



## AN INTEGRATED AND COMPREHENSIVE APPROACH BETWEEN INVESTMENT REQUIREMENTS AND INDUSTRIAL AND COMMERCIAL PROPERTY RIGHTS

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Send Article Date: 18-04-2026

Date of acceptance of the article: 02-05-2026

### Abstract:

Investment constitutes a fundamental mechanism for achieving economic and social development and an effective tool for integration into the global economy. To ensure the success of investment policies, Law No. 22-18 provides a set of legal incentives and guarantees aimed at encouraging investors to enter the national market and creating an environment conducive to investment and innovation. In this regard, the national legislator has reinforced the investment framework through several legal texts directed at relevant stakeholders, including Executive Decree No. 22-298 of 8 September 2022, which defines the organization and functioning of the Algerian Investment Promotion Agency, as amended and supplemented by Executive Decree No. 24-111 of 13 March 2024.

In order to establish a clear and transparent national policy regarding the investment climate, the national legislator has also strengthened the principle of intellectual property protection, given its role in safeguarding copyrights, trademarks, industrial property rights, patents, and related intellectual property rights. This protection aims to secure the rights of owners, limit counterfeiting practices, and ensure compliance with international commitments in this field.

Accordingly, this study seeks to highlight this fundamental issue, namely the close relationship between industrial property rights in particular and investment requirements. It also examines the importance of economic security and investment, and analyzes the effectiveness of infringement actions in protecting investors' rights. The objective is to develop a comprehensive and integrated legal approach that achieves the necessary balance between the requirements of industrial property protection on the one hand and the promotion of an attractive investment climate on the other.

**Keywords:** Investment; Intellectual Property; Rights; Protection.

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## Introduction:

Investment requirements have been and continue to be of particular importance to the Algerian State as one of the fundamental economic and social imperatives that cannot be ignored under any circumstances. It is the cornerstone of economic stability, and it is through investment that the State is able to establish the diverse economic, financial, and agricultural activities required by the population.

Because of the importance of investment in achieving sustainable development, the Algerian State has addressed this issue through a structured and principled approach, resulting in a set of legal rules that frame investment in particular and the business climate in general. The Algerian State has thereby acquired considerable experience in regulating investment requirements with accuracy and fairness, and in maintaining investors' rights against all impediments that may hinder the investment of their assets.

In accordance with this commitment, Investment Law No. 22-18 was enacted. The legislator pursued a balanced course between the public interest and the interests of investors. This obliged the State to establish administrative and technical bodies tasked with combating and resolving investment obstacles, as investment barriers have come to occupy a central place in development concerns. Development is one of the fundamental conditions for individual stability, well-being, and the fulfilment of needs across all economic, social, and intellectual fields.

In line with this orientation, the Algerian State regards the protection of investors' rights as the foremost strategic priority to be taken into account in the drafting of investment legislation, constituting one of the fundamental drivers of economic and social development and the achievement of sustainable development objectives.

This is evidenced by the legal arsenal supporting Law No. 22-18, including: Executive Decree No. 22-298 of 8 September 2022, defining the organization and functioning of the Algerian Investment Promotion Agency, as amended by Executive Decree No. 24-111 of 13 March 2024; Executive Decree No. 22-297 of 8 September 2022,



defining the composition and functioning of the National Investment Council; Presidential Decree No. 22-296 of 4 September 2022, defining the composition and functioning of the Supreme National Investment Appeals Committee; and Executive Decree No. 22-299 of 8 September 2022, setting out the modalities for the registration and transfer of investments and the collection of related processing fees.

The protection of investors' rights was one of the key topics addressed at the annual meeting of the International Organization of Securities Commissions (IOSCO) held in Doha, Qatar, from 12 to 15 May 2025.

The Algerian legislator's aim in including Article 9 in Law No. 22-18 is primarily protective in nature and constitutes a legal guarantee for the investor, as the State is thereby obliged to protect the investor's intellectual property rights — particularly at a time when inventions, trademarks, and authored works can be readily counterfeited, creating a fertile environment for fraud.

