



Algeria's New Investment Legal Framework: Procedural Improvements and Traits of Modernization

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Received :29/01/2024

Accepted :19/06/2024

Abstract

The 22-18 Investment Law, promptly followed by a cluster of regulations, marked an important milestone in efforts to provide a safer and more consistent regulatory environment for foreign and domestic investments in Algeria.

In a view to facilitate investment launching and FDI relocation, the Algerian government inserted profound amendments to improve legal certainty, assert guarantees, and alleviate burdensome restrictions. Furthermore, the newly enacted Law created The Investor's Digital Platform to accelerate due procedures, as it enshrined provisions to incentivize investments in technology transfer, innovation, and knowledge-based economy among others.

This paper presents an attempt to depict improvements and traits of modernization provided in the Law thereof, as it traces the Algerian government's efforts to recover from the politico-economic crisis in the aftermath of 2019, marking the beginning of a new era.

Keywords: Investment, Law N° 22-18, AIPA, FDI, the Investment Climate, Digitalization, Incentives, Legal Certainty.

INTRODUCTION

The legal framework plays a crucial role in shaping the trajectory of investment from the launch of the investment right through to the end of the project. Hence, consistency and effectiveness in such a regime can guarantee the prosperity of investments, and a business-friendly climate may be created with the ability to attract and incentivize domestic and international investments. However, if the regime thereof is complex and lacks effectiveness this may discourage investors and even dissuade them from investing.

Nowadays, developing countries have become increasingly convinced about the high value that investment might bring to their economies, especially those involving Foreign Direct Investments. In effect, FDIs' presence in any country is deemed notoriously important to create job opportunities, transfer technology, and foster growth and development objectives over the medium to the long term. Thus, many developing countries like Algeria are working painstakingly on their investment legal framework to facilitate investment-related procedures and respond appropriately to investment exigencies.

The aftermath of the 2019 popular movement “Al Hirak” and of the subsequent regime change in Algeria, during which numerous large foreign project demands were disrupted, prompted the newly installed government to take steps to reposition Algeria as a safe investment destination.

Furthermore, the latter government had to deal with the COVID-19 pandemic's negative repercussions to reinvigorate the economic situation.

To respond to the pressing need to send a positive signal to both prospective and already established investors. The government introduced many substantial amendments and submitted a new investment Bill to the parliament which was adopted and promulgated in 2022. The purpose of the in-depth revision of the text was to attract new investments to Algeria through more generous incentives and stronger guarantees, along with a streamlining of administrative obstacles and procedures.

Against this backdrop, this paper highlights the Algerian Investment Legal Framework enacted in the 22-18 Investment Law, plus the government's efforts since 2020 to adjust institutions, and amend laws, regulations, and investment-related procedures.

The importance of the subject:

This study is justified because it deals with the 22-18 Investment Law, a Law introduced following a delicate politico-economic situation in Algeria. It highlights all

newly introduced legal, regulatory, and institutional amendments, and points out every legal and procedural improvement.

The paper provides a resource for investors, lawyers, and academics interested in investment legal frameworks in Algeria. Moreover, it might be amongst the early ones that treat the Law thereof in the English language, having in view the need to unpack Algeria's investment legal framework to English-speaking readers.

The research problem:

What improvements did the 22-18 Investment Law bring to foster investment-related rules and procedures in Algeria?

The paper provides an analytical reading of the 22-18 Investment Law, with a time-to-time comparison with successive legal provisions issued under previous investments-related laws, laws of finance, supplemental laws of finance etc, aiming at disclosing improvements and traits of modernization.

The study consists of an introduction, two sections on procedural and legal improvements, and a conclusion. Section 01 illustrates how the newly enacted Law heads toward digitization and aligning with investors' perspectives. Section 02 delves into laws, and regulations, as it outlines guarantees, benefits, and certainty offered to investors. The paper concludes with the results obtained and some suggestions, aiming at addressing implementing related deficiencies in some of the new Law provisions.

1. Section one: Investment Process: Towards Digitalization and Reaching Investors

Encouraging digitalization is the motto of the new government led by the Algerian President Mr. Abdelmadjid Tebboune. On many occasions, while addressing media outlets the President emphasized the necessity to push towards an intensive use of technology, believing that would curb corruption and foster new opportunities for growth for youth and future generations.

In alignment with the government policy, the Ministry of Higher Education declared the year 2023 the year of AI in Algeria, aiming to promote AI training in different scientific institutions and integrate it into training offers and scientific research.

The Algerian government has adopted a series of legal measures to promote innovation, technology transfer, e-commerce, and online payment, including providing tax incentives and supporting E-commerce platforms creation based on many Laws, such as Law N°18-05 relating to E-commerce, and Law N° 22-18 Relating to Investment.

This paper focuses on measures introduced within the new Investment Law N° 22-18. Its purpose is to disclose provisions dedicated to alleviating the bureaucratic burden and lengthy procedures concerning investment.

Through the Law thereof, the government set up a new digital instrument, institutions, and reforms to tax incentives regimes, aiming at bringing the administration closer to investors.

All those elements are thoroughly explained in the next subsections.

1.1 Encouraging Digital Transformation and Innovation

For a long time, Algeria's Digital performance depicted in many international reports has been below the global averageⁱ.

This was partially the reason behind the length of the whole process relative to launching business and investment in Algeria as portrayed in the WBG for 2020 relating to Doing Businessⁱⁱ.

