

## Newly introduced legal mechanisms for investment development in Algeria under Law 22/18

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### Abstract :

Investment constitutes a fundamental pillar for economic development and sustainable growth, particularly in developing economies seeking to diversify their sources of income. In Algeria, the legal framework governing investment has undergone profound reforms, culminating in the enactment of Law No. 22–18 relating to investment. This law aims to improve the business climate, enhance legal certainty, reduce administrative constraints, and attract both national and foreign investors. This article examines the newly introduced legal mechanisms under Law No. 22–18 through a critical legal analysis. It seeks to assess the extent to which these mechanisms effectively contribute to promoting investment in Algeria. Adopting an analytical and critical methodology, the study evaluates the legal guarantees, institutional reforms, and incentive schemes established by the new law, while highlighting their strengths and potential shortcomings. The article concludes that although Law No. 22–18 represents a significant shift toward a more investor-friendly legal environment, its effectiveness largely depends on proper implementation, administrative coherence, and the stability of investment policies.

**Keywords:** Investment Law, Legal Mechanisms, Economic Development, Algeria, Law No. 22–18

### Introduction:

The legal framework for investment has undergone significant development, primarily stemming from the evolution and transformation of the economy from a centrally planned to a modern, market-oriented one. Consequently, investment is considered a highly important topic, both nationally and internationally.

It is the cornerstone of economic development and a crucial and effective tool for advancing the economy and other sectors, especially in light of the rapid and continuous changes in technology,<sup>1</sup> production methods, and the rapid development of communication systems and the internet. In these contexts, evaluating the viability of an investment idea has become a pivotal issue, the dimensions of which are intertwined with the availability of a suitable investment climate.<sup>2</sup>

### General Concepts Related to Investment:

Investment was not known in the past, either in its current form or at the present level. International direct investment flourished during the period from the 1950s until the early 1970s, influenced by the prevailing development ideology of the time.<sup>3</sup>

Given that developing countries in the late 1950s and early 1960s possessed vast natural resources, industrialized nations and their companies rushed to acquire investment concessions to explore these resources. This was achieved either through partnerships with the national governments of these countries or by paying substantial sums for the right to develop

these resources. The nature of investment in developing countries quickly evolved into what we know today, characterized by the partnership of foreign capital with domestic capital. Furthermore, most legislation aimed to attract foreign capital, utilizing these investments to establish new industries in developing countries, reclaim agricultural land, and develop housing projects.

The concept of investment has been interpreted in various ways, and we will attempt to address the following points:

**1- The Concept of Investment:**

In general, we have long understood the term intuitively, considering it a word we use in everyday language. However, unfortunately, it does not necessarily carry the same meaning in economics, law, and our daily applications, sometimes leading to errors in thinking or understanding.

One might "invest oneself personally," or "invest time," or "invest in the stock market" is still possible. Therefore, the concept of investment can only be defined, and there are numerous definitions and concepts surrounding it, both linguistically and technically. Some are economic, others legal, which we will attempt to address below:

**The Linguistic and Technical Definition of Investment:**

Linguistically, investment is derived from the verb "to invest," which is related to the concept of the fruit of a tree. The word "fruit" refers to the produce of a tree, and it also means money. Any benefit derived from something is called its "fruit," as in "the fruit of knowledge is righteous deeds," and "the fruit of righteous deeds is Paradise." It is also said that a man "fructified" his wealth, meaning he increased and augmented it. When it is said that money "fructified," meaning it increased, it linguistically refers to seeking and investing in money, working towards its production and growth<sup>4</sup>.

**The Economic Definition of Investment:**

While investment is an economic term, specialists have not been able to establish a simple and unified definition. According to the Economic and Financial Dictionary of Yves Bernard, the following definition is provided. Yves Bernard defines investment as the acquisition of means of production through expansion, the acquisition of capital for the purpose of generating income.<sup>5</sup>

Investment is defined as the sacrifice of a specific financial agreement in exchange for a future expected return.

According to the Austrian economist Eugen von Böhm-Bauer, capital is a collection of indirect or intermediate goods which, through the productive circulation of time, have the advantage of generating more productive labor.<sup>6</sup> Thus, according to the Austrian School, whose representatives include Eugen von Böhm-Bauer, Friedrich Hayek, and Joseph Schumpeter, investment is characterized by the fact that it prolongs the production process.

