

Encouraging foreign investment in Algeria in light of international agreements

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Abstract:

The Algerian legislator hastened to enact several internal laws with an international dimension and to conclude several cooperation and partnership agreements with many countries related to investments, including some bilateral ones such as the Algerian-Kuwaiti agreement for the encouragement and mutual protection of investments ratified under Presidential Decree No: 03-370 to create appropriate conditions. To develop economic cooperation between them, and the agreement concluded between Algeria and Denmark on the mutual promotion and protection of investments was ratified by Presidential Decree No. 03-525 with the aim of intensifying economic cooperation by providing appropriate conditions for investors of one party in the territory of the other contracting party based on fair and equitable treatment of mutual investments.

It also ratified several international agreements to provide guarantees and broad facilities to the foreign investor, such as the Washington Agreement ratified under Presidential Decree No. 95-346, which includes the establishment of the International Center for the Settlement of Investment Disputes in order to provide legal protection to the foreign investor and ensure his confidence, and the International Investment Guarantee Agency (AMGI) ratified under Presidential Decree No.: 95-345 was established in order to bear the financial consequences resulting to the investor as a result of the non-commercial risk incurred in the member state by concluding insurance and reinsurance contracts with its member states.

Keywords:

Investment, international agreements, foreign investor, expropriation, dispute settlement.

تشجيع الاستثمار الأجنبي في الجزائر في ظل الاتفاقيات الدولية

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المخلص:

لقد سارع المشرع الجزائري الى سن عدة قوانين داخلية ذات بعد دولي وإلى إبرام عدة اتفاقيات تعاون وشراكة مع العديد من الدول متعلقة بالاستثمارات منها ما هو ثنائي كالاتفاقية الجزائرية الكويتية للتشجيع والحماية المتبادلة للاستثمارات المصادق عليها بموجب المرسوم الرئاسي رقم: 03-370 لخلق الظروف الملائمة لتنمية التعاون الاقتصادي فيما بينهما، والاتفاق المبرم بين الجزائر والدانمارك حول الترقية والحماية المتبادلتين للاستثمارات المصادق عليه بموجب المرسوم الرئاسي رقم: 03-525 بغية تكثيف التعاون الاقتصادي من خلال توفير الشروط الملائمة لمستثمري أحد الطرفين على إقليم الطرف المتعاقد الآخر بناء على معاملة عادلة ومنصفة للاستثمارات المتبادلة.

كما صادقت أيضا على عدة اتفاقيات دولية لإعطاء ضمانات وتسهيلات واسعة للمستثمر الأجنبي كاتفاقية واشنطن المصادق عليها بموجب المرسوم الرئاسي رقم: 95-346 والمتضمنة إنشاء المركز الدولي لتسوية المنازعات المتعلقة بالاستثمار من أجل توفير الحماية القانونية للمستثمر الأجنبي وضمان ثقته، والوكالة الدولية لضمان الاستثمار AMGI المصادق عليها بموجب المرسوم الرئاسي رقم: 95-345 وتم إنشائها من أجل أن تتحمل التوابع المالية الناجمة للمستثمر نتيجة الخطر غير التجاري اللاحق به في الدولة العضو وذلك عن طريق إبرام عقود تأمينات وإعادة التأمين مع الدول الأعضاء فيها.

الكلمات المفتاحية: الاستثمار، الاتفاقيات الدولية، المستثمر الاجنبي، نزع الملكية، تسوية النزاعات.

Introduction:

By adopting a market economy policy and liberalizing foreign trade, the Algerian legislator hastened to issue many legal texts and ratify international agreements in an effort to change its

legal system in accordance with what the prevailing global system requires, and to give priority to foreign investment to bring in foreign capital, transfer technology, and thus support and promote National economy.

