords: Investment; Algerian Law 22-18; investor guarantees, investment climate; economic reforms; Algeria; foreign direct investment.

Introduction

Investment is one of the main factors contributing to the economic and social development of any country, as it plays a vital role in boosting economic growth and creating job opportunities. In Algeria, improving the investment climate is an urgent necessity to address the current economic challenges, particularly in light of rapid global changes.

To this end, Law 22-18 was enacted to enhance the country's competitiveness by providing a clear and attractive legal framework for investors. This law seeks to offer incentives to both local and foreign investors by simplifying registration procedures and reducing bureaucracy, which previously hindered the smooth flow of investment operations. The Algerian legislator, with the aim of

reinforcing the necessary reforms to make the investment environment more appealing, designed this law to address the challenges faced by investors, such as administrative complexities and bureaucracy. It also aims to provide more effective guarantees to investors, thereby contributing to greater trust in the business environment.

Section One: Legal and Judicial Guarantees

subsection One: Legal Guarantees

Law No. 22-18 includes several legal guarantees, most notably the principle of legislative stability and the protection of intellectual property rights.

First branch: Guarantee of Legislative Stability

Jurists differ on defining legislative stability, with each legal school presenting a definition aligned with its perspective:

1. First School:

Defined it as "the state's commitment not to amend the legislative framework governing investments under which investment contracts or agreements were concluded, since sudden changes in investment laws often raise concerns among investors and deprive them of expected profit opportunities."

This definition is based on the principle of legislative stability, which ensures that the foreign investor can operate under the rights and privileges agreed upon, without changes. (Djilali, May 2021, p. 328)

2. Second School:

Some scholars defined it as "a mechanism that freezes the applicable law on a contract in the form it was at the time of its conclusion, which is commonly applied in contracts between states and foreign parties."

From this definition emerges the principle of "legislative text immutability in the investment field, even in the case of amendments or repeal," based on the general rule of the non-retroactivity of laws,

meaning the old law remains valid for obligations arising under it. (Kellou, p. 485)

According to Article 13 of the law, the legislator establishes the principle of legislative stability by freezing the investment law from the implementation stage after the contract or investment agreement is signed until the project is completed. This principle is based on the rule "the contract is the law of the parties," ensuring that sudden legal changes do not occur, which might weaken investor confidence and reduce profitability. The President of the Republic confirmed in a press interview that this law will not be amended for ten years or more to avoid legislative changes that previously increased the concerns of foreign investors.

Second branch: Guarantee of Investment Freedom

The principle of investment freedom was enshrined in Law No. 90-10 on currency and credit as amended by Legislative Decree No. 93-12, emphasizing the sanctity of private property. This opened the door for national and foreign capital to invest in various fields. This principle was solidified in the 1996 Constitution under Article 37, which states: "Freedom of commerce and industry is guaranteed and exercised within the framework of the law." (Tali, 2004, p. 3)

It was clearly reaffirmed in Ordinance No. 01-03, amended by Ordinance No. 06-08, which guaranteed full freedom in investment as stated in Article 4. The 2016 constitutional amendments and their implementation through Law No. 16-09, now replaced by Law No. 22-18, further consolidated this.

While Law No. 16-09 focused on certain types of investments and used the terms national and foreign investment, identifying the person entitled to this freedom requires reviewing related legal texts. Article 3 of the investment law explicitly refers to the investor as "a natural or legal person, national or foreign."

Article 5 of Law 22-18 further affirms this, defining the investor as "a natural or legal person, national or foreign, resident or non-resident." Thus, investment activity in Algeria is open to all persons, whether individuals or entities, national or foreign, residents or not.

Third branch: Guarantee of Intellectual Property

Intellectual property has become a critical and contemporary issue, particularly in investment-related fields. Protecting intellectual property rights—such as patents and trade secrets—through effective legal and judicial frameworks is essential for individuals and companies investing in a country (**Bousta, 2016–2017, p. 207**)

In Algeria, Investment Law No. 22-18 includes a new form of investment called "relocation of activities from abroad," affirming the state's commitment to providing new guarantees to protect intellectual property rights under applicable legislation. Such protection is fundamental to encouraging innovation, modern technology, and foreign investment, ultimately supporting the country's economic and innovation ecosystem.