Investment has also been defined as the process of purchasing or producing basic materials, equipment, and goods. It is also defined as a necessary process requiring the active intervention and activation of an economic actor to create capital, meaning the investor's wealth.<sup>7</sup>

Within the framework of economic analysis, investment, in relation to society as a whole, refers to the funds allocated to producing goods that are used in the production of other goods. In other words, investment represents production that is not directly consumed, such as capital

goods like machinery, equipment, facilities, and buildings, as well as funds allocated to increasing inventory.<sup>8</sup>

Investment is also a portion of wealth allocated to increasing production through growth or by renewing productive capacities.<sup>9</sup> It is also defined as the formation of new tangible capital, which is represented by an increase in productive capacity. As such, it constitutes a net increase in the real capital of society, and its components include buildings and structures, machinery and equipment, means of transport, livestock, and other related items.<sup>10</sup>

Investment has also been defined as the allocation of money with the aim of generating a return, income, or profit.<sup>11</sup>

It has also been defined as the portion of income allocated to the production process in order to create capital.<sup>12</sup> It is also defined as the transfer of foreign capital and advanced technical and managerial expertise for the purpose of economic, social, and administrative development, contributing to the growth and development of the host country through newly established companies with the participation of national capital.<sup>13</sup>

### **The Legal Definition of Investment:**

It is important to note that the term "investment" is subject to debate in legal scholarship and jurisprudence. In this context, investment has been defined as the transfer of capital from abroad to the host country with the aim of generating profit for the foreign investor, thereby ensuring increased production and development in the host country.<sup>14</sup>

It has also been defined as the investment of labor or leisure for a specific period to develop an economic activity, whether in the form of tangible or intangible assets, or in the form of loans.<sup>15</sup>

Others define it as the contribution of a non-national to the economic or social development of the host country through capital, labor, or expertise in a specific project, with the intention of obtaining rewarding returns in accordance with the law.

As stated in Presidential Decree No. 420/90, which ratified the Agreement on the Promotion and Guarantee of Investments among the Arab Maghreb States, signed in Algiers on July 23, 1990, investment is defined as the act of a citizen who owns capital and invests it in one of the member states of the Arab Maghreb Union<sup>16</sup>.

Furthermore, the Algerian legislature defined investment in Legislative Decree 93/12 of October 5, 1995, concerning investment promotion, as: the creation, development, and enhancement of capacities, and the restructuring of capabilities, undertaken in the form of financial or in-kind contributions provided by any natural or legal person, and carried out within the framework of economic activities related to the production of goods and services not expressly designated for the State, its branches, or any legal entity specifically designated by law.

Articles 1 and 2 of Law 03/01 on Investment Development, issued on August 20, 2001, define investment. Article 1 states that it includes all national and foreign investments undertaken in economic activities that produce goods and services, as well as investments made within the framework of concessions and licenses.

### **Article 2 further defines investment as:**

- Acquiring assets within the framework of creating new activities, expanding production capacities, rehabilitation, or restructuring.
- Contributing to the capital of an enterprise in the form of a cash or in-kind contribution.
- Reclaiming activities within the framework of partial or full privatization.

Article 1 of Law 18/22 on Investment indicates that the objective of this law<sup>17</sup> is to define the rules governing investment, the rights and obligations of investors, and the incentive systems applicable to investments in economic activities that produce goods and services, whether undertaken by natural or legal persons, national or foreign, resident or non-resident. Article 2 of Law No. 18/22 on Investment also indicates that the provisions of this law aim to encourage investment with the following objectives:

- Developing priority sectors of activity with high added value.
  - Valuing local natural resources and raw materials.
  - Giving preference to technology transfer, innovation, and the knowledge economy
- ..
- Promoting the widespread use of modern technologies.
  - Activating the creation of permanent jobs and enhancing the skills of human resources.
  - Strengthening and improving the competitiveness of the national economy and its export capacity.

## **2 - Components of Investment:**

Investment consists of the following:

Productive investments: Equipment that constitutes the means of operation for projects, including changes in the inventory of finished goods or goods in process.

Investment in housing: Including major maintenance work.

Investment in administrative buildings.

## **3 -Types of Investment:**

According to the nature of the investor:

That is, based on the entity that spent the monetary mass to create investments. This category includes:

Private individual investments, stemming from the spirit of free individual initiative, i.e., the use of individual and private savings to create investment capital.

