

Innovative Mechanisms for Attracting Investments in Algerian Legislation

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Abstract:

The Legal security in the economic field is considered a basic pillar and an important pillar of encouraging investment because of the reassurance and guarantee it provides to the investor for his capital and investment from unexpected legal changes and amendments, and for his projects and expectations based on existing legal texts. Therefore, public authorities must avoid harming and diminishing the privileges. Granted to the investor under existing laws to maintain and multiply existing investments in order to achieve development and stability.

Keywords: Law, effect, Investment, legal security.

Introduction:

Attracting investment is one of the strategic objectives that countries compete to achieve. This requires the creation of a suitable environment that ensures this attraction and its sustainability, so that the country's ambitious economic outcomes can be realised. In this context, the framers of the Constitution worked to provide a legal framework to create an attractive investment climate. Article 61 of the Constitution states that the freedom of trade, investment and entrepreneurship is guaranteed, whereas previously it was only recognised before the constitutional amendment in 2020.

In line with this, Law 22-18 on Investment was enacted, which aims to define the rules governing investment¹, the rights and obligations of investors, and the incentive systems applicable to investment in economic activities for the production of goods and services by natural or legal persons, national or foreign, resident or non-resident. The Law also aims to encourage investments to develop priority sectors with high added value, ensure sustainable and balanced regional development, develop local

natural resources and raw materials, prioritise technology transfer and innovation, promote the use of modern technologies, activate the creation of permanent jobs and improve the skills of human resources. It also aims to strengthen and improve the competitiveness of the national economy and its export capacity.

The law also includes the following principles

- Freedom of investment is guaranteed to any natural or legal person, national or foreign, resident or non-resident, who wishes to invest, provided that they comply with the relevant laws and regulations.
- Transparency and equality in the treatment of investments².

Foreign investment, in particular, is one of the essential elements for achieving development, progress, economic stability and social advancement, as it serves as an important source for the flow of funds and technology. Legal stability is considered one of the components of legal security and is a key concern for foreign investors, especially in light of the increasing intervention of host countries in amending and changing the legal system governing investment. This leads to legal uncertainty and affects the stability of acquired rights and legal positions. It is therefore necessary to establish the legal mechanisms necessary to achieve legal stability in this area.

This may include general legal principles which, when applied, can ensure legal stability, such as the principle of non-retroactivity of laws and the principle of freedom of contract. In this context, the Algerian legislator has sought to provide general principles to ensure the stability of legal texts. In particular, Article 13 of Law 22-18 states that the effects of any future revision or repeal of this law shall not apply to investments made under this law, unless the investor expressly requests otherwise.

The provision of incentives, legal stability and the guarantee of the benefits that motivate investments are among the most important factors in attracting, promoting and ensuring the success of investments. Therefore, this study aims to clarify these aspects within the current legal texts. Consequently, the central issue of this study is to examine the extent to which the Algerian legislator has succeeded in creating an attractive legal environment for investment by providing legal certainty and incentives in Law 22-18.

The importance of this study lies in examining the factors that improve the investment climate, ensuring genuine attraction and effective flow of investment, particularly foreign investment, which ultimately leads to development and stability³.

The research is divided into two sections. The first section examines the institutional framework for investment through a study of the National Investment Council and the National Agency for Investment Promotion. The second section focuses on the incentives provided by the Algerian legislator to encourage and promote investment. The analysis is based on a content analysis methodology, which is well suited to legal studies, by examining the legal texts related to the research topic.

The institutional framework established by Law No. 22-18

One of the main objectives of the state in promoting investment is to facilitate the inflow of private capital into the domestic economy and the transfer of technology. Investors look first and foremost for strong incentives and stability within the State at all levels, particularly at the legislative, political, financial, economic and even social levels. Legal stability implies the preservation of acquired rights that cannot be infringed. Frequent amendments and repeals of laws can harm the economic interests of investors, leaving them uncertain about their investment projects and finances in the midst of fluctuating laws and regulations.

In response, the Algerian legislator has sought to provide legal guarantees that ensure the stability of the legal environment for investment by creating organised institutions and structures to support and accompany investment.

Transition from the National Investment Development Agency to the Algerian Investment Promotion Agency

The investment climate in Algeria has not been stable due to the inconsistency of legislative texts. The Algerian legislator continues to seek compatible legislation that will create an investment environment capable of attracting both Algerian and foreign investors. To this end, the legislator frequently introduces texts containing benefits and guarantees, and creates bodies and agencies dedicated to the investment sector, specifically aimed at promoting investment and achieving the desired economic growth. Among the most recent developments is Law 22-18 on investment, which created agencies focused on investment development. In particular, the Algerian Investment Promotion Agency was created, accompanied by bodies to promote digitalisation in the investment sector.