In 2022, the new legislation set up a cluster of objectives to promote investments which include, inter-alia, projects that foster technology transfer, innovation, and a knowledge-based economy, in addition to projects that spread the use of new technologies. Additionally, a digital platform was created to sustain the government policy aiming at preparing an attractive investment climate.

1.1.1 Introducing the Investor's Digital Platform

The Digital Platform is deemed to be a quantum leap introduced in the recent Law N° 22-18 relating to Investments. Nowadays, accelerating and streamlining procedural and administrative processes relative to investment in Algeria is highly important, therefore, the new government has been seriously engaged in dematerializing different administrative procedures to reach this objective.

In the last decades, Algeria's digital performance depicted in many international reports was below the global average, this has undoubtedly impacted the whole process relative to launching business and investment.

The Digital Platform introduced by the Algerian Investment Promotion Agency (AIPA) is unprecedented, it is an electronic tool for guidance, assistance, and follow-up of investments as well, it accompanies projects from their registration through to the operation phase (Art. 27, Exc. Decree N° 22-298 setting up the organization and functioning of AIPA).

AIPA digitalizes due process and provides access to all necessary documents required to get the registration certificate. In other words, It provides investors with an overall view of the necessary steps to register and launch their investments.

The platform is interconnected to an inner system of all administrative entities involved in the investment process. The system is supposed to enhance the internal

functioning of public services involved in the investment process by making them available, efficient, and able to deliver quality service.

Investors worldwide planning to invest in Algeria can subscribe via the Investor's Digital Platform and find all needed information and documents relative to their investments.

1.1.2 Encouraging Technology Transfer, Innovation and Knowledge-based Economy:

The new legislation especially Law No 22-18 relating to Investment set up a cluster of objectives to promote investments which include inter-alia projects that foster technology transfer, innovation, and a knowledge-based economy, in addition to projects that foster the use of new technologies.

In the same context, article 04 of law 18-05 concerning E-commerce highlighted that investments destined to facilitate E-commerce activities would be eligible for incentive measures.

Investments that foster Innovation, a knowledge-based economy, and technology transfer are eligible for the "Sectors Scheme" and therefore benefit from tax incentives as defined in the 22-18 Investment Law.

Furthermore, the acquisition of technology and know-how is taken into account to establish the "Evaluation Grid" (art. 20 and 21 of Exc. decree N° 22-302), which is an unprecedented tool introduced to define the length of periods to benefit from the granted advantages as part of the operating phase. In other words, it is deemed to be a weighting factor if a project entails technological contributions within its operation phase, that grant extensions of the advantage periods.

On top of that, Investments with high potential jobs and wealth creation, or as defined in the Law thereof, as " Structuring Investments"ⁱⁱⁱ, are granted as well extensions of periods during which they might benefit from incentives if they entail projects that contribute inter-alia to the acquisition of technology and know-how.

To sum up, those elements provide an obvious insight that the Algerian government is encouraging innovation and transformation toward a technological and knowledge-based economy.

1.2 Reshaping the Incentive Regimes and introducing the "Evaluation Grid"

Until the enactment of the 22-18 Investment Law, the Algerian investment laws have often used dual incentive regimes to provide tax and financial incentives, Although, designations within successive laws differed they revolved around the same logic which provided general advantages and particular ones.

The new investment law reshaped the incentive regimes and introduced a new division based on sectors, zones, and structuring investments, each benefiting from a specific scheme.

The new law provisions related to tax and financial incentives are more accurate and detailed.

It also introduced a new tool called “ the Evaluation Grid” to assess investments and define which ones merit the most to obtain extended periods of incentives during their exploitation phase.

1.2.1 Reshuffling the Incentive Regimes:

The new investment law repealed the old incentives based on three categories namely: common, additional, and exceptional incentives (Art. 07 Law 16-09 relating to Investment Promotion).

Such a division had led to complex schemes and over time investment officers had encountered a real challenge to select the appropriate regime. For instance, the regime of exceptional incentives that is specific to major projects holding special interest to the national economy did not mention any criteria to define such kind of projects. Adding to that, the fact that these projects must be approved by the National Investment Council (CNI^{iv}), considered to be a political body, exposed such investments to complex procedures. Moreover, the “ special interest” sectors had never been specified.

The new Investment Law N° 22-18 kept division under three parts but altered the whole logic and content as follows:

- Sectors Regime: referred to as the incentive scheme for “ priority sectors”,
- Zones Regime: referred to as the Zones Scheme which is the incentive scheme for zones the state pays particular attention,
- Structuring Regime: referred to the structuring of investment schemes, which is the incentive scheme for investments with a structuring nature.

The investor can benefit only from one of the incentive schemes.

1.2.2 Incentive periods and “the Evaluation Grid”: For a fairer treatment

Investments pass through two phases, realization, and exploitation (operation). The first phase starts from the date the investor registers his or her investment with the AIPA and receives a certificate of registering, or from the date of the building permit delivery if required.

Taking into account exemption periods from land taxes related to real estate properties, each phase is given a limited time during which registered investments enjoy incentives.

The realization phase concerning “ the Sectors Regime” shall be performed within a deadline of no more than three (03) years and could be extended to (02) two extra years.

The deadline for realization concerning “the Zones Regime” and “the Structuring Regime” is set at five (05) years and may be extended to (02) two extra years.

To benefit from deadline extensions during the realization phase, investors should provide proof of progress as defined by the Agency (Art. 32 of the 22-18 Law relating to Investment).

The outset of the exploitation phase starts with the establishment of a “Fact-finding Report” on the entry into operation made by the concerned One-stop Shop (Art. 04 Exc. Decree No° 22-302, of Sep. ^{8th} 2022 setting up the qualifying criteria for structuring investments, the modalities for benefiting from the operating advantages and evaluation grid).

