

The Concept of Economic Real Estate Intended for Investment Under Law 23/17

مفهوم العقار الاقتصادي الموجه للاستثمار في ظل القانون 17/23



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Abstract:

The 1989 Constitution marked a pivotal transition in the state's shift towards a market economy. This step was followed by a legislative framework sought at finding alternatives for public revenue beyond the investment sector. Real estate emerged as a key candidate, particularly in light of fluctuating oil prices and the looming threat of resource depletion. Initially, the concept of economic real estate was unclear, with legislators focusing first on establishing investment rules, defining its concept, and outlining its institutional framework. Meanwhile, ambiguity persisted regarding which properties could serve as suitable investment grounds, posing a risk to public state assets. In response to these challenges, Algerian legislators enacted Law 23/17, which primarily addresses economic real estate and is expected to represent a significant advancement in investment.

Keywords: Oil, Investment, Real estate.

الملخص :

يعد دستور سنة 1989 منعرجا حاسما في توجه الدولة نحو اقتصاد السوق ، وهي الخطوة التي تليها ترسانة تشريعية للبحث عن بدائل للخزينة العمومية خارج قطاع الاستثمار ، فكان العقار هو المرشح للعب هذا الدور خاصة مع التدبذب الذي عرفته أسعار النفط بالإضافة إلى خطر زوال هذه الثروة ولم يكن مصطلح العقار الاقتصادي واضحا في البداية إذ ركز المشرع في بادئ الأمر على ترسيخ قواعد الاستثمار بتحديد مفهومه و بيان الإطار المؤسسي له ، بينما بقي الغموض قائما بخصوص العقار الذي يمكنه أن يكون الأرضية المناسبة للاستثمار مما شكّل تهديدا على أملاك الدولة العامة . و بسبب كل هذه المعطيات و أخرى استصدر المشرع الجزائري القانون 17/23 الذي اختص بالأساس بالعقار الاقتصادي و هو ما يشكل قفزة نوعية في مجال الاستثمار .

الكلمات المفتاحية : النفط ، استثمار ، عقار اقتصادي .

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Introduction:

Real estate plays a crucial role in fulfilling sustainable development as the foundational basis for state public policies across various economic, social, and cultural fields. It offers the necessary land for establishing essential infrastructure and public facilities, supports investment, and serves as a tool for achieving stability and social peace. *Real estate* is a necessary foundation for developing various industrial, commercial, or tourist-related projects. It is regarded as a means of achieving stability, security, and social peace due to its effective role at the economic and social levels. In this regard, Algerian legislators have issued several legal texts, the most recent being Law 23/17, which provides comprehensive details on economic property as an effective tool for investment.

What is the concept adopted by the Algerian legislator for economic real estate intended for investment following Law 23/17?

To address this problem statement, we have divided the study into two main sections:

Topic One: The Legislative Concept of Economic Property Intended for Investment

Topic Two: Types of Economic Property Intended for Investment

Topic One: The Legislative Concept of Real Estate Intended for Investment

The state has placed significant importance on economic property as part of the general real estate pool to foster the investment sector and attract both foreign and domestic capital. However, its concept needed to be sufficiently defined under previous legal texts, prompting the Algerian state to establish precise mechanisms swiftly through effective legislative policy.

According to Article 4 of Law 23/17¹, certain components must be present for real estate to acquire the status of economic property.

First Requirement: It Shall Be State-Owned Property

State-owned properties² can be acquired through numerous means, including those specified in Article 26 of the National Property Law and those

¹Law No. 23/17 dated 15/11/2023, which defines the conditions and procedures for granting economic land, part of the state's private property, intended for the realization of investment projects.

²Article 18 of the 1989 Constitution created a gap in the legal system governing national properties in Algeria, as it recognized two different property regimes for the state, the province, and the municipality. The first is referred to as public national property, and the second as private national property. Article 18 states: "National properties are defined by law

outlined in Article 39, as amended and supplemented, which encompasses unclaimed properties.

In this regard, Article 24 of the Real Estate Orientation Law states that the real estate properties and rights owned by the state and its local authorities fall within the scope of national property, which includes:

- Public and private national property of the state.
- Public and private national property of the province.
- Public and private national property of the municipality.

