

Legal Guarantees for Foreign Investment in the Tourism Sector in light of the New Investment Law No. 22-18

"الضمانات القانونية للاستثمار الأجنبي في القطاع السياحي على ضوء قانون الاستثمار الجديد 18-22".

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Abstract:

The enactment of the new Investment Law Nos. 22-18 reflects the Algerian legislature's intention to enhance Algeria's economic standing. Through this legislative instrument, significant incentives and guarantees have been granted to foreign investment in the tourism sector to encourage rapid and sustainable development of the tourism sector and to contribute to the diversification of the national economy beyond hydrocarbons. This approach demonstrates the legislator's awareness of the importance of foreign investment in tourism for facilitating capital flows to and from abroad and for achieving economic development and attracting tourists. Accordingly, this research paper seeks to shed light on the principal new legal guarantees afforded to foreign investment in the tourism sector under the new Investment Law Nos. 22-18.

Keywords : Foreign investment, tourism investment, sustainable development, guarantees, capital flows,

الملخص:

إن صدور قانون الاستثمار الجديد 18-22 كان رغبة من المشرع الجزائري في الرفع من المكانة الاقتصادية للجزائر، وقد تم من خلاله منح امتيازات و ضمانات هامة للاستثمار الأجنبي في مجال السياحة، بهدف تشجيع التنمية السريعة والمستدامة لقطاع السياحة، ومحاولة منه بتطوير الاقتصاد الوطني خارج قطاع المحروقات. وذلك وعيا من المشرع الجزائري بأهمية الاستثمار الأجنبي في قطاع السياحة في تحريك رؤوس الأموال من وإلى الخارج ودوره في تحقيق التنمية الاقتصادية وجذب السياح.

وعليه تستهدف هذه الورقة البحثية تسليط الضوء على أهم الضمانات القانونية الجديدة للاستثمار الأجنبي في القطاع السياحي على ضوء قانون الاستثمار الجديد 18-22.

الكلمات المفتاحية: الاستثمار الأجنبي، الاستثمار السياحي، التنمية المستدامة، الضمانات، رؤوس الأموال....

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Introduction:

The tourism sector in Algeria is regarded as a sensitive sector and a fundamental pillar for advancing the national economy and fostering sustainable development, particularly given Algeria's tourism potential, geographical location, captivating natural landscapes, and cultural diversity, which attract both domestic and foreign investors.

Accordingly, tourism investment is among the most important forms of foreign investment in Algeria. For this reason, it has received the attention of the Algerian legislature, insofar as it has become one of the most significant alternatives to hydrocarbon exports. Tourism investment contributes to a country's economic development by increasing its capacity to attract foreign tourists and by encouraging domestic tourism, thereby increasing foreign-currency revenues.

In view of Algeria's lagging economic performance in the Doing Business report for 2020, the Algerian state has sought to remedy this lag by adopting a new legislative policy that encourages the attraction of investors to the tourism sector and removes the obstacles they face. Within this framework, the Algerian legislature moved towards a radical change to the investment regime by enacting a new law, namely, Law No. 22–18 of 24 July 2022 (Official Gazette No. 50, dated 28 July 2024), which repealed Law No. 16–09 relating to the promotion of investment and shifted from a rentier economy policy to a diversification-oriented economy.

Therefore, this research paper aims to answer the following research question: “What are the legal mechanisms and guarantees provided by the new Investment Law Nos. 22–18 to encourage foreign tourism investment in Algeria?”

To address this question, the present paper is divided into two principal sections. The first section concerns the concept of investment, whereas the second section concerns incentive regimes and new guarantees for foreign investment in the tourism field.

1.Section one :Concept of investment

Examining the concept of tourism investment requires assessing its definition (First Requirement) and the principles upon which it is based (Second Requirement).

1.1- First Subsection: Terminological Meaning of Tourism Investment

Investment, in general terms, refers to the sacrifice borne by the investor in terms of immediate benefits in exchange for obtaining greater benefits in the future in an uncertain manner; that is, the investment process is predicated on uncertainty and the assumption of risk (Fawaz Lajlat & Samira Brardi, 2020, p. 610).