Public government investments: These are translated at the macroeconomic level into component G, and are achieved through equipment expenditures incurred by the state, as well as budget surpluses, bonds, and stocks.

- According to the nature of the investment: Investments are divided into several types, including:

Productive investment: This refers to any increase in capital or its formation aimed at expanding the structure of the productive enterprise and strengthening its production capacity to meet market needs and generate profits.

Non-productive investment: This does not contribute to increasing production capacity, and there is no direct relationship between the two. It maintains the enterprise's structure, such as through the creation of its founding contracts and its rights, like patents and registration rights.

- According to the purpose and opportunity criterion: Based on this criterion, investments can be divided into:

Renewal and replacement investments: These aim to replace previously obsolete investments or those that have lost value over time or through use with new, more efficient, and profitable investments.

- According to the investor's nationality criterion: The origin of the capital or the investor's nationality is taken into consideration:

Foreign or multinational investment: This involves using savings of foreign origin to form local and national investments, or using local savings to form new capital in foreign countries.

**Local investment:** This involves using savings of a local nature to form investments in real estate and movable assets within the same region.

**Indirect foreign investment:** This involves a foreign investor owning all or part of a project, but not having full or partial control over its management and operations. Such investments take various forms, including licensing agreements.

**Direct foreign investment:** This activity involves direct intervention in the monitoring, management, and supervision of investment projects established in one economy by an entity based in another economy.

#### **4 - Investment Objectives:**

Investment aims to achieve several objectives, including:

- Generating profit or income, regardless of the type of investment.
- Creating and growing wealth.
- Securing anticipated needs and providing liquidity to meet those needs.
- Preserving the value of assets.
- Obtaining raw materials from the host country for use in its industries.
- Benefiting from investment-friendly laws and tax exemptions granted to attract foreign investment, as well as from lower labor costs compared to developed countries, and the cost of obtaining raw materials and transportation.
- Finding new markets for the products and goods of foreign companies.
- Taking advantage of the lower risks associated with foreign companies' investments in the host country.
- Leveraging technological advancements.
- Attracting foreign capital for investment in developing countries.
- Increasing the percentage of exports and improving the balance of payments for the host country, especially when projects export their products abroad.
- Reducing imports by increasing domestic production.
- Training local workers in advanced technical and administrative skills and in the use of advanced production methods.
- Entering new markets and improving trade relations with the rest of the world.

#### **5- Stages of Development of the Legal Framework for Investment in Algeria:**

The investment law in Algeria has undergone several developments and changes in line with the economic and political conditions of each period, particularly during the 1990s. During this period, the state implemented significant economic and financial reforms, including the enactment of laws to encourage investors, open doors for them, and establish bodies tasked with promoting and supporting investment.

This context necessitates clarifying all stages of investment development in Algeria, from the establishment of the first legal framework to the enactment of the new investment law, given its constitutional entrenchment. Did this constitutional entrenchment play a role in attracting foreign investors?

We will review the development of investment promotion laws in Algeria during three periods: the first before the 1990s, the second during the 1990s, and the third after the 1990s. Furthermore, we will examine how both the Algerian legislature and the constitutional framers dealt with investment during each period.

#### **I - The Pre-1990s Period:**

Investment laws in Algeria have gone through different phases, each characterized by its own political nature. The first period was marked by the government's complete monopoly of the

economic sector under the socialist system and a centrally planned economy based on administrative control.

The second period was characterized by opening up the market to both domestic and foreign investments, offering guarantees and incentives to encourage and increase investment under a free market economy.

We will examine the constitutional provisions for investment during this period, as well as the legal guarantees for promoting investment in Algeria. Constitutional Guarantees for Investment:

During this period, extending to the 1990s, the Algerian constitutional framers addressed investment by establishing principles aligned with the prevailing ideologies of the time. While the 1963<sup>18</sup> Constitution did not contain any such principles, the 1976 Constitution outlined an action plan based on five-year and seven-year development plans and strategies. This aimed to stimulate the economy through methods and mechanisms consistent with the socialist system, all under the umbrella of precise and cautious legal texts, as can be inferred from Articles 13 and 14 of that constitution<sup>19</sup>.

The 1989 Constitution, which protected freedoms, marked a turning point. It represented a shift from a unified political system comprised of a single party and one authority to a political system based on the separation of executive, legislative, and judicial powers. It also marked a transition from a restricted socialist system to the enactment of several laws adopting a free-market economic policy. These economic reforms in Algeria encompassed the tax and banking sectors and were primarily characterized by...