The Algerian legislator did not provide a specific definition for the amended and supplemented National Property Law. Instead, a comparative approach was utilized to distinguish between public and private properties. It was determined that only public properties, by their nature or purpose, are not subject to private ownership. In contrast, private properties are defined by their financial and ownership functions.

This means that any property intended to fulfill public benefit falls within the category of public property. In contrast, properties that do not serve a public benefit and are characterized by financial and ownership functions are classified as private properties, governed by the rules of private law¹.

The Algerian legislator continued to utilize the same approach to distinguish between the types of national property. He added another feature to differentiate them: national public property is not subject to disposition, prescription, and seizure². In contrast, national private property is subject to disposition, prescription, and seizure.³

and consist of public properties owned by the state, province, and municipality." See: Constitution of 23/02/1989, Official Gazette No. 09, dated 01/03/1989. Refer to: Redouane Temali, "Local Communities' Properties and the Principle of Administrative Decentralization," *Al-Mufakkir Journal*, Faculty of Law and Political Sciences, Mohamed Lakhder University, Biskra, Issue 10, 2014, p. 508.

¹ Article 3 of Law 90/30, as amended and supplemented, stipulates the following:

"... Public national properties are the assets mentioned in the previous Article 2, which cannot be privately owned due to their nature or purpose. As for other national properties that are not classified as public property and serve a proprietary and financial function, they represent private national properties."

² This law introduced a change in the concept of national properties by revisiting modern theories and opinions in the domain of state or national properties. It distinguishes between public domain and private domain, while also detailing the management and administration of the state's public and private properties. See: Mohamed Maamar Kouadri, "The Evolution of the Concept of National Properties in Algerian Law," *Al-Academia Journal of Social and Human Sciences*, Hassiba Ben Bouali University, Chlef, Issue 5, 2011, p. 28.

³ Article 4 of Law 90/30, before amendment, stipulates:

However, the enactment of Law 08/14, which amended Law 90/30, completely overturned this perspective of distinguishing between public and private property. Both types of national property, public and private, are now immune to prescription and seizure, except the right of disposition¹, which is granted to private property but not to public property.

In comparison, other legal systems have clearly defined national private property. For instance, French public law defines private property in Article 12211 as follows:

"Part of the private domain are the assets of public entities mentioned in Article L1, which do not fall under the public domain as per the provisions of Title 1 of Book 1."

Similarly, Article 12212 of the same law specifies that:

"Forests and woods of public entities subject to the forest regime are part of the private domain²."

Egyptian law defines state private property in Article 970 of the Egyptian Civil Code as:

"Private assets owned by the state or public legal entities, and assets of economic units affiliated with public institutions or bodies and public sector companies, or any of these, as well as assets of charitable endowments..."

In contrast, Lebanese law describes state private property as consisting of assets belonging to several public entities that do not fit the definition of public property, which is the preparation of property for public use by the public or its allocation for the service of a public utility.

From the above, it is evident that the Algerian legislator has yet to be very successful in his attempt to define national private property. In all the mentioned provisions, there needs to be a precise definition. Instead, each definition of national private property is compared with national public property, utilizing either an exclusionary approach or a contrasting concept. Consequently, the legislator has failed to establish an independent definition of national private

"Public national properties are not subject to disposal, prescription, or seizure. The management of movable and immovable properties that fall under private national properties and their disposal are subject to this law and the provisions of applicable legislative texts."

¹ Article 4 of Law 08/14 on national properties states:

"Article 4 of Law No. 90/30 dated 01/12/1990, mentioned above, is amended and supplemented as follows: Public national properties cannot be disposed of, prescribed, or seized. Their management is subject to the provisions of this law, in accordance with the specific legislative texts. Private national properties cannot be prescribed or seized..."

² Ordinance No. 2006-460 of April 21, 2006, regarding the legislative part of the General Code of Public Property. See also: Asia Hamidouche, previously cited reference, p. 32.

property¹. This leads us to conclude that the most important distinguishing characteristic of public property from private property is its inalienability.