In order to attract the largest possible amount of foreign funds, Algeria not only enacted internal laws with an international dimension, but also concluded several agreements related to investments, including bilateral and multilateral agreements. It has also ratified several international agreements in this field with the aim of encouraging investment while giving guarantees and incentives to investors, while maintaining the right to control the conditions of foreigners on its territory in accordance with the principle of state sovereignty over its territory. However, it is obligated to respect the principle of minimum respect for the rights of foreigners in accordance with the restrictions imposed on it. International custom in its treatment of foreign money on its territory in accordance with international agreements ratified by the state in order to protect and guarantee foreign money. Therefore, we will try to study and address the encouragement of foreign investment in Algeria in light of international agreements through the presented problem, which is: **What are the most important international agreements encouraging foreign investment in Algeria?**

The first topic: bilateral international agreements that encourage investment

The first requirement: The bilateral agreement between Algeria and Kuwait to encourage and mutual protection of investments

This agreement was concluded on September 30, 2001 in the State of Kuwait and ratified by Presidential Decree No. 03-370 dated October 23, 2003, which includes ratification of the agreement between the government of the People's Democratic Republic of Algeria and the government of the State of Kuwait for the encouragement and mutual protection of investments, signed in Kuwait on September 30, 2001 and the exchange of letters dated January 20, 2002 and January 25, 2003, respectively, Official Gazette No. 66, issued on November 2, 2003, including legal texts aimed at creating appropriate conditions for the development of economic cooperation between them, defining several concepts such as the term:

1. **Investment:** which means: “all types of assets located in a contracting party and owned or controlled by an investor of the other contracting party directly or indirectly, whether through subsidiary or affiliated institutions, where its headquarters are in a contracting party or a third country.
2. **Investor:** either a natural person holding the nationality of that contracting party in accordance with its applicable laws, or the government of that contracting party and its bodies and institutions, or any legal person or any other entity legally established under the laws and regulations of that contracting party.
3. **Related activities:** which are activities related to investment and which are carried out in accordance with the laws of the contracting party hosting the investment according to the text of Article 1 of the same decree.

The agreement also included a set of obligations and responsibilities borne by each party, the most important of which are:

1. Each contracting party must, in accordance with its applicable laws and regulations, accept the investments of the other party in its territory.
2. Each party is obligated to grant licenses, permits, and all approvals, authorizations, and licenses for accepted investments to the extent permitted in accordance with the principles and conditions specified in its laws.
3. Work to facilitate investment opportunities within the territory of each party's state.
4. Work to facilitate the entry, residence, or work of natural persons and the transportation of goods as well.
5. Not to take any arbitrary or discriminatory measures that lead to harm to mutual investments between the two parties according to Article 02 of Presidential Decree No.: 03-370.

As for the guarantees approved by the agreement, this is in accordance with what was stated in Order No. 03-01 in order to encourage investors from both countries, which are:

Treatment of investments: Each contracting party shall be committed to fair and equitable treatment for the other contracting party in its territory, no less than that granted in similar circumstances to investments of investors from any third country, and this treatment provided to investors from the contracting party shall be free of any advantage, treatment or preference over investors from the other party according to Article 04 of the same decree.

Compensation for damage or loss: In the event that one of the contracting parties suffers damage or losses in the territory of the other party due to war or any other conflict or in a state of emergency... from the other party with regard to restoring the situation to what it was or returning the losses or compensation or any other settlement no less favorable than that granted by the other contracting party to its investors or investors from any third country, whichever is more favorable according to Article 05, paragraph one of the same decree.

In the event of damages or losses incurred by investors of one of the parties as a result of the temporary seizure or destruction of their property or part thereof, compensation shall be immediate, sufficient and effective and must be paid in a freely convertible currency or allowed to be freely converted and without any delay in accordance with Article 05, paragraph two of the same decree.

Expropriation: According to Article 06 of the aforementioned Presidential Decree No. 03-370, investments made on the territory of one of the parties shall not be nationalized or expropriated by the contracting party except for a purpose related to the national interest of the contracting party, provided that immediate and adequate compensation is provided, determined in accordance with internationally recognized valuation principles in the currency in which the investment is made or any other convertible currency. The affected investor has the right to immediate review of his case by a local judicial authority in the country hosting the investment or another independent competent authority of the contracting party.