The deadline for the exploitation phases depends on an evaluation grid that takes into consideration the objectives defined in art. 02 of the 22-18 Law relating to Investment, namely:

- Enhancing the creation of durable jobs and building human resources capacity,
- Upgrading the local natural resources and raw materials,
- Strengthening and enhancing the competitiveness of the national economy, and its export capacity as well,
- Fostering technological transfer and developing innovation and a knowledge-based economy.

The newly introduced “Evaluation Grid” is based on assessment criteria that take into account precise marks and weighing factors to define fair eligibility for phases’ extension. Such a tool brought an important change in how to evaluate projects and orient incentives towards projects that align with the State policy. This method aims at the end to extend exploitation periods during which tax incentives are provided, and foster projects that merit to be enhanced the most.

1.3 The new institutional framework

Investments-related institutions experienced a great deal of difficulties since 2009, a time during which many amendments were brought imposing restrictions, such as those related to the investment decision-making authority that was transferred to the central public authority; such as the National Investment Council and the Council of Ministers.

Hence, attributions possessed by the Previous agency (ANDI^v) did not permit an effective role, as it lacked prerogatives while dealing with major investments.

Nowadays, thanks to law 22-18, the previous Agency becomes AIPA, it retrieves its prerogatives and regains the initial role toward all sorts of investments via its two bodies (the two One-stop Shops) dedicated to domestic and international investments.

In the perspective of responding proactively to investor’s appeals, another institution was established so called the High National Commission for Appeals (HNC), it is placed under the Presidency of the Republic as it gathers members from different judicial bodies.

1.3.1 Establishing the Algerian Investment Promotion Agency (AIPA)

AIPA is the primary Algerian government Agency, provided with a legal entity and financial autonomy, the Agency acts under the supervision of the Prime Minister. Its mission consists of recruiting and retaining investments through facilitation, assistance, and promoting investment opportunities. AIPA runs branches in Algeria's different wilayas (departments) which are tasked with facilitating business registration, tax payments, and other administrative procedures.

The restructuring of the previous Agency known as ANDI by the AIPA aims to reinforce the effectiveness of its role and widen the scope of its attributions, especially in decision-making related to foreign and major projects.

Under earlier legislation, the Agency included a unique shop that handled both national and foreign investments. While investments estimated at five hundred million AD (500.000.000 AD) or more were handled by the Investment National Council; this threshold evolved through legislation amendment until the 2022 Investment Law enactment, from that moment onwards, major projects and foreign investments were all handled by the newly established institution called the One-stop Shop for Major Projects and Foreign Investments.

The Decentralized One-Stop Shops were kept as having a domestic competence for the investments other than those depending on the One-Stop Shops for Major Projects and Foreign Investments.

The One-Stop Shop for Major Projects and Foreign Investments is established under the AIPA and possesses national competence.

Both One-Stop Shops' mission is to serve as the counterpart of the investor. In this regard, they are particularly responsible for:

- Reception of investors,
- Registration of investments;
- Management and follow-up of investment applications;
- Support for investors with the administrations and entities concerned.

In addition to the staff of the Agency, both the One-Shop for Major Projects and Foreign Investments and the Decentralized One-Stop Shop gather the representatives of:

- Tax Authority Administration;
- Customs Administration;
- National Center for Trade Registry;
- Urban Planning Services;
- Entities in charge of investment-oriented land;
- Environment Services;
- Labour and Employment Entities;
- Social Insurance Funds for Salaried and self-employed workers.

Other investment-related administrations and entities could be involved where appropriate.

All documents delivered by the administrations and Entities' representatives, at the single window, are enforceable to the administrations and entities concerned.

The One-Stop Shop for Major Projects and Foreign Investments is among AIPA's bodies. It is situated within the new headquarters of the Agency in Dar El Beïda in Algiers; the capital city of Algeria and is about 2.4 miles from Algiers' international airport.

1.3.2 Curtailing the National Investment Council's prerogatives

The National Investment Council (CNI) enjoyed a large variety of prerogatives under the previous regulations which included both strategic and managing roles (Exec. Dec No 06-355), the Council was created under Law N° 01-03 relating to Investment Promotion amended and completed (Official Gazette, N° 47).

The Council was capacitated with the ability to assess and validate investments equal to or more than five billion AD (5.000.000.000 AD)^{vi}, in addition to projects that are important to the national economy. Furthermore, the Council possessed the power to provide approvals to permit the launching of those projects which required a "preliminary study" (Art. 58 of Supplementary Finance Law for 2009).

Its capacity to make decisions was often seen as inappropriate and a real challenge to investors, as it usually took a long time, owing to its composition and way of functioning; for example, the Council meets every three months to make relevant decisions (Art. 05 of Exec. Dec. No 06-355), while such decisions should be taken promptly and without delay by a body with a managing role like the Agency (AIPA). Many authors who criticized the rendering of the Council, since its inception, put forward impediments linked to its political nature, as they describe it as a non-transparent mechanism that could be subject to capture by vested interests. (Algeria-United Department of State, 2022 Investment Climate Statements: Algeria, p. 06)

In practice, the Council was able to make decisions related to many aspects of the investments especially towards FDI, which were supposed to submit their demands and wait for approvals (Art. 06, Exec. Dec. No 06-355).

Due to the delicate political situation during the popular movement "AL HIRAK" in 2019, the operations of the Council were temporarily suspended pending review by the former Ministry of Industry, and in November 2021 the Prime Minister reported that almost 2500 projects were awaiting validation from the Council once it resumes activities (Algeria- United Department of State, Idem, p. 06).