Tourism investment refers to investments made in one of the domains covered by the tourism sector, encompassing the key components and principal potential of the tourism industry. These are consolidated around two principal axes: investment in tourism equipment and facilities, namely, tourism services, including accommodation services, recreational facilities, transport services, and communications services, on the one hand, and investment in tourism wealth, represented by tourist attraction sites and their resources, on the other hand (Abd al-Nasir bin Abd al-Rahman al-Zahrani, 2008, p. 18).

1.2- Second Subsection: The Legal Meaning of Tourism Investment

To determine the legal meaning of investment, it is necessary to examine the legislator's position regarding its definition (first) and then to examine the extent to which it is legally enshrined (second).

First: The Legislator's Position on Defining Tourism Investment

Unlike specific foreign legislation, an examination of the laws that have regulated investment in Algeria shows that none include a definition of investment. However, the Algerian legislature provided a broad definition of the repealed Order No. 01–03. In contrast, the current Investment Law defines the investor and refers to certain types of investments.

(a) Definition of Investment under Order No. 01–03:

Investment, within the meaning of Order No. 01–03 (Order No. 01–03, Art. 2), refers to the following:

- The acquisition of assets within the framework of establishing new activities, expanding production capacities, rehabilitation, or restructuring.
- Contribution to the capital of an undertaking in the form of cash or in-kind contributions.
- The takeover of activities within the framework of partial or total privatisation.

(b) Definition of the Investor under Investment Law No. 22–18:

An investor, within the meaning of the new Investment Law, is "any natural or legal person, whether national or foreign, resident or nonresident within the meaning of the regulations governing foreign exchange, who carries out an investment in accordance with the provisions of the Investment Law" (Investment Law No. 22–18, Art. 5, p. 6).

The same article also defines the legal meaning of several types of investment. An establishment investment means "any investment carried out for the purpose of creating technical capital from scratch by acquiring assets in order to establish an activity for the production of goods and/or services". Expansion investment refers to "any investment carried out with the aim of increasing the capacities for the production of goods and/or services through the acquisition of new means of production added to those already existing".

Foreign investment is an investment whose capital is wholly or partially owned by foreign natural or legal persons and that benefits from the guarantee of the transfer of the investor's capital and the returns arising therefrom (Executive Decree No. 22–299, 2022, Art. 4, Official Gazette No. 60).

(c) Legal Enshrinement of Tourism Investment in Algeria:

The Algerian legislature has been concerned with regulating, promoting, and developing the tourism sector and its resources. This has been reflected through various investment laws, as well as through an important body of laws specific to the tourism field in Algeria, notably the law relating to the sustainable development of tourism (Law No. 03–01, Official Gazette, 2003), the order laying down the general rules for the touristic use and exploitation of beaches (Order No. 03–02, Official Gazette, 2003), and the law relating to tourism expansion zones and tourist sites (Law No. 03–03, Official Gazette, 2003).

Second Requirement: Principles of Investment

The Algerian legislature stipulated fundamental principles of investment through several legal texts, notably the new Investment Law No. 22–18, which focused on two important principles: the principle of freedom of investment and the principles of transparency and

equality in the treatment of investments. Accordingly, these issues will be addressed through two consecutive subsections.

First Subsection: Principles of Freedom of Investment

For the first time, the Algerian legislature provided for the principle of freedom of investment through Article 3 of Legislative Decree No. 93/12. It was subsequently enshrined as a constitutional principle in the 1996 Constitution, through Article 37 thereof, and then in the 2016 Constitution, through Article 43 thereof, which stated that "freedom of investment and trade is recognised and exercised within the framework of the law", as well as in the current Constitution, through Article 61 thereof, which provides that "freedom of investment, trade, and enterprise is guaranteed and exercised within the framework of the law".

From these constitutional provisions, the legislator's intention to broaden the scope of freedom of investment and trade may be observed, ultimately settling on the new formulation "enterprise" to improve the investment climate in Algeria, particularly in the tourism sector (Belkacem & Boufateh, 2003, p. 291).

