

Convertible Concession Contract as a Mechanism for Exploiting Tourist Real Estate Belonging to the State's Private Property in Accordance with Law No. 23/17

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Received: 30/03/2025

Accepted: 09/05/2025

Abstract:

The present study addresses the convertible concession contract as an instrument for utilizing tourist real estate belonging to the state's private property, as stipulated by Algerian Law No. 23-17. Given Algeria's reliance on the oil and gas sector, diversification through strategic investment in tourism property became imperative. The legislator introduced the convertible concession contract as the exclusive mechanism to effectively manage and exploit these properties for economic and social growth. This paper examines the legislative framework established during 2022–2023, particularly focusing on Law No. 23-17 and its implementing decrees. Employing a descriptive and analytical approach, the research highlights how this contractual arrangement facilitates sustainable economic development and evaluates its efficacy in promoting strategic investment within Algeria's tourism sector.

Keywords: Tourist real estate, Investment-oriented property, Consensual concession contract.

Introduction

Considering that the principal source of national income traditionally stems from a singular sector—namely, oil and gas—it became imperative for the state to seek alternative avenues capable of compensating for deficits encountered in various sectors. Accordingly, investing in state-owned tourist real estate emerged as the most viable solution. This strategy necessitated the formulation of robust regulatory provisions governing such properties, enhancing their investment appeal and viability.

This regulatory approach has been affirmed by the Algerian legislator through a series of chronologically structured laws, detailing the organization of tourist real estate to amplify its significant role in propelling both economic and social growth. The latest legislative development in this series is embodied in Law No. 23-17, enacted on November 15, 2023, concerning modalities governing the granting of economic real estate belonging to the state's private property, specifically intended for executing investment projects.

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Through this legislation, a novel methodology was adopted, marked by distinctive substantive elements and regarded as the sole mechanism for exploiting tourist real estate—represented explicitly by the consensual concession contract convertible into a transfer of property rights within the domain of the state's private property.

This research bears significant importance in comprehensively understanding the effectiveness of legal provisions that regulate the mechanism of the convertible concession contract designed for acquiring investment-oriented tourist real estate, particularly as introduced by the Algerian legislator during the period from 2022 to 2023, including Law No. 23/17 and its accompanying executive decrees.

To effectively address this research topic, the following primary issue has been formulated: How did the Algerian legislator regulate the concession contract as a mechanism aimed at enhancing the exploitation of tourist real estate belonging to the state's private property?

In an attempt to resolve the research question and enrich the discussion, the descriptive-analytical approach was employed through analyzing relevant legal texts to deduce legal provisions and clarify concepts central to this study. Consequently, the research structure is divided into two main sections. The first section elucidates the conceptual framework of granting a convertible tourist concession applicable to state-owned private property, while the second section explores the rules governing consensual concessions subject to transfer.

1- Granting Convertible Concessions Subject to Transfer Pertaining to the State's Private Tourist Property

The concession contract holds significant importance in legal and economic studies, serving as both a mechanism for managing public real estate and ensuring funding for investment projects. Additionally, it facilitates institutional and administrative reform, enabling the state to align with economic advancements in tourism, particularly in terms of property management conditions and methods. Consequently, the legislator institutionalized the concession system as a means to valorize such property.

Examining the consensual concession of tourist property—as an integral component of economic property—necessitates exploring its conceptual aspects. Initially, we shall clarify the concept of tourist property directed towards investment via consensual concession contracts (First Subsection), followed by an analysis of the consensual concession contract itself (Second Subsection).

1.1- The Concept of Tourist Property Directed for Investment via Consensual Concession Contracts Subject to Transfer

Tourist property belonging to the state's private domain constitutes one of the significant investment real estate portfolios. The Algerian legislator has systematically organized this category of tourist real estate, categorizing it under the state's private properties, where investment development is intrinsically linked to the elements constituting it, thereby making it a tourism hub. Accordingly, we will address the definitional aspect of

tourist property belonging to the state's private property (First Branch), followed by its components (Second Branch).

1.1.1- Definition of Tourist Property Belonging to the State's Private Domain:

Tourist property encompasses the state's and local groups' private national properties, defined by the National Property Law as follows: "...as for other properties not classified under public property, fulfilling possessory and financial functions, these represent private national properties." Through this provision, the legislator refrains from explicitly defining private national properties, resorting instead to the concept of exclusion. The article implies that properties not classified as public but fulfilling financial and ownership functions constitute private state property.

All regulations stipulated in the State Property Law concerning the formation of such properties apply to tourist properties classified under state private ownership, with due consideration to special provisions for tourist properties outlined in relevant legal and regulatory texts.