While under the new Investment Law N° 22-18 (Art. 04, Exec. Dec. 22-297), all management attributions related to investment whether local or foreign were annexed to the AIPA's One-Stop Shop for Major Projects and Foreign Investments.

The National Investment Council lost this technical role but preserved a strategic mission that aligned with its political nature. Therefore, its mission became restricted and centered upon issuing opinions and recommendations tied to the State's investment strategy aiming at ensuring its overall coherence and evaluating its implementation as well.

Another important role the Council is endowed with under the new regulations is drawing up an annual assessment report and submitting it to the President of the Republic (Art. 02, Exec. Dec. N° 22-297).

1.3.3 Establishing the High National Commission for Appeals in charge of quasi-judicial and consultancy missions:

The High National Commission (HNC) was established by article 11 of the 22-18 Investment Law and regulated by the Presidential Decree N° 22-296, one of the implementing texts of the latter Law. The Presidential Decree thereof restructured the Appeal Commission created for the first time in 2006^{vii}.

The main mission of the HNC is to rule on the appeals filed by the investors considering themselves wronged about the implementation of the relevant investment laws provisions, especially, disputes tied to the following cases:

- Withdrawal or refusal of granting benefits;
- Refusal to deliver decisions, documents, and permits by the administrations and entities concerned.

Formerly, the Commission worked under both repealed Executive Decrees above, under the authority of the Investment Ministry and gathered several ministries' representatives, like Finance, Interior, and Justice, plus representatives of both the ministry concerned with the appeal and the National Agency for Investment Development (ANDI). Additionally, the Commission president might recourse to experts to assist the Commission in accomplishing its missions. While in the Presidential Decree, N° 22-296 the composition of HNC utterly changed, nowadays, it is placed within the Presidency of the Republic and it handles more attributions with members from judicial bodies and experts on economics and finance.

The chairmanship of the HNC is occupied by the representative of the Presidency of the Republic, while judges and experts replace the earlier representatives who did not enjoy any judicial quality, the new representatives are:

- A judge of the Supreme Court,
- A judge of the Conseil of State,
- A judge of the Audit Court,
- Three (03) independent economic and financial experts.

Procedures and deadlines: contrary to both repealed Executive Decrees, the Presidential Decree N° 22- 296 binds the investor to submit a prior claim before AIPA, in person or via the Investor's Digital Platform, within one month, from the date of the notification of the contested decision.

The Agency CEO shall rule on the prior claim within a term of no more than fifteen (15) days from his receipt of the forwarded claim. Under the previous Executive Decree, the investor could not submit his or her claim before the Agency CEO and had sixty (60) days to submit his or her claim to the Commission from the day he received the contested decision.

After the date of receipt of the decision of the AIPA, the investor shall appeal to the HNC within fifteen (15) days,

Subsequently, the HNC shall decide on it within no more than one month, from the date of its referral.

Art .11 of the Presidential Decree N° 22- 296 reduced the time, during which the administration concerned with the appeal should respond to the HNC to ten (10) days while under the previous Executive Decrees, it took fifteen (15) days.

For the first time, the Algerian legislator vested the HNC with the power of access to the administrative documents relating to the investment projects in dispute. Additionally, the HNC convenes both parties or their representatives to be heard, while under the previous Executive Decrees had to convene only the investor, which demonstrates the quasi-judicial attributes the HNC enjoys.

The HNC meets whenever necessary. Its appeals' decisions shall not exceed one month from the date of referral without being addressed.

It deliberates validly only in the presence of at least (2/3) of its members. Its decisions are adopted by the majority of the present members' votes, in the case of tie voices, the chairperson has the casting vote.

Art. 13 binds the HNC to notify its decision to the parties concerned, by any means, within a period not exceeding eight (08) days from the date of its pronouncement. Meanwhile, investors will be able to contest the HNC's decision before the competent judiciary.

Providing the Presidency with Consultancies: in addition to its quasi-judicial role the HNC holds a consulting role, as it submits a half-yearly report on its activity and on the recurring problems investments are facing and provides recommendations, where appropriate, to the Presidency of the Republic intending to address them.

2. Section II: Reinforcing guarantees, advantages, and legal certainty

The 22-18 Investment Law aligns obviously with article 61 provision of the 2020 Algerian constitution that asserted the freedom of trade, investment, and entrepreneurship, hence such freedom is deemed to be among the fundamental liberties consecrated within the Algerian Constitution. On this basis, the new Investment Law enshrines in article 03 the following three principles; freedom to invest, transparency, and equality for all persons whether natural or legal, national or foreign, resident or non-resident.

While earlier, many provisions; particularly those of the 2009 SFL, inserted several restrictions on the liberty of investment and discriminated against foreign investments.

The legislation enacted since President Tebboune came to power introduced radical changes. These amendments redressed many measures, alleviated previous restrictions, and reinforced guarantees and legal certainty to investors as it put foreign investors on an equal footing with the national ones, except for some sectors as highlighted in the second subsection.

The first subsection is dedicated to portraying guarantees and tax incentives introduced in the 22-18 Investment Law, while the second subsection focuses on considering legal certainty under the new provisions brought by the new Investment Law.

2.1 Guarantees and Incentives

Guarantees and incentives marked a significant improvement within the new Investment Law. The provided guarantees amounted to six elements. The new Law embodies the same principle enacted in the 01-03 Law relating to Investment Promotion in which foreign investors were treated on an equal footing with national ones^{viii}. The 22-18 Law pointed out explicitly this time the liberty to invest and the principle of equal treatment before all investors whether nationals or foreigners.