The Algerian legislature also enshrined the right to invest in the new Investment Law Nos. 22–18. Article 3 provides that this law consolidates the principle of freedom of investment: any natural or legal person, whether national or foreign, resident or nonresident, who wishes to invest is free to choose their investment, subject to compliance with the legislation and regulations in force (Law No. 22–18, p. 5).

Second Subsection: Principles of Transparency and Equality in the Treatment of Investments

The principles of transparency and equality in the treatment of investments are among the new principles consolidated by the Investment Law (Law No. 22–18, 2022, Official Gazette No. 30, pp. 5–10), thereby becoming a fundamental pillar of the investment process.

One manifestation of the Algerian legislator's commitment to applying this principle, strengthening fair competition and transparency in the examination of investment applications, and fostering the spirit of initiative is the establishment of the "digital platform for the investor", a digital platform created pursuant to Article 23 of the new Investment Law (Law No. 22–18, p. 8), as well as Article 28 of the Executive Decree setting out the organisation and functioning of the Algerian Agency for the Promotion of Investment (Executive Decree No. 22/298, Official Gazette No. 60, p. 11). This platform provides all necessary information, including investment opportunities in Algeria, land supply, incentives and advantages associated with investment, and related procedures.

This digitally interconnected platform, linked to the information systems of the bodies and administrations responsible for the investment process, also enables the dematerialisation of all procedures and the execution, via the internet, of all procedures related to investment (Law No. 22–18, Art. 23, p. 8).

2. Section two: Incentive regimes and the new guarantees for foreign investment in the tourism field

Under the new Investment Law, the legislature established significant incentive regimes for both foreign and national investment in the tourism field (First Requirement) and granted greater guarantees to encourage foreign investment in this field (Second Requirement).

2.1- First Requirement: The New Incentive Regimes for Investment

The legislature changed the term "advantages" used in the repealed Investment Law Nos. 16–09 and replaced it with the term "incentive regimes" under the new Investment Law Nos. 22–18. These were divided into three regimes: the sectoral regime (First Subsection), the regional regime (Second Subsection), and the structuring investment regime (Third Subsection).

First Subsection: Incentive Regimes under the Sectoral Regime

After the investor registers their investment project with the Algerian Investment Agency, they will benefit from the agency's incentives during the project's implementation phase (First) and during the operational phase (Second).

First: incentives during the implementation phase under the sectoral regime

Article 27 of Investment Law No. 22–18 sets out the incentives available during the implementation phase under the sectoral regime, namely, (Belkacem Boufateh, 2023, p. 294):

- Exemption from customs duties with respect to imported goods that are directly used in the implementation of the investment.
- Exemption from value-added taxes with respect to imported goods and services or those acquired locally that are directly used in the implementation of the investment.
- Exemption from the fee payable for the transfer of ownership for consideration and from the land registration tax for land publicity with respect to all real estate acquisitions carried out within the framework of the investment concerned.
- Exemption from registration duties, the land publicity tax, and amounts due to the National Domain, incorporating the concession right relating to built and unbuilt real property intended for the implementation of investment projects.
- Exemption from property taxes on real estate property falls within the framework of investment for a period of 10 years, starting from the date of acquisition.

Second: Incentives during the Operational Phase under the Sectoral Regime

These range from 3--5 years, starting from the date of commencement of operation, and consist of (Belkacem Boufateh, n.d., p. 294):

- Exemption from corporate profits tax.
- Exemption from the professional activity tax.

Second Subsection: Incentive Regimes under the Regional Regime

The regional regime refers to the high plateau, southern, and deep southern regions, as well as sites whose development requires exceptional state support and sites with potential natural resources capable of being valorised.

Unsurprisingly, allocating incentive regimes to the regional regime will encourage the attraction of a greater number of foreign and Algerian tourism investors alike.

Notably, the incentives under the regional regime during the implementation phase are the same as those under the previous regime, as provided by Investment Law Nos. 22–18.

For incentives during the operational phase under the regional regime, their duration under the new Investment Law ranges from 5--10 years, starting from the date of commencement of operation (Law No. 22--18, Art. 29, p. 9), and they consist of:

- Exemption from corporate profits tax.
- Exemption from the professional activity tax.