Intellectual property rights have been constitutionalized (**creativity & however**) in the 2020 Constitution, with Article 74(3) affirming legal protection for rights related to intellectual creativity. (Decree) This obligates the legislator to incorporate this protection in investment law, in addition to existing national laws such as Copyright Law No. 03-05, (**03-05**) Patent Law No. 03-07, (**No03-07.**) and Trademark Law No. 03-06. (**No03-06., dated 19 July 2003**)

Ensuring protection of intellectual property rights in investment is vital. It requires a legal and regulatory framework that safeguards investors' rights in the ideas and innovations they develop or use in business. This includes patents, copyrights, trademarks, industrial designs, and trade secrets.

According to Article 9 of Law No. 22-18, the state is responsible for providing all necessary legal guarantees to protect intellectual property rights from any form of violation, including patent infringement, copying, imitation, or theft. (**Daim, April 2022, p. 1304**)

Algeria's efforts to enhance intellectual property protection—now constitutionally enshrined—compel the legislator to integrate these rights into investment and other laws. Moreover, Algeria's commitment to international treaties reflects its national and international interest in strengthening these rights.



Subsection Two: Judicial Guarantees

The state has worked to create a conducive climate for various forms of investment by instilling greater trust and reassurance, particularly in the event of disputes between investors and the state, through multiple legal mechanisms and guarantees for resolving such disputes. These guarantees are enshrined in both post-reform laws and international agreements.

The legislator has ensured investors' rights, especially foreign investors, recognizing that this enhances the credibility of investment projects and encourages their establishment. These guarantees include recourse to national courts and international arbitration.

First branch: Recourse to National Courts

Article 12 of Law No. 22-18 outlines the general framework for resolving disputes between foreign investors and the Algerian state, stating:

"Any dispute arising from the application of this law between the foreign investor and the Algerian state, caused by the investor or as a result of a measure taken by the Algerian state, shall fall under the jurisdiction of the competent Algerian judicial authorities, unless there are bilateral or multilateral agreements ratified by Algeria whose provisions pertain to conciliation, mediation, or arbitration, or unless an agreement is reached between the agency mentioned in Article 18 (representing the state) and the investor that allows the parties to resort to arbitration as a means of resolving investment disputes." (22-296, 04/09/2022.)

The legislator also provided an alternative for investors unwilling to pursue judicial litigation: the possibility to submit an administrative appeal to the High Appeals Committee.

1. Composition of the High Appeals Committee on Investment

The committee's structure and operation are governed by Presidential Decree No. 22-296. It includes:

- A representative of the Presidency (Chair)

- A judge from the Supreme Court or Council of State
- A judge from the Court of Auditors
- Three (3) independent or expert economists/financiers appointed by presidential decree based on their competence

Committee members are appointed by presidential decree for a renewable three-year term (once only).

2. Functioning of the Investment Appeals Committee

The investment agency acts as the committee's secretariat. The committee prepares its internal regulations and begins work upon notification from an investor. Appeals may be filed in cases such as denial or revocation of incentives, refusal to issue licenses or legal approvals.

Investors must file an appeal within 20 days from notification of the contested decision (Law, 2022). Appeals can be submitted directly or via a digital platform and must include: **(Law, 2022)**

- Name and identity of the appellant or their representative
- A signed, individual appeal
- A memorandum outlining facts and legal arguments
- Supporting documents

Upon receiving the appeal, the committee chair sends a copy to the concerned authority, which must respond within 10 days. The committee then meets and rules on the appeal within 30 days from notification. The committee may summon administrative representatives or the investor to hear their arguments and can review all administrative documents relevant to the disputed project.

Deliberations are only valid with two-thirds of the committee members present. Decisions are made by a majority vote; in case of a tie, the chair's vote prevails. The decision is communicated to the concerned parties within 8 days and becomes effective.

The committee reports to the President of the Republic every

six months, detailing its activities and recurring issues affecting investments, and may provide recommendations when necessary.

Second branch: Guarantee of Recourse to International Commercial Arbitration

While disputes are generally resolved domestically, foreign investors may hesitate to rely on domestic mechanisms due to the nature of disputes involving a sovereign state versus a private foreign entity, which may raise concerns about judicial impartiality.

Thus, Algerian law allows foreign investors to resort to arbitration or conciliation as a dispute resolution method.

1. Definition of International Commercial Arbitration

International commercial arbitration is a form of private justice governed by law, allowing certain disputes to be removed from the jurisdiction of ordinary courts.

Some scholars define it as "a special procedural method for resolving a specific dispute by a third party."