The legislator organised the Algerian Investment Promotion Agency in the investment law through Article 16 of Law 22-18, positioning it as a replacement for the National Investment Development Agency, as stated in Article 18 of Law 22-18. In this way, the Algerian legislator abolished the National Agency for Investment Development, which was created by Article 06 of Decree 01-03⁴. With regard to its organisation and

operation, the special regulations for the National Investment Development Agency have been maintained. The regulatory text defining the organisation, operation and tasks of the Agency was issued under Executive Decree 22-298, which defines the organisation and operation of the Algerian Investment Promotion Agency⁵.

The legislator specified that the Algerian Investment Promotion Agency is a public body of an administrative nature, with legal personality and financial independence, operating under the supervision of the Prime Minister. It is responsible for supporting and assisting national and foreign investors in the realisation of their investment projects⁶. The Agency's role and tasks in promoting investment are set out in Law 22-18 and Executive Decree 22-298 as follows:

- Promoting and enhancing investment in Algeria and abroad, as well as the attractiveness of Algeria, through communication with Algerian diplomatic and consular missions abroad.
- To inform and sensitise the business community.
- Ensure the management of the digital platform for investors.
- Registering and processing investment files.
- Assisting investors in completing procedures related to their investments.
- Managing the benefits, including those related to the portfolio of projects declared or registered before the enactment of Law 22-18.
- Monitoring the progress of investment projects.
- Provide reception and information services to investors.
- Collect, process, produce and disseminate documents related to investments.
- Establish information systems that allow investors to access all necessary data.
- Creation of databases on business and investment opportunities.
- Developing a database on the availability of real estate for investment.
- Establishing and managing a digital platform for investors.
- Evaluate the investment climate and propose measures to improve it.
- Provide all necessary information, in particular on investment opportunities in Algeria, real estate offers, incentives and benefits related to investment, as well as relevant procedures.

- Actively initiate cooperation with public and private entities in Algeria and abroad to promote investment in Algeria.
 - Prepare and propose an investment promotion plan at national and local levels.
 - Provide services to establish business relations and facilitate communication between investors, while enhancing business and partnership opportunities.
 - Establish and develop cooperation with similar foreign entities.
 - Organising services to guide and assist investors.
 - Provide advisory services, using external expertise where necessary.
 - Accompany investors in dealing with other administrations.
 - Preparation and modification of investment registration certificates.
 - Identifying structured projects based on specified criteria and rules, and concluding related agreements.
 - Verify the eligibility of registered investments for benefits.
 - Approving lists of goods and services eligible for benefits.
 - Issue decisions on the withdrawal of benefits.
 - Ensuring, in coordination with the relevant administrations and agencies, the fulfilment of commitments made by investors.
 - Dealing with petitions and complaints from investors.
 - Developing monitoring, consultation and follow-up services for registered investments.
- d investments.

The legislation provides for the establishment of the following one-stop shops within the Agency:

- The one-stop shop for large projects and foreign investments.
- Decentralised one-stop shops.

The digital platform for investors

For almost two decades, the world has been witnessing the emergence of a powerful force that is reshaping economic and administrative systems, requiring fundamental

changes in organisational strategies in various forms. The most significant of these forces is the phenomenon of digital transformation, which signifies the advancement of digital philosophy in all areas of life and human resources, the acquisition of intelligent tools and the dominance of social media platforms. This reflects the ability to harness creativity and innovation⁷.

The revolution in information and communication technology has radically changed the lives of people and societies. This technological progress has been used by many governments to perform their functions and deliver services to their citizens, resulting in improved quality of service, simplified procedures, time savings and added value, whether in performing these functions and tasks or in obtaining them.

In the face of these global developments and the transition to a new phase of political, economic and social transformation brought about by the era of globalisation, governments can no longer operate within a narrow framework. They need to keep pace with these changes, which requires them to embrace the various outcomes of the information and communication technology revolution in order to bridge the existing digital divide and enter the knowledge economy based on information and rapid access to it.

This significant change in the current administrative business environment has transformed modern spatial management into virtual digital management. Large, medium and small companies are accelerating their transition to digital management, leaving behind the basics of modern spatial management. Consequently, one of the most important criteria for assessing the progress of organisations is their ability to move from modern administrative patterns to digital management models⁸.

Despite the advances in information and communication technology that the world is witnessing today, it is not easy for most governments, especially in developing countries, to keep pace with this development. This challenge is due, on the one hand, to the rapid evolution of these technologies and, on the other, to limited resources and skills. However, these reasons can no longer justify not adopting an eGovernment programme, especially given the urgent need for its services.