Tourist properties belonging to state private ownership include lands within tourism expansion areas and tourist destinations, potentially comprising lands previously declassified from public property status, thus becoming subject to sale, lease, or exchange¹. Moreover, private state-owned lands situated in tourism expansion areas and tourist destinations, crucial for executing specific investment programs outlined in the tourism development plan, are sold to the National Agency for Tourism Development based on amicable agreements².

The National Property Law specifies contents of private state properties pertaining to the state, governorates, and municipalities, provided as examples rather than exhaustive listings, as indicated by terms such as "includes" and "particularly"³.

1.1.2- Components of Tourist Property Subject to Concession Contracts Belonging to the State's Private Domain:

Investment-oriented tourist property, forming the basis of concession contracts subject to transfer as stipulated by relevant legal and regulatory texts, comprises:

Firstly: Tourism Expansion Areas: According to governing laws, tourism expansion areas represent extensions of regions or territories endowed with natural, cultural, human, and creative attributes conducive to tourism development. These areas are appropriate for establishing and enhancing tourist facilities and available for sustainable tourism development. Created by the tourism administration, they are managed and utilized following specifications within the regional development plan. This definition clarifies that tourism expansion areas constitute undeveloped properties suitable for constructing hotels, hotel facilities, and specialized tourism hubs⁴.

Secondly: Tourist Sites: These are regions attracting tourists due to scenic beauty, such as desert oases, or natural wonders and landmarks, including national natural parks. Their historical, artistic, mythical, or cultural significance, including historical sites and monuments, further distinguishes them. Additionally, they encompass structures erected upon

them, such as historical sites and monuments, whose authenticity is appraised and protected from human-induced damage or deterioration⁵.

1.2- The Concept of Consensual Concession Contracts Subject to Transfer Pertaining to Tourist Property Belonging to the State's Private Domain:

The concession is a nominated contract and one of the oldest contracts recognized within administrative law, initially associated with the concept of public service and originally applied to public properties before extending to private state property, including tourist real estate. Recognizing its significance in supporting national economic growth and providing a crucial strategic alternative, the Algerian legislator established convertible concession contracts as effective mechanisms to exploit tourist property. Therefore, it is necessary to address the definition of concession contracts related to tourist property (First Branch), clarify their characteristics (Second Branch), and enumerate their components (Third Branch).

1.2.1- Definition of Consensual Concession Contracts Subject to Transfer Pertaining to Tourist Property Belonging to the State's Private Domain:

The Algerian legislator has not provided a precise legal definition of consensual concession contracts, leaving this task to jurisprudence and judicial interpretation. Nevertheless, through analyzing the legislative framework enacted between 2022 and 2023, it is conceivable to define this contract as an administrative contract executed by state property authorities based on the concession granting decision issued by the National Investment Promotion Agency. The agreement involves the state, represented by the Agency, and private law entities, natural or legal persons, domestic or foreign.

This contract grants the beneficiary usufruct rights over state-owned tourist property for a defined period to enable the execution of investment projects. This measure significantly contributes to promoting investment and consequently bolsters national economic development⁶.

1.2.2- Characteristics of Consensual Concession Contracts Subject to Transfer Pertaining to Tourist Property Belonging to the State's Private Domain:

Based on the aforementioned definition derived from Law No. 23-17, the following distinctive characteristics of concession contracts are identifiable:

Firstly: Concession contracts are continuous: These contracts establish ongoing relationships rather than immediate fulfillment upon execution⁷. Typically, their duration is extensive, with tourist concessions specifically set at 33 years, renewable, facilitating the completion of investment projects⁸.

Secondly: Concession contracts entail usufruct rights: Investors acquire the right to use the property without obtaining ownership. This right can encompass construction or development of tourism or real estate facilities and can serve as collateral for securing debts or financial obligations. It should be noted that concession contracts do not directly transfer ownership unless explicitly converted into property transfer rights, granting investors

complete ownership subject to specific conditions, thus bestowing traditional property rights: use, exploitation, and disposition.

Thirdly: Consensual concessions constitute administrative contracts: They arise between the state, represented by one of its public institutions or authorities, and beneficiaries typically being natural or legal persons⁹. These contracts bypass competitive procedures, instead directly negotiating agreements between involved parties and the National Investment Promotion Agency, representing the state and directly contracting with investors or concerned companies, abiding by contractual terms aligned with public interests.

Third Branch: Elements of Consensual Concession Contracts Subject to Transfer Pertaining to Tourist Property Belonging to the State's Private Domain:

To ensure validity, legal effectiveness, and achievement of intended purposes, consensual concession contracts related to tourist property require essential elements:

- Firstly: Consent: Consent represents mutual agreement between two parties:

1. The National Investment Promotion Agency, legally authorized to grant and execute concessions¹⁰.
2. Investors, either natural persons or corporations, irrespective of nationality¹¹.