Algerian legislation has enshrined arbitration as a means for resolving investment disputes in most international treaties ratified by Algeria. It was recognized in Ordinance No. 01-03 and Law No. 16-09 on investment promotion, and continues under Law 22-18. This reflects Algeria's progress toward economic openness and encouraging investment...

2. The Position of the Algerian Legislator on International Commercial Arbitration

Algeria was initially reserved about arbitration due to its adoption of the socialist system and its commitment to exercising full sovereignty. However, with political and ideological changes, Algeria began to shift its stance, joining the 1958 New York Convention and initiating legal reforms, including the amendment of the Code of Civil Procedure through Legislative Decree No. 93-09, which introduced a special chapter on arbitration.

Section Two: Financial Guarantees for Investment

In addition to providing legal and judicial protection for investors, the Algerian legislator has recognized the importance of ensuring financial protection to enhance the attractiveness of the investment climate in Algeria. This requires offering legal guarantees that enable investors to transfer their funds and profits abroad easily and without unjustified obstacles, through the establishment of legal mechanisms that ensure the settlement of investment-related disputes amicably and swiftly. Therefore, there arose the need to strengthen the legal system with financial protections.

Subsection one: Guarantee of Capital Transfer and Its Returns

Guaranteeing the transfer of investment capital is one of the most important guarantees granted to foreign investors. It refers to the legal commitment to allow the reinvested capital to be repatriated in case of withdrawal or upon the termination of the investment agreement. This guarantee is based on the nature of the investment and the terms stipulated in the agreement between the two parties, whether included in the original agreement or in a separate document.

First Branch: Guarantee of Investment Capital Transfer

This guarantee refers to procedures and mechanisms that reinforce investor confidence by assuring their ability to convert their assets into financial liquidity at their discretion. The importance of this guarantee lies in giving investors peace of mind about the possibility of withdrawing their investments when needed, whether to cover emergency expenses or to seize new investment opportunities. This type of guarantee is commonly used to protect investors from the risk of capital loss if expected returns are not realized or in unforeseen crises.

Investment contributions are classified into monetary shares—i.e., "foreign funds employed by the investor to execute the investment project." These must be imported through banks in a convertible currency rated by the Bank of Algeria, as stipulated in Article 02 (09-01, 2009) of Regulation No. 09-01 dated February 17, 2009. The in-kind shares refer to equipment, machinery, and tools necessary for project execution and operation, and may also include patents and

technological contributions, provided these are also imported from abroad and assessed in accordance with the rules governing company formation.

Algeria has enshrined the principle of free capital transfer in its amended 2020 Constitution, where Article 61 stipulates the principle of free investment, implicitly including capital transfer guarantees. This guarantee is also reinforced in financial legislation, notably Ordinance No. 11-03 on Currency and Credit in Article 126, and through several regulatory systems, such as Regulation No. 04-14, which defines the conditions for transferring capital abroad in the context of investment, applicable to economic operators under Algerian law.

It is noted that the Algerian legislator did not stop at formal guarantees but has continuously strengthened this legal framework, culminating in the issuance of Law No. 18-22, which provided more freedoms and legal guarantees to investors, particularly foreign ones, regarding the transfer of their funds abroad. Article 8 of the law states: “Capital shall be presented as monetary shares imported via the banking channel and in freely convertible currency rated by the Bank of Algeria.” (22-18, 2022)

Second Branch: Guarantee of Returns Generated by the Invested Capital

In addition to guaranteeing capital transfer, the Algerian legislator granted foreign investors the right to transfer the returns generated from operating the investment project, including profits, interests, and all other revenues. These returns are considered fully transferable, provided that due taxes are paid or legally granted exemptions are respected. (Bay, 2021, p. 169)

This guarantee represents a financial commitment often backed by financial entities (such as banks or financial institutions) that ensure the periodic transfer of investment returns according to agreed-upon terms. This mechanism contributes to stabilizing and attracting foreign investment, as it reflects the availability of foreign currency in the market throughout the project duration. (Chetouh, 2021–2022, p. 243)

On the other hand, Law No. 18-22 affirms the principle of equality among investors, regardless of their nationality. It emphasizes that all investors—local or foreign—must enjoy the same rights and privileges in areas of investment, employment, and legal protection. Rights previously exclusive to domestic investors are now extended to foreign investors without discrimination.