Both internally and externally, there is a widespread belief that most developing countries are lagging behind due to the lack of clear strategies for creating an information society and the absence of consistent and transparent policies in this area.

Article 23 of Law 22-18 on investment provides for the creation of a digital platform for investors, managed by the Algerian Investment Promotion Agency. This platform is designed to provide all necessary information, in particular on investment

opportunities in Algeria, real estate offers, incentives and benefits related to investment, as well as the relevant procedures.

This interconnected digital platform enables the elimination of the physical component from all procedures, allowing all investment-related processes to be carried out online. In addition, the digital platform serves as a tool to guide and accompany investments, facilitating their monitoring from the moment of registration throughout their operational period.

Objectives of the Digital Platform

The digital platform aims to:

- Support, simplify and facilitate the processes of setting up companies and investments.
- Improve communication between investors and the economic administration.
- Ensure transparency of procedures and methods of processing investor files.
- Speed up the processing and investigation of investor files by the relevant authorities.
- Allow investors to track the status of their files remotely.
- Improve public service in terms of timeliness, agent performance and quality of service.
- Improve the internal performance of public services, making them more accessible and easier to reach for investors.
- Organise effective cooperation between the administrative services involved in the investment process.
- Facilitate direct and immediate exchanges between agents of the relevant administrations and agencies.

Benefits of the digital platform:

- Assistance in setting up a business or company.
- Electronic registration of investment projects.
- Ability to track the status of files.
- Reducing the need for investors to travel.

- Immediate and easy access to information for system users.
- Automatic reporting of data and reliability of information.
- Improved efficiency in decision-making (statistics, dashboards, trends).
- A centralised and user-friendly system accessible via web browser.
- Through a single electronic account, investors can access and request all the functions required for their projects.
- Monitoring of the implementation of the project, from its inception to the operational phase, through data provided by various stakeholders (staff of the Algerian Investment Promotion Agency, administrations represented at the one-stop shop, customs services, tax authorities, etc.).

Access to this platform is open to any project owner or investor who wishes to:

- Obtain information on all aspects of the implementation of their investment project.
- Register their investment project.
- Benefit from the advantages granted in the context of the promotion and encouragement of investment, as provided for by the legislation in force.
- Apply for economic ownership.
- Use the services of the platform.

Digitisation is a replication process that allows any type of document to be converted into a digital series⁹. The new system aims to free investment from the obstacles related to the availability of industrial property, while effectively simplifying the administrative process. This will allow project holders to fully dedicate themselves to the realisation of their investments without hindrance.

In addition to other measures taken by the Algerian government, such as the conversion of the concession of economic property for projects that have entered the operational phase, the creation of specialised agencies for the development of economic property (industrial, tourism and urban) and the regularisation of the status of projects that benefited from concessions before the new system came into force, the launch today of the digital investment platform marks the beginning of a new era for investment policy in the country.

In this context, the launch of this platform will promote greater transparency in the processing of requests for access to economic property, while ensuring accurate

monitoring and unbureaucratic support for investments, which represents a complete break with past practices. The simplification of administrative procedures is one of the main pillars of the government's programme to improve the functioning and efficiency of public services.

The transition to electronic investment management requires a legal framework in line with the digital age, as well as a high level of cybersecurity and confidentiality to protect national and personal information and to safeguard the national archive¹⁰. The legislator's efforts to develop the economic sector are in line with the global digital landscape and the increasing use of digital technology in many countries. This includes the adoption of e-government, which is prevalent in most countries and aims to modernise the delivery of electronic services via the Internet.

This modern approach is designed to eliminate corruption and bureaucracy, enabling remote transactions with less effort and cost, increasing efficiency and saving time. It does away with traditional transactions and administrative procedures and promotes flexibility¹¹. This platform ensures the removal of the physical aspect from all procedures and allows the completion of investment-related processes online, adapting procedures according to the type of investor and the nature of the request¹².

Incentive schemes in Law 22-18 on investments

Investments may, at the request of the investor, benefit from one of the following incentive systems:

1. Incentive system for priority sectors (hereinafter referred to as the "sectoral system").
2. Incentive Scheme for Areas of Special Importance to the State (hereinafter referred to as the "Areas Scheme").
3. Structured Investment Incentive Scheme (hereinafter referred to as the "Structured Investment Scheme").

Prior to their execution, investments must be registered with the relevant one-stop shops in order to benefit from the advantages specified in this Law. The registration will be confirmed by the immediate issuance of a certificate with a list of goods and services eligible for benefits, which will allow the investor to claim the privileges to which he is entitled from the relevant administrations and agencies.