Privatization of public institutions, restructuring of public economic institutions, and the establishment of a decentralized system and the independence of public institutions.<sup>20</sup>

#### **Legislative Guarantees for Investment:**

Algeria's socialist orientation following independence necessitated state intervention in all sectors of the economy. This was clearly reflected in the various investment laws, which were characterized by a degree of caution and reservation towards foreign direct investment.

This period included the issuance of several laws to encourage investment:

#### **First - The Investment Law of 1963:**

This law<sup>21</sup> focused on foreign investment in secondary sectors, excluding strategic sectors that were monopolized by the state. It also allowed for the repossession and ownership of foreign investors' shares. The law stipulated freedom of investment and equality before the law, particularly in the tax field.

What distinguishes it is that it included certain guarantees, facilitations, and even obstacles. Furthermore, it prioritized national investments over foreign ones, legally defining and restricting the areas designated for foreign investment. This law generally did not see effective implementation in practice because investors doubted its credibility, given that Algeria had already been providing insurance during the period 1963-1964. Furthermore, it did not incentivize foreign investment due to the political instability following independence.

#### **Secondly, the Investment Law of 1966:<sup>22</sup>**

Following the failure of the 1963 law, Algeria adopted a new law to define the role of capital in economic development, its status and forms, and the guarantees associated with it. This new law differed from its predecessor in the principles it established.

The explanatory memorandum stated that, in accordance with the instructions of the Revolutionary Council regarding clarifying the role of capital in economic development, its status, forms, and legal guarantees, the government prepared this decree, which was approved by the Revolutionary Council and, along with the texts upon which the Investment Law is based, constitutes the framework governing the intervention of private capital in various

branches of economic activity. It aims to address the shortcomings of Law No. 277/63 of July 26, 1963, by defining the principles underlying this capital intervention and specifying the guarantees and benefits granted to private capital, whether foreign or domestic.

Perhaps the most important of these is the prohibition of nationalizing investment projects unless the public interest so requires, while also allowing for investment with a foreign partner in vital sectors.

This law affirms the state's monopoly over vital sectors through Article 2, which stipulates that the initiative to implement investment projects in sectors vital to the national economy belongs to the state and its affiliated bodies. However, the state may decide to invite private capital to undertake these projects, specifying in each case the modalities for the involvement of national or foreign private capital in such investments.

Furthermore, according to Article 4, investors, whether natural or legal persons, Algerian or foreign, have the right to invest in other sectors and to establish or develop industrial or tourism enterprises that would increase the nation's productive capacity, after obtaining prior authorization from the administrative authorities.

Article 5 stipulated that the state could initiate investment either through joint ventures or by holding tenders to establish specific institutions.

This order also provided for guarantees and privileges for investment, including equality before the law, particularly equality before tax law as per Article 10, and the right to transfer funds and net profits as per Article 11.<sup>23</sup>

The incentives were characterized as tax-related, including full, partial, or progressive exemption from the transfer tax and property tax (for a period of ten years), a reduced rate of the single total production tax on capital gains, or a refund of the tax on Algerian-made equipment, and deferral of customs duties and the single total production tax on capital gains necessary for the project's realization. Additionally, there was full, partial, or progressive exemption from the tax on industrial and commercial profits for a period not exceeding five years, provided that the annual amount of profits did not exceed 20% of the private capital invested, as stipulated in Article 14.

Furthermore, there were a number of specific benefits, such as access to a reserve guarantee provided by the Algerian Development Fund on behalf of Algeria to facilitate access to short-term bank loans secured by industrial mortgages for financing manufactured goods or stock deemed essential for Algeria's development.

The guarantee also included a maximum interest rate on some of its medium- and long-term financing, which was determined at the time the license was granted. It should be noted that these guarantees can only be granted if the institution's own funds cover a reasonable percentage of the potential investment, and are subject to regulations issued by the Minister of Finance and Planning.

Although the 1966 law was intended to facilitate foreign investment, it lacked the genuine political will to open up both domestic and foreign private investment.

It failed to attract foreign investors because it stipulated a nationalization agreement and because dispute resolution was subject to Algerian courts and law.

### **Thirdly - The 1982 Law on the Establishment and Operation of Mixed Economic Companies:**

In Law No. 82/13 of 1982, dated September 28, 1982, concerning the establishment and operation of mixed economic companies, Algeria affirmed its intention to adopt a form of foreign investment and to establish a legal framework for "mixed companies between national and foreign capital."