This prompted the legislator to determine the type of legal protection guaranteed by legal texts for intellectual property rights, in conformity with the requirements of international conventions such as the WIPO Convention, to which Algeria acceded by Order No. 75-2 bis of 9 January 1975, ratifying the Convention signed in Stockholm on 14 July 1967. WIPO is an international organization that provides assistance in ensuring the protection, recognition, and reward of creators and intellectual property owners, in accordance with the provisions of Article III of that Convention.

In order to further develop cooperation between WIPO and Algeria, Presidential Decree No. 25-310 ratified the Headquarters Agreement between the Government of the People's Democratic Republic of Algeria and WIPO, concerning the opening of a WIPO external office in Algeria, signed in Geneva on 30 January 2018.

### **Research Problem:**

The central problem of this study falls within the scope of the Algerian State's approach to optimally protecting industrial and commercial property rights as a legal guarantee for the investor. This central problem gives rise to a set of sub-questions that can be

categorized into two main areas: first, the relationship between investment requirements and the protection of industrial and commercial property rights; and second, the concept of economic security in connection with investment and the identification of the various actors involved in the protection of these rights.

### **Research Methodology:**

The proposed approach — a comprehensive and integrated framework linking investment requirements with investors' industrial and commercial property rights — has required primary reliance on the legal-analytical method. This approach enables the analysis and comprehension of legal texts, with a view to determining the necessity of protecting investors' industrial and commercial property rights and identifying the legal mechanisms available for their protection. Accordingly, the legal texts have been analysed and interpreted using content analysis techniques, so as to grasp the substance of the legal norm and its interaction with the realities of practice.

### **1- Protecting Industrial and Commercial Property Rights: An Investor's Concern**

Since independence, the protection of intellectual property rights has been a top priority in various public policy directions. This is evidenced by the prominent role assigned to this issue in successive investment laws and in international conventions in the field of science and technology. Article 7(2) of Presidential Decree No. 06-402 of 14 November 2006, ratifying the Agreement on Scientific and Technological Cooperation between Algeria and the United States signed on 18 January 2006, expressly provides that both parties shall ensure adequate and effective protection of intellectual property created or provided under the Agreement, and that such rights shall be allocated in accordance with the provisions of the relevant annex.

This commitment was further reinforced by Algeria's accession to most international industrial property agreements, including: Presidential Decree No. 13-420 of 15 December 2013, concerning accession to the Madrid Protocol on the International Registration of Marks (adopted in Madrid on 27 June 1989, as amended in 2006 and 2007); and Presidential Decree No. 99-92 of 15 April 1999, ratifying



with reservation the Patent Cooperation Treaty concluded in Washington on 19 June 1970, as amended, along with its Implementing Regulations.

### **1.1- Challenges of the Investment Climate and Its Interaction with Industrial and Commercial Property Rights**

Intellectual property is not a modern concept; it was universally enshrined in the Universal Declaration of Human Rights, which guarantees freedom of intellectual, scientific, and literary creativity and mandates its protection by the State. What is relatively new is its regulation by dedicated legal instruments, such as Order No. 66-86 of 28 April 1966 on drawings and models, Order No. 76-65 of 16 July 1976 on designations of origin, Order No. 03-06 of 19 July 2003 on trademarks, and Order No. 03-07 of 19 July 2003 on patents of invention.

Industrial property may be defined as the body of rights that protect intellectual, creative, and human production in the industrial and commercial sphere. According to WIPO, these rights include: patents of invention, trademarks, industrial models, and integrated circuits.

The Paris Convention on the Protection of Industrial Property is the cornerstone of international instruments in this field, ratified by Algeria under Order No. 75-2. Its Article 1(3) establishes the broad scope of industrial property, which extends beyond industry and commerce in the literal sense to encompass agricultural and extractive industries and all manufactured or natural products.