Incentive system for priority sectors

The legislator has determined that investments in the following activities are eligible for the Priority Sectors Scheme:

- Mining and quarrying.
- Agriculture, aquaculture and fisheries.
- Industry, including the food, pharmaceutical and petrochemical industries.
- Services and tourism.
- New and renewable energy.
- Knowledge-based economy and information and communication technologies.

In addition to the fiscal, quasi-fiscal and customs incentives provided for in the General Law, investments eligible for the Sectoral Scheme also benefit from the following advantages

Execution phase incentives

- Exemption from customs duties on imported goods directly related to the execution of the investment.
- Exemption from Value Added Tax (VAT) on imported or locally purchased goods and services directly related to the implementation of the investment.
- Exemption from real estate transfer fees and real estate advertisement tax for all real estate purchases made in connection with the investment.
- Exemption from registration fees levied on the incorporation of companies and capital increases.
- Exemption from registration fees and real estate advertisement tax, as well as amounts related to national real estate, including the right of first refusal on built and unbuilt real estate intended for investment projects.
- Exemption from property tax on real estate related to the investment for a period of ten years from the date of acquisition.

Incentives for the operational phase

For a period of three to five years from the date of commencement of operations:

- Exemption from corporate income tax.
- Exemption from professional tax.

The legislator has stipulated that a list of activities that do not qualify for the benefits of the Sectoral System will be established in accordance with Executive Decree No. 22-300 of 8 September 2022, which establishes the lists of activities, goods and services that do not qualify for the benefits, as well as the minimum financing thresholds required to benefit from the transfer guarantee¹³.

Incentive scheme for areas of special national importance

Investments in the following locations are eligible for the “Areas System”:

- Sites located in the Plateau, Southern Regions and the Great South.
- Sites that require special government support for their development.
- Areas with potential natural resources that can be exploited.

The legislator has specified that the list of sites included in the areas of special importance to the State will be established by Decree No. 22-301 of 8 September 2022, which establishes the list of sites of special importance in terms of investment¹⁴.

With regard to incentives and benefits, in addition to the fiscal, quasi- fiscal and customs benefits provided for by general law, investments eligible for the benefits of the Area System, provided that the activities carried out in these areas are not excluded from the benefits provided for by this article, may benefit from the following advantages

Benefits during the execution phase

- The advantages referred to in Article 27 of this Law.

Benefits during the operational phase

For a period of five to ten years from the date of commencement of operations:

- Exemption from corporate income tax.
- Exemption from professional tax¹⁵.

The legislator has also stipulated that the list of sites in areas of special importance to the State will be established by Decree No. 22-300 of 8 September 2022. In addition, the list of activities that do not qualify for the benefits described in the Sectoral System will also be determined in accordance with Executive Decree No. 22-300.

Structured Investment Incentive Scheme

Investments eligible for the “Structured Investment Scheme” are those with a high capacity to generate wealth and create jobs, which can increase the attractiveness of the region and serve as a driving force for economic activity aimed at sustainable economic, social and regional development. In particular, these investments contribute to:

- Import substitution and export diversification.
- Integration into global and regional value chains.
- Acquisition of technology and improved performance.

The legislator has stipulated that investments qualifying for the Structured Investment Scheme must meet the following criteria:

- Direct job creation. A minimum of five hundred (500) direct jobs.
- Amount of investment: A minimum of ten (10) billion Algerian dinars.

The criteria for qualifying investments for the “Structured Investment Scheme” are defined in accordance with Executive Decree No. 22-302 of 8 September 2022, which establishes the qualification criteria for structured investments and the procedures for benefiting from operational advantages and evaluation networks¹⁶.

The legislator has established that, in addition to the tax, quasi-tax and customs incentives established by general law, investments eligible for the Structured Investment Scheme may benefit from

Execution phase benefits

- The benefits described in Article 27 of this Law. The benefits available during the execution phase may be transferred to the contracting parties that cooperate with the beneficiary investor and are responsible for the execution of the investment.

Benefits during the operational phase

- From the date of commissioning, for a period of five to ten years:
 - Exemption from corporate income tax.
 - Exemption from professional tax.

Structured investments may also benefit from state support in the form of partial or full coverage of the preparatory and essential infrastructure works necessary for their realisation, on the basis of an agreement concluded between the investor and the

agency acting on behalf of the state. This agreement is concluded after obtaining the approval of the government¹⁷.