Several methods are followed to enrich its real estate holdings. The state may utilize general law methods such as contracts, donations, exchanges, statute limitations, and possession. Furthermore, exceptional methods like expropriation and the right of preemption² are also used.

The options are not limited to these methods; the legislator has also allowed the state to use other methods, such as transferring vacant properties, properties without owners, and estates without heirs to the state.³

Second Requirement: Acquired by the Algerian Agency for the Promotion of Investment for the Benefit of the State

This body was established under Ordinance 01/03 regarding investment development under the National Agency for Investment Promotion⁴. According to Article 16 of Investment Law 22/18⁵, it is now called the **Algerian Agency for The Promotion of Investment**. It is regarded as one of the institutions responsible for investment.

This body includes two types of windows:

- The single window for large projects and foreign investments.
- The decentralized single windows.

These windows coordinate with relevant bodies and administrations to carry out a set of tasks, including:

- Enhancing and promoting investment domestically and abroad through contact with diplomatic and consular representations.

-Managing the investor's digital platform The management of which is entrusted to the agency. This platform provides all the necessary information to activate the investment sector, such as available investment opportunities in Algeria, real estate offerings, as well as incentives and benefits associated with investment and related procedures.

What distinguishes this digital entity is that it is connected to the information systems of the bodies and administrations related to the investment process. In this regard, it removes the physical nature of all procedures and relies on the internet to carry out all investment-related processes.

¹ Asia Hamidouche, the same reference, pp. 32, 33.

² Article 26 of amended and supplemented Law 90/30, previously cited reference.

³ Article 39 of Law 90/30, as amended and supplemented, previously cited reference.

⁴ Article 6 of Ordinance 01/03 dated 20/08/2001, related to the promotion of investment, amended and supplemented by Ordinance 06/08, Official Gazette No. 47 of 2001.

⁵ Law No. 22/18 dated 24/07/2022, related to investment, Official Gazette No. 50 of 2022. Article 18 of Law 22/18, same reference.

This entity also serves as a guiding and supporting tool for investments starting from the date of their registration and throughout their operational period¹

- Registering and processing investment files.
- Assisting the investor with all procedures associated with their investment.
- Administering all investment benefits.
- Monitoring the progress of investment projects.²

Third Requirement: Shall be Capable of Receiving an Investment Project

The new Investment Law 22-18, dated July 24, 2022, opens new prospects and removes some previously posed challenges and concerns for investors, particularly foreign ones. It appears more liberal and modern than its predecessor, especially in terms of benefits, guarantees, and incentives offered to Algerian and foreign investors. It focuses on technological transfer, innovation, and the knowledge economy.

The effectiveness and success of the new investment law are primarily connected to legislators' attention to developmental investments in various domains, especially in the industrial and tourism sectors. The law focuses on areas requiring development or those with large real estate assets, allowing for considerable investments. According to Article 24 of the new Investment Law, the law classifies investments eligible for tax, quasi-tax, and customs incentives into three systems: the sectoral system, the structured investments system, and the regional system.

A- Sectoral System: The legislator discussed this term in Article 24 of Law 22-18, referring to priority sectors that can benefit from specific tax, quasi-tax, and customs incentives specified in the general law.

B—Regional System: This system pertains to areas that the state prioritizes for development and investment encouragement. Executive Decree 22-301, dated September 8, 2022, specifies the areas of special interest to the state, encompassing municipalities in the high plateaus, southern regions, and the greater south, and those requiring special development support from the state. It

¹Article 23 of Law 22/18, same reference

² Article 18 of Law 22/18, same reference.

also involves areas with natural resources that can be valorized. The annex to the decree offers a list of the municipalities concerned by this classification¹.

C- Structured Investments System: Defined in Article 15 of Executive Decree No. 22-302, dated September 8, 2022, as: "Investments with a high capacity to create wealth and generate jobs, which promote regional attractiveness and act as a beneficial force for economic activities aimed at sustainable economic, social, and regional development. These investments contribute to import substitution, export diversification, integration into global and regional value chains, and technology acquisition and performance enhancement."