Moreover, intellectual property constitutes the subject matter of foreign investment agreements. For example, Article 1(e) of Presidential Decree No. 02-223 of 22 June 2002, ratifying the Agreement between Algeria and Oman on the Promotion and Mutual Protection of Investments, defines 'investment' to include:

- Copyrights and industrial property rights, including patents, licences, trademarks, industrial models, technical processes, trade names, and goodwill.

Similarly, Article 1(d) of Presidential Decree No. 98-320 of 11 October 1998, ratifying the Agreement between Algeria and Egypt on

the Promotion and Mutual Protection of Investments signed on 29 March 1997, defines 'investment' to encompass all assets including:

- Copyrights and industrial property rights (patents, licences, registered trademarks, industrial models and designs), technical methods, and trade names.

## **1.2- Specific Effects of Industrial and Commercial Property Rights on the Investment Climate**

The protection of industrial and commercial property rights is indispensable for attracting investors, as legal protection enables the more efficient completion of investment projects. It helps the investor to understand his rights, to identify the obligations and categories covered by protection, and to benefit from the legal stability and certainty that such protection affords.

The importance of protecting industrial and commercial property has grown considerably, as these rights have become a key factor in every economic and social development process, fostering a climate of innovation and creativity, providing transparency and clarity in economic activity, and constituting a pivotal tool in attracting foreign investment — particularly by ensuring the flow of necessary capital, the transfer and assimilation of technology, job creation, and the reduction of imports.

The jurisprudence defines investment law as 'the formal disclosure, in legislative form, of the various fiscal and customs facilities and guarantees granted in order to attract investment'. Algeria, as a party to the Paris Convention, is bound to strengthen its efforts in the areas of transparency, anti-corruption, and the removal of real and legal obstacles to successful investment.

Intellectual property rights in general, and industrial property rights in particular, play a determinant role in the investment climate, especially when dealing with companies that possess advanced technologies. Such companies invest significant financial resources in the development of their technologies — a contribution that serves the general interest of sustainable national development. Neglect of intellectual property protection therefore has a significant negative impact on foreign investment, as it leads investors to seek safer and



more stable destinations, thereby threatening investment requirements and placing the host State in breach of its international obligations.

## **2-Economic Security and Investment**

The impetus behind the protection of intellectual property by States and international organisations has been the need to address the phenomenon of counterfeiting, which has spread to an extent that can no longer be tolerated. Counterfeiting now affects all goods and products in all their forms, encompassing sectors such as textiles, spare parts, mobile phones, and pharmaceutical products — the latter posing direct risks to human life and undermining the credibility of public health systems. Counterfeiting is also a contributing factor to widespread job losses, with the consequent exacerbation of social problems.

From a security perspective, counterfeiting constitutes a source of instability and aggravates organised crime, including money-laundering, irregular migration, drug trafficking, and the financing of terrorist groups. Reports have revealed the scale of the financial losses sustained by industrial property rights holders and States alike.

The Algerian legislator, through the recently amended laws regulating economic life, has declared a firm commitment to protecting industrial property rights by providing an appropriate legal framework to control and expedite actions against infringements of intellectual property rights. The protection of intellectual property rights is a key factor in every economic and social development process: it creates a climate of innovation and creativity, promotes transparency and clarity in economic activity, and constitutes a central tool for development and an attractive environment for foreign investment — particularly by ensuring the flow of necessary capital, technology transfer, job creation, and import reduction.

The absence of economic security has a direct impact on investment and development — a matter of concern to all governments, given that a transparent, clear, and protective economic environment is essential to the well-being of the population. Public policies must therefore draw fully on the industrial and commercial

property contents of leading companies, which can only be achieved by effectively protecting their exclusive rights.

## **2.1- The Customs Administration's Strategy for the Protection of Industrial Property as a Driver of Investment**

In order to attract investment and foster trade and industry, the State must intervene by all available means to protect industrial and commercial property. All States have expressed their willingness to combat counterfeiting in the context of economic globalisation — a reality that is not optional but is imposed on all, from which no State can deviate.

The unlimited opening of geographical borders and the free movement of goods and persons has imposed specific obligations on States, both at the international and domestic levels, including the obligation to protect industrial and commercial property rights, in furtherance of international economic cooperation and the intensified liberalization of economic exchanges.