Third Subsection: Incentive Regimes under the Structuring Investments Regime

The incentive regime for investments of a structuring nature is referred to as the "Structuring Investments Regime" (Law No. 22–18, Art. 24, p. 8). Pursuant to Executive Decree No. 22–302, structuring investments are "investments with a high capacity to create wealth and generate employment, which are likely to enhance the attractiveness of the territory and constitute a driving force for economic activity towards sustainable development" (Executive Decree No. 22–302, Art. 15, Official Gazette No. 60).

Notably, the incentives under the Structuring Investments Regime during the operational phase are the same as those under the previous regime, as provided by Investment Law Nos. 22–18.

For the incentives during the operational phase under the Structuring Investments Regime, their duration under the new Investment Law ranges from 5--10 years, starting from the date of commencement of operation (Law No. 22--18, Art. 31, p. 9). They consist of:

- Exemption from corporate profits tax.
- Exemption from the professional activity tax.

2.2- Second Requirement: The New Guarantees for Foreign Investment in the Tourism Field

The new Investment Law No. 22–18 includes several guarantees to encourage domestic and foreign investment in the tourism sector. These consist of substantive guarantees (First Subsection) and procedural guarantees (Second Subsection).

First subsection: Substantive Guarantees

To encourage foreign investment in the tourism sector, several substantive guarantees must be provided, as set out in the provisions of Investment Law Nos. 22–18. These include the guarantee of legislative stability (First), the guarantee of the right to intellectual property (Second), the guarantee of compensation for expropriation (Third), and the guarantee of the transfer of capital (Fourth).

First: Guarantee of Legislative Stability

Legislative stability is regarded as one of the most important legal guarantees provided for in investment laws. Through this guarantee, the host state seeks to avert the risks arising from legislative instability in investment law and to instil reassurance among investors (Fawaz Lajlat & Samira Brardi, n.d., p. 620).

Through Article 13 of the Investment Law, the legislator provided the principle of legislative stability (Law No. 22–18, Art. 13, Official Gazette No. 70, p. 7). This refers to the temporal freezing of the Investment Law from the implementation phase, following the signing of the contract or investment agreement, until the completion of the investment project. This is based on the principle that the contract is the law of the parties because the parties' will be the source of the binding force of the contract, thereby avoiding sudden changes to investment laws that could give rise to concern among investors and deprive them of opportunities to realise profit (Boufateh Mohamed Belkacem, n.d., p. 292).

Second: The Guarantee of the Right of Ownership

The legislature introduced a new guarantee under the current Investment Law that did not previously exist, namely, the guarantee of State protection of intellectual property rights, reflecting the State's intention to implement investment projects and attract a greater volume of foreign investment (Boufateh Mohamed Belkacem, n.d., p. 292).

Third: the guarantee of compensation for expropriation

To encourage foreign investment, investment legislation should not be confined to incentives and advantages granted to investors; it must also reduce the likelihood of risks associated with investor ownership, particularly expropriation procedures (Fawaz Lajlat & Samira Brardi, n.d., p. 620).

Accordingly, the legislator has sought to protect private property irrespective of the owner's nationality, affirming that it may not be infringed upon except where there is a public interest and in accordance with the law and in return for fair compensation. This instils confidence among investors, even foreign nationals, thereby encouraging them to undertake tourism investment in Algeria.

On this basis, the legislator provided in the Investment Law for fair and equitable compensation to the investor in the event of expropriation (Law No. 22–18, Art. 10, Official Gazette No. 50, p. 6).

Fourth: the guarantee of the transfer of capital

The legislature provided, in the Investment Law, a guarantee for the transfer of capital to and from abroad and for broadening the scope of such transfers and the returns arising therefrom (Law No. 22–18, Art. 8, Official Gazette No. 50, p. 6). The purpose of this guarantee is to intensify the inflow of foreign capital into the domestic market straightforwardly and transparently, away from opacity. The foreign investor needs only to open a bank account in Algeria to manage transfers to and from Algeria using the domiciliation number (Saadi & Mjnah, 2021, p. 33).