Tax and financial Incentives introduced in the new Law did not change in their substance but utterly morphed in their form. A lot of provisions provided within the previous Law N° 16-09 relating to Investment Promotion were kept, however, the amendments targeted different phases of projects as it added more criteria and conditions to encourage eligible investments and foster sectors and regions where incentives are needed the most as pointed out in the Subsection 2 above.

2.1.1 Widening the scope of the guarantees

The law N° 22-18 maintained some of the guarantees which existed in the previous law N° 16-09 and brought some modifications, while for foreign investments, it provided them with the same rights as nationals. Henceforth, nationals and foreigners are equally treated, except for some elements that are pointed out next.

Those guarantees are enshrined in Chapter 02 of the above-mentioned Law and are amounted to six components:

- Benefiting from lands that fall under the private real estate of the state: this provision was not mentioned in the previous investment laws, hence, several business owners have reported significant difficulty in obtaining land from the government to develop new industrial activities^{ix}, which often required recourse to several legal texts to extract such provisions, even though so far industrial land legal texts are considered by many keen analysts as holding variable and scattered texts that could ruin legal certainty and deter foreign investments from investing in Algeria

(ZOUAÏMIA Rachid, "In search of the legal security of foreign investments").

It is worth noticing that information relative to land availability is supposed to be shared through the Investor's Digital Platform as stated in the art. 23 of the same Law,

however, until now, lands dedicated to investments under AIPA have not been published yet within the Platform.

- **Guaranteeing money transfer:** it is important to point out the fact that the new Law maintains the same provisions about money transfer guarantee introduced initially in Law N° 16-09.

The investment performed from the capital contribution in cash imported through legal bank channels^x that amounted to 25%^{xi} or more of the total investment cost is entitled to benefit from the guarantee of the invested capital transfer and the resulting income. The transfer guarantee and the minimal thresholds mentioned above are also applied to the contribution in kind of an external origin, following an assessment.^{xii}

The same transfer guarantee applies to the actual net proceeds resulting from the sale and liquidation of investments of foreign origin even if their amount is higher than the initially invested capital.

If the investment fails to meet 25% of the total investment cost which is the threshold required, it would be deprived of the transfer guarantee provided for in the art. 08 of the above-mentioned law, however, does not constitute an obstacle to benefitting from the advantages.

- **Exemption from trade and bank domiciliation:** This guarantee exempts foreign contributions in kind exclusively involved in the activities of relocation operations from abroad, in addition to new properties that constitute an external contribution in kind. Such measures were introduced to simplify and accelerate procedures relative to activities relocation to Algeria.

- **Enframing expropriation by the rule of law:** as enshrined within the previous investment laws, an investment can not be subject to administrative requisition only in cases provided by law, in such cases it accords the right to a fair and equitable compensation according to the legislation in force.

- **Guaranteeing the protection of Intellectual Property Rights:** even if such rights are legally protected in Algeria, nonetheless, it is the first time that the Algerian government introduced IPR within the investment law, which means that it accords specific importance to IPR and reaffirms its alignment with international conventions Algeria is part of. Furthermore, Algeria has its national laws protecting IPR such as the ordinance N° 03-05 relative to Copy Rights and Neighbouring Rights, and the ordinance N° 03-07 relative to Patents, etc. In late 2020, an Algerian court ruled in favor of a US pharmaceutical company in the first case of alleged patent infringement by a local. Representatives of U.S. companies operating in Algeria reported that Algeria laws in IPR were satisfactory, whether in terms of the scope of what they cover and the penalties they mandate for violations (Algeria- United Department of State, Idem, p 16).

- **Dispute settlement:** the new Law established a new body under the Presidency of the Republic authority, known as “ the High National Commission for Appeals”^{xiii}.

However, investors could choose to go through the administrative appeal to the HNC or choose the judicial course.

Additionally, the Investment Law N° 22-18 reaffirms investors' right to institute before international arbitrations, as Algeria is a signatory of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention) and the Convention on the International Center for the Settlement Disputes (ICSID Convention), furthermore, the Algerian Code of Civil and Administrative Procedures^{xiv} allows both private and public sector companies full recourse to international arbitration as it permits the inclusion of international clauses in contracts.

2.1.2 Tax and financial Incentives in different investments' phases :

Investors shall register their projects with the competent One-stop Shop to benefit from incentives provided by the investment law. The date of registration shall precede the project launching, as mentioned in art. 25 of the 22-18 Law relating to Investment. The registration is materialized by an immediate delivery of a certificate including a list of goods and services^{xv} eligible for tax incentives.

Tax incentives enacted within the 2022 investment law are added to those provided in common law.

2.1.2.1 Incentives provided for the Sector Regime:

Activities that are eligible for the "Sectors Scheme" are those performed in the following sectors:

- Mines and quarries,
- Agriculture, aquaculture, and fishing,
- Industry, agro-business industry, pharmaceuticals and petrochemicals industry,
- Services and tourism,
- New energies and renewable,
- Knowledge-based economy, information and communication technologies (ICT).

During the realization phase: benefits are enacted in art. 27 of the new Investment Law as follows:

- 1) exemption from customs duties on imported goods directly involved in the investment implementation;
- 2) exemption from VAT on goods and services imported or acquired locally, directly involved into the investment implementation;
- 3) exemption from transfer tax, against payment, and land registration tax, on all property acquisitions made within the framework of the concerned investment;
- 4) exemption from required registration fees on acts of corporation and capital increases;
- 5) exemption from registration fees, land advertising tax as well as the State-owned property remuneration on built and non-built properties concessions, granted for investment projects implementation;
- 6) exemption from land tax on "Real Estate Properties", within the framework of the investment, for ten (10) years, from the acquisition date.