The Algerian legislator recognizes that investment can take one of the following forms:

- **Creation Investment:** Investment that generates technical capital from scratch.
- **Expansion Investment:** Any investment to increase the production capacity of goods or services.
- **Rehabilitation Investment:** Includes acquiring goods or services to update existing equipment and facilities to address technological lag and equipment wear or to revive an activity that has been inactive for at least three years².

Topic Two: Types of Economic Land Allocated for Investment:

The Algerian legislator, in Article 4 of Law 23/17, excluded agricultural land under private national ownership from being categorized as economic land, limiting this classification to industrial and tourism land.

First Requirement: Industrial Land:

Land is regarded as the infrastructure and foundation for launching several economic projects, encompassing industrial ones. Every industrial or production project necessitates a land base for the establishment of an industrial or production unit. The state ensures that these lands, which contain industrial facilities, are located away from population centers due to the risks they pose to public health and the environment.

¹ Executive Decree No. 22-301, which defines the list of sites belonging to areas of special importance to the state in terms of investment, published in Official Gazette No. 60, specifies the locations that belong to these areas. These include the municipalities of the High Plateaus, the South, and the Greater South.

² Article 5 of Law 22/18, previously cited reference.

Industrial land is the space designated for industrial activities, commonly referred to by professionals in the sector as "industrial land," distinguishing it from agricultural and residential land¹.

This definition based solely on the criterion of activity, without specifying the industries it includes, such as production, processing, and display. Consequently, these activities are conducted on the industrial land allocated for them².

The Executive Decree No. 07/119, which established the National Agency for Real Estate Mediation and Regulation³, refers to industrial real estate utilizing the term "economic real estate". Notably, industrial real estate is regarded as a part of economic real estate, which includes various sectors under its umbrella.

Notably, the emergence of several legal systems similar to the concession contract for industrial land, such as the concession contract for agricultural land and the concession contract for tourism land. According to Article 4 of Law No. 10/03, which outlines the conditions and procedures for exploiting agricultural land under state-owned private property, the concession contract for agricultural land applies to agricultural land and any surface properties attached to it, under state-owned private property. The contract is signed between the state and the investor, who shall be a natural Algerian person. The contract has a duration of 40 years, renewable, in exchange for an annual fee, the terms and allocation of which are determined by the Finance Law⁴.

This contract seeks to fulfill profit while committing to maintain the agricultural character of the granted property. The contract is granted by a decision from the Directorate of State Property under the supervision and control of the National Office for Agricultural Lands, particularly if it includes

¹ Hamza Fessih, "The Legal Regulation of the Use of Industrial Land in the Investment Process," Master's thesis, Department of State and Public Institutions, Faculty of Law, University of Algiers, 2004/2005, p. 03.

² Slimane Abdelghani, "Industrial Land in Algerian Law: Between Incentives and Obstacles," *Journal of the Voice of Law*, Vol. 8, No. 01, 2021, p. 370.

³ Article 03 of Executive Decree No. 07/119 dated 23/04/2007, establishing the National Agency for Land Mediation and Regulation, and defining its basic law, amended and supplemented, Official Gazette No. 27, issued on 25/04/2007, amended and supplemented by Executive Decree No. 12/126 dated 19/03/2012, Official Gazette No. 17, issued on 25/03/2012.

⁴ Djilali Belhadj, "The Agricultural Concession Contract in Algerian Legislation," Doctoral thesis in Law, Faculty of Law and Political Science, University of Tizi Ouzou, 2021, p. 17.

converting a permanent usufruct right into a concession right¹. In contrast, the decision to grant an industrial property concession involves multiple authorities due to frequent changes and amendments to its legal system. However, the authority to grant industrial property concessions has recently been consolidated with the governor according to the latest amendments.

As for the tourism property concession, the legislator has allowed the exploitation of lands situated within tourist expansion areas through a concession agreement, which applies to the investment project site. The concession is renewable and granted for 20 years², whether the land is private state property or public state property. Decree No. 08/04 confirmed the investor's right to usufruct. At the same time, the ownership remains with the state, adopting a non-transferable concession system to prevent encroachments on state property and focusing on renewable financial resources resulting from the possibility of renewing the concession.