Second Subsection: Procedural Guarantees

Procedural guarantees facilitate the investment process. They are divided into administrative guarantees (First) and judicial guarantees (Second).

First: Administrative Guarantees for Foreign Investment

Current Investment Law Nos. 22–18 introduced new administrative guarantees, whether for domestic investors through the establishment of a central one-stop shop or for foreign investors through the establishment of a one-stop shop with national jurisdiction for significant projects and foreign investments.

The final paragraph of Article 18 of the Investment Law provides that the one-stop shops referred to are established within the Algerian Agency for the Promotion of Investment.

Pursuant to Article 19 of the Investment Law, the one-stop shop for significant projects and foreign investments is the sole interlocutor with national jurisdiction and is responsible for carrying out all procedures necessary for the implementation and support of major investment projects and foreign investments. Executive Decree Nos. 22–299 define what constitutes a major project: projects whose value is equal to or exceeds 2 billion Algerian dinars (Executive Decree Nos. 22–299, 2022, Art. 4, Official Gazette No. 60).

Second: Judicial Guarantees for Foreign Investment

The legislature established a High Appeals Committee under the Presidency of the Republic (a) and permitted arbitration as an amicable means of settling investment disputes (b).

a-The National High Appeals Committee:

The National High Appeals Committee relating to investment is a newly introduced mechanism intended to remedy the prejudice suffered by investors. It is a high-level

committee comprising judges and economic and financial experts, placed under the Presidency of the Republic, and tasked with adjudicating complaints and appeals submitted by investors, pursuant to Article 11 of Investment Law No. 22–18, as well as Presidential Decree No. 22–296, which determines the composition and functioning of the National High Appeals Committee relating to investment (Presidential Decree No. 22–296, 2022, Official Gazette No. 60).

b-Arbitration in Investment Disputes

As a general rule, the legislature provided that all investment disputes, or any dispute arising from the application of the provisions of the Investment Law between the foreign investor and the foreign State, whether caused by the investor or resulting from a measure taken by the Algerian State against them, fall within the jurisdiction of the competent Algerian courts (Law No. 22–18, Art. 12, p. 7).

However, by way of exception, the legislature provided that, upon Algeria's ratification of bilateral or multilateral agreements, recourse may be had to conciliation, mediation, or arbitration as amicable methods for the settlement of investment disputes.

Conclusion:

At the end of this research paper, we present a set of findings and recommendations as follows:

Findings:

- New Investment Law Nos. 22–18 sought to remedy the shortcomings of the previous law; however, a degree of legislative ambiguity persists regarding the rights and obligations of investors in the tourism sector.
- The current Investment Law seeks to combat bureaucracy and enhance transparency and integrity by enshrining the principles it sets.
- The investor digital platform is a modern tool that simplifies procedures and provides foreign and domestic investors with all the necessary information and investment opportunities in Algeria, as well as the incentives and advantages associated with investment; it also supports investment projects.
- Under the new Investment Law, the principle of fair treatment has become a fundamental principle of investment rather than merely a guarantee thereof.
- The new law provides a range of guarantees and incentive regimes to attract foreign investors to the tourism sector.
- The new law established administrative bodies capable of organising the investment process and attracting foreign investment in the tourism sector, including the High Appeals Committee under the Presidency of the Republic and the one-stop shop for significant projects and foreign investments.

Recommendations:

The new Investment Law continues to suffer from certain shortcomings; therefore, we recommend the following:

- There is a need to eliminate ambiguity from the current law and distinguish between domestic investment law and foreign investment law.
- The need to lift all restrictions imposed on foreign investors in the tourism field.

- The need to compile investment laws into a single guide to facilitate foreign investors' familiarity with Algerian legal texts.
- The need to ensure legislative stability for investment-related laws in the tourism sector, as frequent amendments to such laws may hinder investment, generating doubt and apprehension among investors about the risks of investing.
- The need to eradicate the problem of bureaucracy faced by tourism investors prevents the commencement of the investment project's implementation because of the large number of administrative documents required in the file.
- There is a need to eliminate problems that hinder tourism investment in Algeria, such as issues related to tourism land, bank financing, administrative corruption, and bureaucracy.

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