Benefits during the Operation phase:

for a period from three (03) to five (05) years, from the date of starting operation, of:

- Exemption from Tax on companies' profits (IBS)^{xvi};
- Exemption from the tax on the turnover (TAP)^{xvii};

2.1.2.2 Incentives provided for the “Zones Scheme” investments:

Are eligible to the “Zone Scheme”, investments performed in :

- Localities in the Highlands, the South, and the Great South,
- Localities whose development requires special support from the State,
- Localities with natural resource potential to be developed.

The list of localities depending on zones to which the State attributes a particular interest is set up in the Executive Decree N° 22- 301 of Sep. 8th, 2022, Setting up the list of localities depending on the areas to which the State pays particular attention.

Investments entitled to the “Zones Scheme” benefit from the following incentives:

During the realization period: incentives enshrined in article 27 of the 22-18 Investment Law.

During the operation period: for a period ranging from five (05) to ten (10) years, from the date of starting operation, of:

- Exemption from companies profits tax (IBS),
- Exemption from the tax on the turnover (TAP).

2.1.2.3 Incentives provided for the “Structuring Investments Scheme”:

Investments eligible for the “Structuring Investments Regime” may benefit, from:

During the realization period: the incentives provided in article 27 of the Law thereof.

The realization phase's incentives provided for “Structuring Investments” may be transferred to the contractors of the beneficiary investor responsible for implementing the investment, on behalf of the latter.

During the operation phase: for a period ranging from five (05) to ten (10) years, from the date of starting operation, of:

- Exemption from companies profits tax (IBS);
- Exemption from the tax on the turnover (TAP).

Structuring investments can benefit from the support of the State by taking charge, whether partially or fully, of infrastructure's works necessary for their realization, based on an agreement established between the investor and the Agency acting on behalf of the State.

The agreement is concluded after its approval by the Government.

The period of the tax benefits, during the operating phase is decided based on “the Evaluation Grid” as explained in sub-section 2 of the first section.

2.2 The 22-18 Investment Law: To Recover Legal Certainty?

Legal certainty requires a balance between stability and flexibility, as it should provide investors with predictability, especially for investors who seek to relocate their investments and look for a long-term presence in any chosen territory. In Algeria, other legal factors might engender ambiguity stemming from the fact that legal texts on investment are scattered and usually stem from different sources, like laws of finance,

SFL, laws of investment, etc, in addition, to numerous institutions involved in the process.

After more than a decade of drifting^{xviii} from some guarantees enacted in 01-03 Law relative to Investment Promotion through implementing discriminatory measures against foreign investors,^{xix} the Algerian government has been introducing a cluster of amendments that alleviated restrictions and reinstated equal treatment before investors. Some sectors are excluded as enacted within the 2020 SFL and Executive Decree N° 21-145 which defined activities holding a strategic character.

2.2.1 Industrial Land... marked instability for decades:

Legal texts framing Industrial Land dedicated to investment in Algeria have been considered to be the most intricate and unpredictable for decades.

Undoubtedly, skepticism had been raised due to such constant instability that affected legislation, regulations, institutions, and agencies^{xx} involved in managing private properties of the State.

Even though Algeria possesses large swaths capable of boosting its socio-economic development, land management and its mode of transfer have long been a real obstacle for investors. This is so paradoxical to notice (KHOUADJIA Samiha Hanene, Industrial Land In Algeria).

One of the most salient modifications was brought within 2006 notable Ordinance N° 06-11 relative to conditions and modalities of concession and land transfer falling within the private domain of the State dedicated to the realization of investment projects^{xxi}. In addition to clarity and harmony enshrined in the 2006 Ordinance, it kept land transfer as a mode to access Industrial Lands subject to certain conditions, it also delimited the number of institutions involved in these operations^{xxii}.

Many implementing texts were adopted afterward but did not last long and were all repealed following the 2008 Ordinance issuance which abrogated land transfer and kept land concession^{xxiii} as an exclusive way to access private real estate of the State^{xxiv}.

Such an amendment was duly justified by the General Director of domains who declared at that time to some national newspapers. The General Director stated that consecrating concession as being the only modality aims to preserve an important component of the national domains from waste and speculation. Due to the fact that private real estate of the State is deemed to be a non-renewable heritage of the nation, the response of the minister was well-founded. (AKRON Y. The Industrial Land In Algeria: Localization and Mode of Access).

At the same time, it is worth noticing that legal modalities of land concession in the 2008 Ordinance kept the same ancient modalities that are “public auction” -as the main

rule- and “mutual agreement”. However, it included “specifications” in both modalities and introduced “restrained” and “opened public auction”.

“Public auctions” as the main rule are authorized under the 08-04 Ordinance by an order issued exclusively by one of the following ministers: the Tourism Minister, the Industry Minister, the Investment Promotion Minister, and the Minister in charge of Territory Planning (Art. 04 of the Ordinance 08-04), or by the Wali (Governor).