- Secondly: Subject Matter: The subject matter involves tourist property within the state's private domain, comprising assets related to tourism activities, obligated by the state to grant to investors in exchange for annual fees specified within contracts.

- Thirdly: Purpose: The purpose is facilitating investors' execution of investment projects, thereby fostering tourism sector investments¹².

- Fourthly: Formalities: Despite being termed consensual concessions, these contracts necessitate additional formalities, including adherence to legally prescribed templates and compulsory registration with regional land surveying and real estate conservation authorities, given their association with tourist property¹³.

2- Rules for Granting Consensual Concessions Subject to Transfer Pertaining to Tourist Property

The Algerian legislator has regulated the rules for granting tourist property via concession through the law related to economic property. Although the legal principle stipulates non-retroactivity of laws, the Algerian legislator, by virtue of the same law and its implementing decrees, has overridden this principle, permitting the transferability of concessions related to tourist properties as part of economic property, regardless of whether these concessions were granted before or after the enactment of this law. Thus, this section addresses the procedures for granting consensual concessions (First Subsection), conditions for converting consensual concessions into transfers (Second Subsection), and finally, the methods for converting these concessions into transfers (Third Subsection).

2.1- Procedures for Granting Consensual Concessions

To benefit from tourist property directed towards investment, a person must undergo several procedural stages to be recognized formally as an investor:

2.1.1- Announcement Stage

In this stage, individuals interested in carrying out investment projects are informed of available investment opportunities and real estate offerings. This is accomplished by publishing a list of real estate properties designated for these projects, with the announcement lasting for a period of 30 days¹⁴.

This procedure relies on accurately specifying real estate details such as location, area, property type, and other essential specifics regarding the property offered for investment¹⁵. The objective is to provide potential investors with all necessary information to facilitate informed investment decisions.

The National Agency for Tourist Real Estate, established according to Executive Decree 23-489, plays a significant role in defining and demarcating tourism expansion areas and sites, in coordination with the Algerian Investment Promotion Agency¹⁶. The decree further clarifies that this data is published through a database available on the digital platform for investors managed by the Algerian Investment Promotion Agency. This underscores Algeria's commitment to organizing and expanding the tourism sector through digitalization and online platforms supporting investors.

2.1.2- Application Submission and Decision Stage

This stage consists of two critical procedures:

Firstly: Application Submission Stage

The system established by the Algerian legislator for submitting concession applications in tourist real estate is clear and transparent, mandating exclusive use of the investor's digital platform for submission. Investors initiate the process by completing project-related details on the digital platform, specifying the investment activity, area, and property location¹⁷. Upon completion of the data entry process, the application is automatically processed, and the applicant is subsequently informed of the preliminary acceptance or rejection of their project. If the project is accepted, the applicant must confirm their selection and finalize the registration process on the platform, ultimately receiving an initial registration certificate confirming their application's preliminary approval.

Secondly: Application Decision Stage

The agency processes applications submitted through the digital platform, evaluating each project based on legally defined criteria. After processing, the agency issues a provisional decision either to reject the concession due to non-compliance with conditions or the unsuitability of the property for the investment project¹⁸. If all conditions are met, a provisional acceptance decision granting the convertible concession is issued. This decision becomes final only after a period of 15 days, during which an appeal may be lodged¹⁹.

Third Branch: Concession Contract Preparation and Publication Stage

This stage is carried out as follows:

Firstly: Concession Contract Preparation

Upon issuing the concession decision, the Algerian Investment Promotion Agency, through its single-point contact, requests the regionally competent State Property Directorate to prepare a concession contract for the accepted candidate within a period not exceeding eight days²⁰.

2.1.2- Concession Contract Publication

The concession contract is publicized through the Directorate of Land Survey and Real Estate Conservation of the region where the subject property is located.

2.2- Conditions for Converting Consensual Concessions into Transfers Pertaining to Tourist Property

To convert a concession into a transfer for investor benefit, the Algerian legislator stipulated essential conditions that the investor must meet, including the effective realization of the investment project (First Branch), removal of the mortgage on the usufruct rights related to the tourist property (Second Branch), and finally, payment of the transfer price (Third Branch).

2.2.1- Effective Realization of the Investment Project

The law requires the investment project to be effectively implemented and operational. This entails the investor's obligation to complete the investment project within the timeframe stipulated in the concession contract and in compliance with the terms and conditions outlined in the specifications document. Investors must also maintain the original intended use of the tourist property, refraining from altering its designated purpose, thus preserving the property's economic and social objectives²¹.