Transfer of payments related to the investment: Each party is responsible for ensuring the free transfer of investment-related payments inside and outside its territory to investors of the other party after fulfilling all tax obligations. The transfer process shall be carried out without any delay or restrictions in a freely convertible currency, except in the case of payments in kind according to Article 07 of the same decree.

Dispute settlement: Disputes between a contracting party and an investor shall be settled amicably, as stipulated in Article 9 of Presidential Decree No. 03-370 mentioned above. If this is not possible within 6 months from the date of the request for amicable settlement, the dispute shall be submitted, at the option of the investor, the party to the dispute, either to appropriate procedures for settling the dispute agreed upon in advance, or to the dispute settlement procedures in the Unified Agreement for

the Investment of Capital in Arab Countries of 1980, or through international arbitration. As for the settlement of disputes between the contracting parties, Article 10 of the same decree, which relates to the interpretation or application of the provisions of the agreement, shall be resolved through diplomatic consultations. In the event of their failure within 6 months from the date of the request for their conclusion, either party may submit the dispute to an arbitration court for this purpose after notifying the other party in writing. Article 12 of the same decree stipulates that the provisions of this agreement between the two contracting parties shall apply to all investments, whether existing on the date of entry into force of this agreement or after that date. However, it cannot apply to disputes arising before its entry into force unless there is an agreement to the contrary. The term of the agreement has been set at twenty (20) years, with its validity continuing for similar periods unless one of the contracting parties notifies the other in writing of its intention to terminate it one year before the end of the first period or any subsequent period, according to Article 14 of the aforementioned Presidential Decree No. 03-370.

The second requirement: The agreement concluded between Algeria and Denmark on the mutual promotion and protection of investments

On January 25, 1999, this agreement was signed in Algeria and ratified by Presidential Decree No. 03-525 dated December 30, 2003, which includes ratification of the agreement between the government of the People's Democratic Republic and the government of the Kingdom of Denmark on the mutual promotion and protection of investments signed in Algeria on January 25, 1999 and the exchange of letters dated June 12, 2002 and October 28, 2002, Official Gazette No. 02, issued on 07, 2004, and this agreement came with the aim of intensifying economic cooperation between the two countries by providing appropriate conditions for investors of one party in the territory of the other contracting party based on fair and equitable treatment of mutual investments. According to Article 03 of the same decree.

This agreement has defined the concept of investment in its first article, and has expanded the concept of investor to include any company, business enterprise, social shares or other forms of contribution to a company or enterprise or bonds in a company, and includes a set of principles applied by both parties in order to promote investment, including:

1. Each contracting party shall accept, in accordance with its laws, the investments of the other contracting party and encourage and provide them with facilities.
2. The investments of each party shall at all times enjoy protection and security in the territory of the other contracting party.
3. No contracting party may take unreasonable or discriminatory measures that would hinder the investments of the other party in its territory.
4. Each contracting party is obligated to respect the obligations it has entered into regarding the investments of the other party as stipulated in Article 02 of Presidential Decree No.: 03-525.

With regard to the guarantees approved by this agreement, they are:

1. **Investment treatment:** This is embodied in the principle of fair and equitable treatment towards investors of both parties, provided that this treatment is no less important than the privileges open to national investors according to the text of Article 3 of the same decree. 2. **Exclusion of expropriation:** The property of investors of each Contracting Party in the territory of the other Contracting Party may not be subject to expropriation, nationalization or measures having equivalent effect except for the purpose of public benefit and on a non-discriminatory basis based on the required legal procedure in return for prompt, adequate and effective compensation.

3. **Guarantee of compensation for losses:** Under this agreement, there are two types of compensation:

A) **Compensation for expropriation:** This is prompt, adequate and prior compensation resulting from the expropriation process and must be:

- Equal to the fair market value of the investment that was subject to expropriation or nationalization.
- Calculated in a freely convertible currency according to the prevailing exchange rate in the market for this currency.
- Possibility of reviewing it in accordance with the laws of the Contracting Party that carried out the expropriation through a competent judicial authority.