While “mutual agreements” are permitted by way of derogation, they are only authorized by the Council of Ministers with the proposition of the CNI, under certain conditions.^{xxv}

In 2011, 2013, and 2015, several amendments took place, bringing profound modifications to Industrial Lands' legal framework. First, in 2011, the Supplemental Law of Finance annulled recourse to “public auctions” and kept “mutual agreements” based upon “specifications” as the only way to obtain concessions^{xxvi}. Another new provision enshrined in the same SFL put the authorization concessions' decision power in the Walis' hands -who have territorial jurisdiction-; on the proposal of one of the following organisms: the CALPIREF, the managing body of the new city, or following a favorable opinion of the National Agency of Tourism Development. In all cases, the law requires the approval of the minister in charge of each relevant sector.

Second, in 2013, another modification was introduced to the same provision above mentioned that the pre-approval issued from the competent minister is not required except when it is about lands situated within the perimeter of a new city; thus, the pre-approval in this case of the minister in charge of territory planning is required.

In the 2015 Law of Finance, the government opted for more decentralization to the concession process and attributed more missions to the Wilayas (Departments) whether relative to tasks of receiving land concessions demands or approving them^{xxvii}. The concerned Wali authorizes the “mutual agreement” concession after a proposal of :

- The department's director in charge of investment,
- The managing body of the new city concerning lands situated within the perimeter of a new city which requires the approval of the minister in charge of the city,
- A favorable opinion of the National Agency of Tourism Development regarding lands within a zone of tourism expansion following the approval of the minister in charge of tourism.

Furthermore, Two successive modifications took place in 2019 and 2020 and added in the 2019 Law of Finance^{xxviii} the proposal of Managing Body of Technological Parks concerning lands falling within those parks after approval of the minister in charge ICT, while the 2020 SFL^{xxix} substituted the approval of the minister in charge of ICT by the minister of Knowledge Economy, Startups, and Micro-Enterprises.

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enshrined in the 08-04 Ordinance, the Algerian government got back to the previous system and restored convertible concession to land transfer^{xxxii}. The concerned projects should duly respond to “specifications” and shall be attested by a compliance certificate.

Viewpoints and criticisms following such constant changes varied amongst analysts and commentators, while some considered it as dramatic drift and thus, a real risk for potential investments, others, pointed out the government's willingness to prevent State real estate from erosion and preserve future generations' rights in Industrial Lands. In addition to the return to land transfer in real estate investment in 2015, the provisions of the 2022 Law relating to Investment that secured lands for investors reflect some improvements. However, the latter did not bring details related to conditions and modalities which eventually require urgent provisions to regulate private real estate functioning, especially those mentioned in Law 08-04.

2.2.2 Mitigating measures for an effective reopening for FDI

The SFL 2020 marked a thorough change regarding the procedural processes aiming at attracting FDI and attenuating legal restrictions and discriminatory treatments enacted previously in the SFL for 2009.

Some provisions introduced within the latter drifted from the principles enacted in the 01-03 Law relative to Investment Promotion in which foreign investors were treated equally with national ones^{xxxii}.

The Algerian government alleviated those restrictions, particularly by setting up modifications aiming at repealing pre-emption^{xxxiii}, limiting the implementation of the 51/49 rule, and exempting FDI shareholders' contribution in kind from trade and bank domiciliation.

Such an amendment demonstrated the government's commitment to revive the national investment climate and encourage FDI relocation instead of relying just on oil rent.

2.2.2.1 The State's right to pre-emption:

The State's right to pre-emption concerning investment was introduced in the SFL for 2009^{xxxiv} which added a new article mentioning that the State and Economic Public Enterprises (EPE) have pre-emption right to substitute shareholdings transfers whether made by foreign investors or in their favor.

Between 2010^{xxxv} and 2020 several amendments took place amending and detailing pre-emption until SFL for 2020 enactment in which the Algerian government finally repealed the right to pre-emption^{xxxvi}.

SFL for 2020 to some extent alleviated legal and procedural restrictions attached to the State and EPE's right to pre-emption that usually threaten foreign companies. Duly aware of the economic challenges, especially during and after the pandemic the Algerian government launched measures to recover from such an economic situation. However, limited restrictions regarding shareholding transfers tied to activities holding

a strategic character were kept, as defined in article 52 of the 2020 SFL which required authorization from concerned authorities before making the transfer.

2.2.2.2 Repealing the 51/49 rule, except for sectors with strategic character:

The SFL for 2020 represented a breakthrough in the investment legal framework regarding FDI, articles 49 and 50 instituted the right for foreign investors to relocate their activities in Algeria without being limited to the 51/49 partnership rule which used to require majority shareholding by Algerian national residents. On the other hand, article 50 excluded some sectors that hold a “strategic character” as defined in the Executive Decree N° 21-145^{xxxvii} which include the pharmaceutical industry, energy, mining, transportation, and industries related to national defense. It is worth noting that the government reinstated the 51/49 ownership requirement in the 2021 Finance Law, for any company importing items (raw materials, merchandise, and goods) into Algeria with the intent to resell.

2.2.2.3 Exempting FDI contribution in kind from trade and bank domiciliation:

On the whole, Trade and bank domiciliation is compulsory to accomplish money transfers^{xxxviii} and regulate import and export activities into and from Algeria^{xxxix}. Foreign shareholders' contributions to companies located in Algeria could be in cash or in kind, while contributions in cash must be operated under domiciliation terms that demand an inscription before a national bank, participation in kind entering in FDI relocation operations is exempted under art. 07 of 22-18 Investment Law, that mentioned “ *foreign contributions in kind exclusively involved in the activities of relocation operations from abroad are exempted from trade and bank domiciliation procedures*”, the same art. adds “*Are also exempted from trade and bank domiciliation, new properties that constitute an external contribution in kind.*” Such measures will simplify and accelerate procedures relative to Foreign Direct Investment activities' relocation to Algeria.