2.2.2- Removal of the Mortgage on the Usufruct Rights

The concession grants the beneficiary a real right over the tourist property, specifically the usufruct right, which can be mortgaged as security for debts or financial obligations²². The legislator stipulates that if an investor wishes to convert the concession into a transfer, the mortgage must be removed either by the expiration of the mortgage period prior to the project's completion or application submission for transfer, or by fully repaying the debt causing the mortgage. In all cases, investors must officially document the removal of the mortgage with the Real Estate Conservation Authority²³.

2.2.3- Third Branch: Payment of Transfer Price

The transfer price is determined by the regionally competent State Property Directorate according to the criteria outlined in the decree related to the standard specifications document. This determination considers the commercial value of the property at the time of concession granting, deducting any annual fees previously paid by the concession beneficiary²⁴.

2.3- Methods of Converting Consensual Concessions into Transfers

The conversion of concessions into transfers occurs after fulfilling stipulated conditions, requiring the beneficiary to undertake specific procedures. The investor must submit an application to convert the concession into a transfer (First Branch), following which

the agency makes a decision on the application (Second Branch), culminating in preparing and publishing the transfer contract (Third Branch).

2.3.1- Submission of Transfer Application

The transfer from concession to ownership is not automatic and depends on a formal application submitted by the concession holder to the National Investment Promotion Agency. Unlike initial concessions, the legislator does not mandate digital platform submissions for transfer applications; thus, these applications must be submitted physically at the agency's office²⁵.

2.3.2- Decision on the Transfer Application

The Algerian Investment Promotion Agency has the authority to decide on transfer applications within three months of receipt. This period is intended to ensure a detailed and comprehensive evaluation of all documents, legal compliance, and the actual progress and completion of the investment project²⁶. The agency may conduct technical assessments, request additional evidence, or coordinate with other relevant administrative bodies to verify the accuracy of the submitted information. If the applicant fails to meet the prescribed legal or regulatory conditions—such as incomplete project implementation, unresolved mortgages, or non-payment of the stipulated fees—the agency issues a formal decision rejecting the application and outlining the grounds for refusal. Conversely, if all requirements are fulfilled in accordance with the applicable laws and the investor has met every contractual obligation, the application is granted, thereby converting the concession into a definitive transfer of ownership. This step formally entitles the investor to exercise all ownership rights, including possession, development, use, and legal disposition of the property. This step is crucial for enhancing procedural transparency and ensuring investor confidence in the integrity and fairness of the property transfer process.

2.3.3- Preparation and Publication of Transfer Contract

This final stage includes:

Firstly: Preparation of Transfer Contract

Upon receiving the application, the Algerian Investment Promotion Agency forwards the request via its single-point contact to the competent regional State Property Directorate to draft the transfer contract within fifteen days. This procedure ensures timely and effective communication between the involved entities, streamlining the administrative process. The competent regional State Property Directorate thoroughly reviews all pertinent documentation and ensures the accuracy and completeness of the transfer contract, thus complying with legal provisions and safeguarding the interests of both the state and the investor. Additionally, this process fosters transparency, reinforces investor confidence, and contributes to the overall efficiency of property transfer procedures²⁷.

Secondly: Transfer Contract Publication

Publication is essential to legally secure the property transfer. The contract must be registered with the tax authority and electronically filed on the real estate platform managed

by the Land Survey and Real Estate Conservation Authority, officially confirming the investor's full property rights, including the rights of use, exploitation, and disposition²⁸.

Upon completion of publication, the investor assumes complete ownership and decision-making authority over the property, in alignment with their investment objectives.

Conclusion:

The summary of this research paper indicates that the Algerian legislator regards tourist property within the state's private domain as an integral component of economic property and utilizes it as a fundamental instrument to facilitate investment projects aimed at promoting investment and enhancing the national economy. Consequently, new legislative measures have been enacted to regulate the use of such properties, highlighting the critical role of this sector in bolstering national economic activity.

Among the most significant findings:

- The convertible concession is the exclusive mechanism established by the Algerian legislator to acquire investment-oriented tourist properties. This method ensures the organized management of relations between the state and investors and directs tourist properties towards productive investments.
 - The concession is a strictly administrative and formal contract wherein the State Property Directorate, as the state's authorized notary, is responsible for drafting both concession and transfer contracts, thus officially ensuring the legality and validity of investment-related procedures and documentation.
 - The digital investor platform represents an essential technological tool in the concession granting process, significantly enhancing transparency and facilitating streamlined communication between investors and relevant administrative authorities.
 - The effective completion of the investment project constitutes a crucial condition ensuring balance between investor interests and the preservation of tourist property's designated purpose, thus maintaining its economic and social benefits for the community and the surrounding environment.
 - The application submission phase aims to simplify procedures and reduce bureaucracy, allowing investors to track their applications automatically, increasing procedural efficiency, and ensuring accurate and swift application processing.
- These findings underscore the challenges and opportunities arising from the new legislative framework governing tourism property investment, highlighting the importance of effective management and regulatory practices.