Since independence, Algeria has sought to build a customs policy that serves its public interests — a policy oriented towards two fundamental objectives: an economic objective of encouraging exports and investment, and a fiscal objective of maximising tax revenues to boost the public treasury and contribute to financing development.

Algeria's commitment to protecting intellectual property and countering counterfeiting and smuggling is reflected in Article 9 of Law No. 79-07 of 21 July 1979 (the Customs Code, as amended), which stipulates that imports and exports of counterfeit goods that infringe intellectual property rights, as defined in the applicable legislation, are prohibited. It further prohibits the importation of goods bearing any written statement or sign that would suggest they are of Algerian origin when they are not.

## **2.2- Criminal Prosecution of Industrial Property Offences**

The Algerian legislator has introduced a set of legal texts governing the offence of counterfeiting across the various forms of industrial and commercial property set out in the Algerian Intellectual Property Code, as this offence constitutes a strong guarantee for the investor. It should be noted that the Algerian legislator has not



provided a specific statutory definition of counterfeiting in the context of industrial property rights infringement.

Given the severe negative consequences of counterfeiting for economic security and investment, leading States have, in addition to enacting relevant legislation, established specialised bodies to detect counterfeit goods and products — such as the Trademark and Service Mark Office (established in 1969), the European Association of Branded Products Industries, and the Business Anti-Counterfeiting Intelligence Agency of the International Chamber of Commerce, established in Paris and headquartered in London, with a mandate to combat industrial counterfeiting.

Like other legislation, the Algerian legislator has criminalised counterfeiting and made the prosecution of infringement actions subject to certain conditions. The standard of proof in criminal law is one of the most important pillars of criminal justice: no person may be held liable for an offence without proof of commission, as everyone benefits from the presumption of innocence enshrined in Article 1(1) of the Code of Criminal Procedure (Law No. 25-14 of 3 August 2025). Accordingly, the burden of proof in cases of industrial property infringement rests upon the accusing party.

In accordance with Article 61 of Order No. 03-07 on patents of invention, patent infringement offences consist of the following acts:

- Manufacturing the product covered by the patent;
- Offering or placing a patented product on the market without authorisation;
- Using the patented product without the consent of the patent holder;
- Importing counterfeit products;
- Possessing counterfeit products;
- Applying a patented process in Algeria without the consent of the patent holder.

Counterfeiting, like other criminal offences, requires two constitutive elements: a material element and a moral element. Article 61 is explicit in requiring criminal intent; accordingly, the above-

mentioned offences are intentional and will not be established in the absence of mens rea. However, only general criminal intent is required — the law does not require specific intent. General criminal intent denotes the direction of the offender's will towards the commission of the offence with knowledge of its legally required constituent elements.

## Conclusion

The success of the investment climate has become the goal of all countries aspiring to break the cycle of underdevelopment and join the ranks of developed nations, as host countries are in urgent need of technology, expertise, and capital. These imperatives constitute a political, economic, and social challenge, and it is therefore incumbent upon the Algerian State to adapt and align its investment legislation whenever the public interest so requires.

Developed countries are convinced that IP protection enshrined in explicit legal provisions within investment law constitutes a legal guarantee that cannot be circumvented or disregarded, as it has become an important indicator of the capacity of legal systems to adapt to the requirements of globalisation and integration into the world economy. Developing countries accordingly strive to establish effective industrial and commercial property regimes in order to provide foreign investment with the appropriate and conducive environment to encourage settlement.

The President of the Republic has consistently emphasised the need to align the national legal system — and in particular the business law framework — with changing economic realities, and to harmonise the mandates of the bodies responsible for the implementation of investment law and customs services with the requirements of the global economic order. In this context, the requirements of intellectual property must be duly incorporated.

In sum, the relationship between the protection of intellectual property rights and investment requirements is clear and direct: the success of investment is contingent upon the protection of intellectual property rights, which is itself the expression of the principle of economic security and investment.



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