Conclusion

The new Investment Law N° 22-18 marks the beginning of a new era within the Algerian investment legal framework. This Law brought a cluster of thorough changes whether tied to digitalization, FDI relocation in Algeria, or alleviating some legal restrictions. All those aspects were analyzed and discussed in this paper, and the following conclusions may be drawn:

- The demarkation from ancient provisions appears in introducing digitalization, whether as used as an instrument to accelerate the investment process, particularly through the Investor's Digital Platform, or the fact of taking into account ICT-related investment in evaluating eligibility to accord extended tax incentives' phases.

- Establishing an unprecedented tool known as “ the Evaluation Grid” to assess investment eligibility for extended benefits.
- Investments relating to technology transfer, innovation, and knowledge-based economy are deemed to have a weighting factor under the Grid thereof.
- Replacing ANDI with AIPA, the latter gained more attributions, especially via its newly established structure: the One-stop Shop for Major Projects and Foreign Investments.
- AIPA's One-stop Shop for Major Projects and Foreign Investments took the CNI curtailed managerial attributions concerning foreign projects plus those equal or surpassing two billion AD (2.000.000.000 AD).
- Activities relocation from abroad or FDI was mentioned explicitly within the new Investment Law N° 22-18 as entering among investments to enhance.
- Earlier to the 22-18 Law enactment, the SFL for 2020 attenuated procedural processes aiming at attracting FDI and abandoned some legal restrictions and discriminatory treatments enshrined previously in the SFL for 2009.
- Certainly, the CNI lost its managerial attributions but preserved its authentic position as an advisory body, issuing recommendations and drawing up annual assessment report to the President of the Republic.
- Given back foreign investments equal legal treatment with national ones, except for projects linked to sectors holding a strategic character.
- Establishing the HNC for appeals under the Presidency of the Republic with a quasi-judicial role and advisory tasks which will bring more assurance to investors' dispute settlements.

However, some shortcomings concerning certain amendments implementation in the terrain shall be highlighted and shall be corrected as well, these include:

- Up until the conclusion of this paper the newly created Platform does not assemble all concerned authorities as mentioned in art. 27 of the Exec. Decree N° 22-298.
- Even though, investors are granted lands for their investments under the 22-18 Investment Law, practically, private real estate of the State still lingers under unstable legislation, which suggests an urgent need for new legislation.
- The Investor's Digital Platform does not yet provide available lands throughout the national territory as promised in art. 06 and 23 of the Law thereof.

Based on the findings, It is prudent to:

- Equip AIPA's centralized digital database with information on available lands, current ownership, and zoning regulations. This database should be easily accessible to authorized investors, providing real-time information. This will enable investors to make informed decisions based on geographic data, and AIPA can use this information to strategically organize and allocate lands for investment purposes.

- Provide training programs and capacity-building initiatives for AIPA staff to effectively utilize the enhanced Investor's Digital Platform. This will empower them to navigate the system efficiently, address investor queries, and contribute to the overall success of the investment facilitation process.
- Enact a new Law relating to industrial lands entering into the investment scope, taking into account its criteria, functioning, and organization to maintain up-to-date and coherent legislation.
- Define AIPA's attributions related to industrial land dedicated to investment as mentioned in the 22-18 Law relating to investment.
- Create a dedicated regulatory authority within AIPA tasked with overseeing the investment Law provisions implementation. This entity should be enabled to formulate recommendations, standards, and guidelines to suggest updates to the legislation to adapt to evolving market conditions, technological advancements, and changing investor needs.

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ⁱⁱ Mehidi Khaled, Algeria's Tax Legislation Impact on Foreign Direct Investment, Ph.D. thesis, Algiers 1 University, Faculty of Law, 2023, p. 147.

ⁱⁱⁱ To be qualified for "Structuring Investments", investment shall meet the following criteria:

- Being able to create at least 500 jobs,
- The total amount of the investment shall be 10 billion AD or more (art. 16, Exec. Decree 22-302).

^{iv} "CNI" is a French acronym well known in the Algerian legal jargon which stands for "Le Conseil National de l'investissement".

^v "ANDI" is a French acronym well used in Algeria's legal jargon which means "L'Agence nationale du développement d'investissement".

^{vi} This threshold amount heightened through successive amendments, first, in SFL for 2009, art. 60 defined the scope of investments falling within the CNI purview to be considered for the general regime incentives, by a threshold amount of five hundred million Dinars (500.000.000 AD), then came LF for 2014, art. 59 which augmented the threshold to one billion and five hundred million AD (1.500.000.000 AD), until Law N° 16-09 relating to Investment Promotion, art. 14 which defined the threshold at five billion AD (5.000.000.000 AD). Such a change reflects how the CNI's decision authority upon investments shrunk until the enactment of Law 22-18 relating to Investment.

^{vii} The appeal Commission was established by the Ordinance N° 01-03 relating to Investment Development and regulated by the Executive Decree N° 06-357; amended by 19-166 Executive Decree under Law No° 16-09 relating to Investment Promotion.

^{viii} Article 14 of Law N° 01-03 relative to Investment Promotion, OG. N° 47 of August 22, 2001.

^{ix} Since January 2020 the State suspended its lands concession. (Ramdane Kebbab, Attribution et gestion du foncier industriel : Une nouvelle loi pour éviter « les dérives du passé », El Watan-dz .com, 29/04/2023 mis à jour: 19:44)

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^{xii} The assessment should be implemented in respect of relevant laws and regulations relative to corporate creation.