Transferable investment returns also include net income generated from the sale or liquidation of a project. The law allows the foreign investor to sell or liquidate the project, guaranteeing the transfer of proceeds from these operations even if they exceed the original capital invested, as stated in paragraph 4 of Article 8 of Law 18-22.

It is also noted that the legislator did not limit financial transfers to a specific type of funds but left the scope open to include all funds related to the investment, including wages, salaries, and bonuses for foreign workers. This enhances the ability to attract foreign talent necessary for the development of economic projects in Algeria.

Subsection two: Guarantee of the Right to Compensation

State actions involving nationalization or expropriation for public interest give rise to the foreign investor's right to compensation, a right recognized internationally. A state's failure to compensate investors for damage caused by such actions constitutes a violation of international law. In this requirement, we address the content of the compensation obligation in the first branch and the characteristics of compensation in the second.

First Branch: Content of the Compensation Obligation

According to general rules, any person who causes harm due to fault must restore the previous situation or provide compensation if restoration is impossible. Both jurisprudence and law agree on the necessity of compensating the foreign investor when subjected to measures that deprive them of their assets. This obligation acts as a restriction on the state's power to expropriate or nationalize, as stipulated in domestic law and international agreements signed by Algeria. For example, paragraph 2 of Article 16 of Ordinance 03-01

states: "Expropriation entails fair and equitable compensation." (Salmi, June 2015, p. 76)

The state must provide the security and stability necessary to create a reassuring environment for investors, thereby increasing investment inflows. Undertaking such measures without providing fair and equitable compensation undoubtedly hinders the inflow of foreign capital. (Nouara, 2013, p. 95)

Second Branch: Characteristics of Compensation

The characteristics of compensation are of utmost importance to both the investor and the host state. Various phrases are used in international practice, reflecting political and economic interests. The Algerian legislator first introduced the principle of prior, fair, and equitable compensation in Article 20 of the 1989 Constitution to protect private property under political and economic reforms. This principle was reaffirmed in the 1996 Constitution.

"Prior" means compensation should be paid before expropriation. However, Algerian investment laws only require compensation to be fair and equitable. Fair compensation is based on an objective standard, implying that compensation must cover all consequences of nationalization and expropriation. Equitable compensation requires considering the investor's rights and any debts owed to the host state. This is confirmed in paragraph 1 of Article 21 of Law No. 91-11, which states: "The amount of compensation for expropriation must be fair and equitable, covering all incurred damages and lost profits resulting from the expropriation."

CONCLUSION

At the end of this research, it can be said that Law 22-18 represents an important step toward improving the investment environment in Algeria. Despite its advantages, there remain challenges that need to be addressed to achieve the desired goals. This study concludes with several key findings concerning the legal, judicial, and financial guarantees for investment in Algeria. First, the principle of legislative stability is a fundamental guarantee for investors, contributing to a stable environment that fosters confidence in the investment climate. The guarantee of free investment and intellectual property rights also reflects Algeria's commitment to

providing a comprehensive legal framework that protects investor rights and encourages innovation.

Second, judicial guarantees highlight the role of national courts and arbitration as mechanisms for dispute resolution, which enhances the credibility of the legal system and investor confidence in the protection of their rights. The establishment of the High Appeals Committee is a positive step toward expediting dispute resolution procedures.

On the financial front, guaranteeing the transfer of capital and returns enhances the investment appeal, allowing investors to repatriate their funds easily—an indication of the financial system's stability.

Recommendations

1. **Enhance Legal Certainty:** The Algerian legislator should work on reinforcing the principle of legislative stability through effective mechanisms that monitor legislative changes and make them transparent and predictable to investors.
2. **Develop Arbitration Systems:** Improve international commercial arbitration mechanisms by updating relevant laws and expanding international agreements that enhance the credibility of arbitration.
3. **Investor Education:** Organize workshops and training sessions for local and foreign investors to raise awareness of their rights and obligations, contributing to improved legal awareness.
4. **Simplify Financial Procedures:** Streamline the procedures for transferring capital and returns in line with international standards to ensure smooth financial operations.
5. **Policy Monitoring and Evaluation:** Establish a mechanism to regularly monitor and evaluate the effectiveness of legal and financial guarantees to ensure the achievement of goals related to investment climate enhancement.

Through these findings and recommendations, it can be said that Algeria is on the right path toward improving the investment climate, but further efforts are needed to fully achieve its goals and enhance foreign investment attractiveness.

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