Conclusion

With Law 22-18, the Algerian legislature has sought to make a significant difference to economic performance in all sectors, particularly investment, by overcoming previous obstacles and providing effective incentives. The structural reforms undertaken by the Algerian government are aimed at improving the business climate. Initiatives such as the simplification of administrative procedures, the protection of investors' rights and the guarantee of transparency are designed to increase investor confidence by ensuring a strong legal and regulatory framework.

While investment as a concept involves the allocation or designation of funds to areas or investment opportunities that the investor believes are viable and offer the best return with the least risk, the encouragement of foreign investment should be framed within a mutually beneficial relationship for both the state and the investor, whether national or foreign. This does not preclude the need for a legal framework that ensures national security and prevents foreign domination of national economic resources, as well as safeguards against money laundering or capital flight, as has occurred in our country.

The benefits of foreign investment to the national economy are not the only consideration; the state must balance the attraction of foreign capital with the preservation of national interests. It is therefore within the state's rights to impose conditions on the acceptance of foreign investment on its territory, ensuring that it is in line with its national objectives. These conditions reflect the state's right to regulate economic and commercial activities within its jurisdiction.

In addition, investors should feel that they are operating in a stable and legally secure business environment that encourages the creation of attractive opportunities for effective and long-term investment. To achieve this, the Algerian state has updated investment legislation to create an attractive investment environment and has signed bilateral investment protection agreements with several countries. These agreements provide investors with insurance against unjustified expropriation and guarantee standards of fair treatment, thereby enhancing the legal security of foreign investment in the country.

Footnotes:

¹- Law 22-18 on Investment of 24 July 2024, Official Gazette No. 50 of 28 July 2024. See Articles 2 and 3 of Law 22-18.

- ²- Moulaty Mouna, Hamssi Miloud. "The Algerian Investment Promotion Agency as a mechanism for digital activation in the field of investment." *Journal of Legal and Economic Research*, Institute of Law and Political Science, University Centre of Aflo, Volume 6, Special Issue, 2023, p. 104.
- ³- Decree No. 01-03 of 20 August 2001 on the development of investment, Official Gazette No. 47 of 22 August 2001.
- ⁴- Decree No. 22-298 of 8 September 2022 laying down the organisation and operation of the Algerian Investment Promotion Agency, Official Journal No. 60 of 18 September 2022. See Article 2 of Decree 22-298.
- ⁵- Faghoul Najat. "Human Resource Management in the Era of Digitalisation", Ph.D. Thesis, Faculty of Economic, Commercial and Management Sciences, University of Algeria 3, Academic Year 2018/2019, p. 19.
- ⁶- Fouzia Sedki. "The role of digitalisation in improving public services in Algeria", PhD thesis, Faculty of Information and Communication Sciences, University of Constantine 3, academic year 2020/2021, p. 40.
- ⁷- Zouhir Hafizi. "Automated Systems and Their Role in the Development of Archival Services", Doctoral Thesis, Faculty of Humanities and Social Sciences, University of Constantine 3, 2008, p. 67.
- ⁸- Amar Bouhouch. "Modern Management Theories in the 21st Century", Dar Al-Gharb Al-Islami Publishing, Beirut, 2006, p. 189.
- ⁹- Kahina Razeel. "A Look at the New Investment Law of 2022", *Critical Journal of Law and Political Sciences*, Faculty of Law and Political Sciences, University of Yitzi Zouzou, Algeria, Volume 17, Issue 2, 2022, p. 63.
- ¹⁰- Amina Koussam. "The Algerian Investment Promotion Agency under the New Investment Law 22/28", *Tabna Journal of Academic Scientific Studies*, University Center of Brika, Algeria, Volume 5, Issue 2, 2022, p. 109.
- ¹¹- Decree No. 22-300 of 8 September 2022 laying down the lists of activities, goods and services which are not eligible and the minimum financing thresholds for the application of the transfer guarantee, Official Journal No. 60 of 18 September 2022.
- ¹²- Decree No. 22-301 of 8 September 2022 establishing the list of areas of particular importance to the State in terms of investment, Official Gazette No. 60 of 18 September 2022.
- ¹³- See Article 29 of Law 22-18 on investment.
- ¹⁴- Decree No. 22-302 of 8 September 2022 establishing the criteria for qualifying structured investments and the procedures for benefiting from operational advantages and evaluation networks, Official Journal No. 60 of 18 September 2022.
- ¹⁵- See article 29 of law 22-18 on investment.
- ¹⁶- Decree No. 22-302 of 8 September 2022 laying down the criteria for qualifying structured investments and the procedures for benefiting from operational advantages and evaluation networks, Official Journal No. 60 of 18 September 2022.
- ¹⁷- See article 31 of law 22-18 on investments.