Based on the above results, we propose the following recommendations:

1. Generalizing Digitalization for the Transfer Procedures: It is essential to amend Articles 15 and 18 of Executive Decree No. 23-487 to mandate the submission of transfer applications exclusively through the digital investor platform, thereby accelerating procedures and facilitating easier access for investors.

2. Issuance of a Decree Implementing Article 17, Paragraph 1: It is crucial to issue a decree clearly defining the conditions and mechanisms for granting compliance certificates, which constitute a fundamental prerequisite for accepting the concession-to-transfer procedure, thus streamlining administrative procedures related to the conversion of concessions.
3. Strengthening Institutional Coordination: Enhancing coordination between relevant institutions, especially between the National Agency for Tourism Real Estate and the Algerian Investment Promotion Agency, to achieve optimal management and integration of tourism investments.
4. Continuous Legislative Review: Periodic assessment and review of the legal framework governing tourism property concessions to ensure adaptability to economic and technological developments and maintain attractiveness for potential investors.

Footnotes:

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2. Article 22(3) of Law No. 03-03 of 17 October 2003, on Tourism Expansion Areas and Tourist Sites, *Official Gazette* No. 11.
3. See Articles 17 to 20 of Law No. 90-30 of 1 December 1990 on National Property, as amended and supplemented by Law No. 08-14, *Official Gazette* No. 44.
4. Jaloul Ben Sedira, *Tourist Property in Algeria: Its Concept and Resources in Light of Legal and Regulatory Texts*, *Algerian Journal of Law and Political Sciences*, No. 1, June 2016, p. 5.
5. Article 2(2) of Law No. 03-03, cited above.
6. Maghnia Lakarnach, *The Convertible Concession Contract as a Mechanism for Accessing Economic Property: A Comparative Study*, *Algerian Journal of Law and Political Sciences*, Vol. 9, No. 1, p. 260.
7. Hamada Abdelrazak Hamada, *The Legal Regime of the Concession Contract – Public Service*, New University House, 2012, p. 114.
8. See Article 14(3) of Law No. 23-17 of 15 November 2023, setting out the conditions and modalities for granting economic property belonging to the state's private domain for investment projects, *Official Gazette* No. 73.
9. See the same article, paragraphs 4 and 5, and Article 13(2) of Executive Decree No. 23-487, which sets the conditions and procedures for granting the convertible concession over economic property belonging to the state's private domain for investment projects, *Official Gazette* No. 85.
10. For more details, refer to Article 14(1) of Law No. 23-17, mentioned above.
11. See Article 5 of Law No. 22-18 of 24 July 2022 on Investment, *Official Gazette* No. 50; and Article 6 of Executive Decree No. 23-486 of 28 December 2023 on the components of economic property belonging to the state's private domain and eligible for concession, *Official Gazette* No. 85.

12. See Article 23 of the same Executive Decree.
13. Refer to Annex II attached to Executive Decrees No. 23-486 and No. 23-487 of 2023.
14. See Article 4 of Executive Decree No. 23-487, cited above.
15. For details, refer to Article 23 of Law No. 22-18, cited above.
16. See Article 5(4) of Executive Decree No. 23-489 of 28 December 2023 establishing the National Agency for Tourist Property, *Official Gazette* No. 30.
17. See Article 12 of Law No. 23-17, cited above.
18. Article 13 of Law No. 23-17 and Article 7(1) of Executive Decree No. 23-487, cited above.
19. Article 7(3) of the same Executive Decree.
20. Article 11 of Executive Decree No. 23-487.
21. See Article 17 of Law No. 23-17 and Article 15 of Executive Decree No. 23-487.
22. Article 13(2) of Executive Decree No. 23-487.
23. See Article 15 of the same Executive Decree.
24. For further details, see Article 22 of Annex IV of the same decree, which contains the standard terms of reference.
25. See Articles 15 and 16 of Executive Decree No. 23-487.
26. Article 15(4) of the same Executive Decree.
27. Last paragraph of Article 15 of the same Executive Decree.
28. Article 23 of the standard terms of reference specified in Annex IV of Executive Decree No. 23-487.

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2 Articles

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