Second Requirement: Tourism Property

There is no specific definition of tourism property in the relevant legal texts. Under Decree No. 66-75, which applies Ordinance No. 66-62³ related to tourist areas and sites, particularly Article 13, the legislator only mentioned the real estate rights within tourist areas and sites, defining the composition of tourism property without providing a definition. During this period, Law No. 90-25⁴ regarding land use emerged as a primary reference for all real estate matters, regardless of its classification, which only referred to protected areas and sites in Article 05.

Tourism property does not deviate from the general real estate concept. It does not have inherent uniqueness but is associated with the tourism field. The term "tourism property" consists of two terms: "real estate," defined in Article

¹ See Article 9 of Law No. 10/03 dated 15/08/2010, which defines the conditions and procedures for the exploitation of agricultural lands belonging to the state's private properties, Official Gazette No. 46, issued on 18/08/2010.

² Ilham Baabaa, "The Legal System of Tourist Property in Algerian Legislation," Doctoral thesis in Property Law, Faculty of Law and Administrative Sciences, University of Constantine 1, 2018/2019, p. 363.

³ Ordinance 66/62 dated 26/03/1962, related to tourist sites and areas, Official Gazette No. 28 of 1962.

⁴ Law 90/25 dated November 18, 1990, concerning land guidance, Official Gazette No. 49, dated November 18, 1990, amended and supplemented by Ordinance 95/26 dated December 25, 1995, Official Gazette No. 55, dated September 27, 1995.

683¹ of the Civil Code as "anything that is fixed in its place and cannot be moved without damage," and "tourism," which refers to the lawful movement of individuals to places other than their permanent residence for not less than 24 hours and not more than a year for any purpose, with its economic, social, cultural, civilizational, and media impacts, etc.

Therefore, by combining the terms, a tourism property can be defined as a "real estate property" that includes and is associated with tourism activities attracting tourists. It is defined according to its purpose, referring to real estate classified by legal texts as having a tourism character, granting its owner the right to use it for tourism purposes in accordance with the regulations governing the tourism sector.

Tourism purposes include various goals that align with the type of property required to fulfill them. Law No. 03-01², related to the sustainable development of tourism, defines several tourism-related terms and types as follows:

Cultural Tourism: Any recreational activity where the primary motivation is pursuing knowledge and experiences by discovering architectural heritage such as cities, villages, historical landmarks, parks, and religious buildings, or spiritual heritage such as traditional festivals and national or local traditions.

Business and Conference Tourism: Any temporary stay by individuals away from their homes, mainly during weekdays, for professional reasons.

Thermal and Marine Water Therapy Tourism: Any travel for therapeutic purposes utilizing high-value thermal spring waters or seawater. It benefits clients who require treatment in an environment equipped with therapeutic, recreational, and entertainment facilities.

Desert Tourism: Any tourist stays in a desert environment that leverages several natural, historical, and cultural assets, complemented by activities related to this environment, such as leisure, entertainment, and exploration.

Thermal Marine Tourism: Any tourist stays at the seaside where tourists enjoy marine leisure activities and other activities related to the marine environment.

¹ Ordinance No. 75/58 dated September 26, 1975, containing the Civil Code, Official Gazette No. 78, dated September 30, 1975, amended by Law No. 88-14 dated 03/05/1988, Official Gazette No. 18, dated May 4, 1988.

² Law No. 03-01 dated 17/02/2003, concerning the sustainable development of tourism, Official Gazette No. 11 of 2003.

Conclusion:

Undoubtedly, the Algerian state has recently taken significant steps to enhance investment by clearly defining the concept of economic property intended for investment through explicit legislative texts. This effort seeks to fulfill the state's objectives of developing alternatives to investment outside the hydrocarbon sector by utilizing economic property. Furthermore, it is now possible to provide better protection for public state property that is not designated for investment.

However, to ensure the effectiveness of Law 23/17, the following recommendations should be considered:

- Complete the cleansing of property ownership to offer clear, dispute-free property.
- Expand the economic property portfolio through an inventory of state-private property.
- Expedite the issuance of the referenced regulatory texts.
- Work on digitizing economic property management to align with global developments and fulfill greater economic efficiency.

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