B) **Compensation for losses:** Which is caused by war, conflict or a state of emergency and the investor benefits from compensation that is no less favorable than that which the other Party grants to its investors or investors of another country Articles 04 and 05 of the same Decree.

4. Guaranteeing the freedom of transfer of capital: This is to allow each contracting party, with respect to investments made in its territory by investors of the other contracting party, the freedom to transfer capital, as well as profits, compensations and interests, in a convertible currency in accordance with the provisions of Article 06 of Presidential Decree No. 03-525 mentioned above.

5. Substitution: This is in the event that one of the contracting parties or its concerned body pays compensation to its investors under a guarantee granted for an investment made in the territory of the other contracting party, and the other party recognizes the transfer of every right or claim from the investor to the first contracting party or its concerned body, and the latter is entitled, under this substitution, to exercise the rights of the investor and claim them according to the text of Article 07 of Presidential Decree No. 03-525.

1. Settlement of disputes: There are two types of disputes according to what is included in Articles 08 and 09 of Presidential Decree No. 03-525 mentioned above:

A) Disputes between a contracting party and an investor: This dispute is settled by mutual consent, and if this dispute continues after a period of six (06) months, the investor has the right to refer the dispute to the International Center for Settlement of Investment Disputes established pursuant to this agreement, or to an arbitrator or a special international arbitration court formed in accordance with the arbitration rules of the United Nations Commission on International Trade Law.

b) Disputes between the two contracting parties: In the event of a dispute arising regarding the interpretation or application of this agreement, it shall be resolved through negotiations. If it is not settled within 6 months from the date of its commencement, it shall be referred, at the request of both parties, to the arbitration court, which shall be formed within 3 months from the receipt of the arbitration request from two members representing the two contracting parties who shall choose the president of the arbitration court, who shall be from another country, within 3 months from the date of their appointment. With regard to the procedures, each arbitration court shall determine its own procedures and make its decisions by a majority vote, and its decisions shall be final and binding on both contracting parties.

Section Two: International Agreements Including Legal Protection for Foreign Investors

Algeria has ratified several international agreements in order to provide legal protection for foreign investors and ensure their confidence, and has established international bodies related to guaranteeing and protecting investment, the most important of which are:

- The International Investment Guarantee Agency, which was established under the Seoul Agreement of 1985,
- The International Center for Settlement of Investment Disputes, which was established under the Washington Agreement of March 18, 1965 and entered into force in 1966.

First Requirement: The International Investment Guarantee Agency (AMGI)

The International Investment Guarantee Agency (AMGI) was established under the Seoul Agreement concluded on October 11, 1985, and was approved by Algeria under Order No. 95-05 dated 01/21/1995 and ratified under Presidential Decree No. 95-345 dated October 30, 1995, which includes ratification of the agreement including the establishment of the International Investment Guarantee Agency, Official Gazette No. 66, issued on November 5, 1995

According to Article 1 of Presidential Decree No. 95-345, the International Agency enjoys full legal personality and the capacity to litigate. It has a capital which was estimated at its establishment at \$1,000 million in special drawing rights, and each special drawing right is equal to \$1.082 million, and it is subject to increase as the number of members increases according to Article 05 of Presidential Decree No. 95-345. According to Article 36 of the same decree, the agency's main headquarters is located in Washington, and it may establish other offices in other places if its activity requires it. It consists of:

- The Board of Governors,
- The Board of Directors,
- The President of the Agency and its employees according to what is stipulated in Articles 30, 31, 32 and 33 of the same decree.

The International Investment Guarantee Agency was established to encourage the flow of investments for productive purposes between member states, and to bear the financial consequences resulting to the investor as a result of the non-commercial risk incurred by him in the member state by concluding insurance and reinsurance contracts with the member states according to Article 02 of the same decree.

The agreement defined the concept of non-commercial risk, which is represented by political error such as transfer of money, expropriation or nationalization, war, and severance of the contractual relationship.

The agency grants foreign investments according to Article 03 of the same decree guarantees according to certain legal conditions. Any natural or legal person with the nationality of a member state of the agency must have the authority to guarantee the agency, provided that it is not the host state of the investment.

The investments eligible for guarantee are direct investments and any form of contribution and must be:

- Economically justified and contribute to the economic development of the host state and comply with its laws.
- The host state must have a favorable investment climate with a fair system.
- New investment is implemented after requesting the guarantee according to Article 12 of the same decree.

Loss compensation: In the event of an insured disaster, the beneficiary of the guarantee submits a request to the agency after exhausting all internal appeal methods granted to him before the host country, after which it investigates the validity of the statements he submitted to it to undertake the payment of the amount.

Substitution of the beneficiary: The agency replaces the beneficiary of the guarantee according to the text of Article 18 of Presidential Decree No. 95-345 after compensating him or agreeing to do so in all his rights, including the rights of transfer and arbitration, and it also assumes all his obligations towards the host country.

Dispute Settlement: The Agency shall address all disputes that may arise between the members of the Agency or between a member and the Agency regarding the interpretation or application of the agreement, or in the event of the withdrawal of a member or a dispute arising over the amount of the guarantee. Disputes in the Agency shall be settled first through negotiations, and if these fail, arbitration shall be resorted to in any dispute arising under a guarantee or reinsurance contract between the parties to the contract to settle it finally in accordance with the rules stipulated or referred to in the guarantee or reinsurance contract in accordance with what is stipulated in Articles 56, 57 and 58 of Presidential Decree No. 95-345.

The second requirement: The International Centre for Settlement of Investment Disputes (CIRDI)

Algeria has approved the Washington Convention establishing the International Centre for Settlement of Investment Disputes by virtue of Order No. 95-04 dated 01/21/1995 and ratified it by virtue of Presidential Decree No. 95-346 dated October 30, 1995, which includes ratification of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, Official Gazette No. 66, issued on November 5, 1995

The International Centre for Settlement of Investment Disputes was established by virtue of the Washington Convention prepared by the International Bank for Reconstruction and Development on March 18, 1965. Its headquarters are located at the headquarters of the World Bank for Reconstruction and Development, with the possibility of transferring it by virtue of a decision of the Centre's Administrative Council, which shall be by a two-thirds majority of its members, according to Articles 2 and 3 of the same decree.

Conclusion: We say at the end of the study that despite the efforts made by the Algerian state and granting legal immunity to the investor in order to attract foreign investments in order to revive the national economy and thus provide jobs, we find that the foreign investor is still afraid and hesitant to invest his money in Algeria due to several problems and obstacles related to bank transfers and administrative procedures. We also find that most foreign investments in the homeland are still limited to the hydrocarbon sector and petroleum companies despite the diversity of real estate owned by Algeria such as the industry sector, tourism and hotels, and agriculture... If these sectors were invested in accordance with what serves the sovereignty and interest of the state, prosperity would prevail, the national economy would flourish, and unemployment would decrease.

List of sources:

1. Presidential Decree No. 95-345 dated October 30, 1995, ratifying the agreement establishing the International Investment Guarantee Agency, Official Gazette No. 66, issued on November 5, 1995.
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3. Presidential Decree No. 03-525 dated December 30, 2003, ratifying the Agreement between the Government of the People's Democratic Republic and the

Government of the Kingdom of Denmark on the Promotion and Reciprocal Protection of Investments signed in Algiers on January 25, 1999 and the exchange of letters dated June 12, 2002 and October 28, 2002, Official Gazette No. 02, issued on 07 2004.

4. Presidential Decree No.: 03-370 dated October 23, 2003, ratifying the agreement between the government of the People's Democratic Republic of Algeria and the government of the State of Kuwait for the encouragement and mutual protection of investments, signed in Kuwait on September 30, 2001 and the exchange of letters dated respectively January 20, 2002 and January 25, 2003, Official Gazette No. 66, issued on November 2, 2003.