This law subjects these companies to national development plans, facilitates technology transfer, and empowers the state to exercise oversight, particularly through the application of banking regulations to investors.

It also clarifies the percentage of foreign company participation, which cannot exceed 49% of the capital of a joint venture, while the remaining 51% represents local participation (Article 22). Joint ventures benefit from a range of incentives, including exemption from property tax for five years and from industrial and commercial profit tax for the first three fiscal years (Article 12)<sup>24</sup>. Furthermore, the law provides guarantees to foreign parties, such as the right to participate in management and decision-making bodies, and the right to transfer ownership.

This law also ensures that foreign companies have access to these resources. It is noteworthy that the Algerian legislator, through this law, attempted to rectify the shortcomings of Ordinance No. 284/66, which includes the amended and supplemented Investment Law, by establishing joint-stock companies.

However, despite enshrining the partnership system with foreign investors, it subjected these companies to national development plans, technology transfer, and state oversight.<sup>25</sup> It did not grant them the freedom to choose the company's legal form, limiting it to a joint-stock company, while the national socialist institution retained the right to direct, monitor, and manage the joint-stock company's activities, considering it a branch of the socialist joint-stock institution.

Furthermore, disputes arising from the joint-stock company's relationships with socialist institutions are subject to mandatory arbitration, as stipulated in Ordinance No. 44/75 dated June 17, 1997. Disputes arising from relationships between the founding members of the joint-stock company are referred to Algerian courts in accordance with Algerian law.

In addition to Law No. 82-11 of August 21, 1982, which was among the first laws enacted to address Algeria's legislative needs in the area of private national investment.

Alongside the law on mixed-economy companies, the authorities also reformed the hydrocarbons law with Law No. 86/14 of Dhu al-Hijjah 13, 1406 AH (August 19, 1986), concerning hydrocarbon exploration, production, exploitation, and pipeline transport. This law was relatively successful in attracting foreign private investment, reaching over 30 contracts. This success can perhaps be attributed to the sector's profitability compared to other sectors, particularly in terms of preferential advantages.

Following this, Law No. 88-25 of July 12, 1988, defined the procedures for directing private national economic investments.

Despite these reforms, investment remained limited due to the regulatory role played by the state and its perception as merely complementary to the public sector. However, with the events of October 1988, it was important to reconsider the investment policy and the approach to the national economy and to carry out structural reforms to restore the efficiency of public institutions and to find solutions to debt, unemployment, the consequences of the oil crisis and international pressures from the International Monetary Fund

This year, the state issued the law concerning the guidance of national private investment, which repealed Law 82-11 concerning national private investment.

It is noteworthy that previous legislation contained economic and legal distinctions between foreign and domestic investors, on the one hand, and between public and private investors, on the other. This continued until the 1990s with the issuance of the Monetary and Credit Law of 1990.



### **The 1990s:**

Algeria witnessed numerous economic reforms, generally manifested in the liberalization of the economy through a set of legal guarantees. These guarantees were intended to prepare the legal framework for the transition to a capitalist system in which the principle of free investment plays a fundamental role, through the following:

#### **Constitutional Guarantee of Investment:**

The 1996 Constitution included several principles encouraging investment, such as Article 19, which stipulates that the regulation of foreign trade is the prerogative of the state, and explicitly states that freedom of trade and industry is guaranteed and exercised within the framework of the law, in accordance with Article 37 of the Constitution.

Thus, at the end of the 1990s, Algeria abandoned several investment-discouraging practices, such as trade controls, and enshrined the freedom of trade and industry in its constitution. This change represented a qualitative leap, allowing for the adoption of numerous concepts that support investment freedom and were previously unavailable. This shift was perhaps due to the near-total absence of foreign investment in Algeria at the time, stemming from the prevailing social, economic, and political conditions.

#### **Legislative Guarantees for Investment:**

Given the developments Algeria was undergoing, it was crucial to develop the economy and enact a series of legal texts aimed at attracting as much foreign investment as possible. This was necessary to address the adverse conditions Algeria was experiencing, overcome the crises resulting from the changes in economic approach and structure, and create economic activities that would have a positive social impact. For this reason, this period witnessed the enactment of laws and decrees to encourage investment, including:

#### **The Monetary and Credit Law:**

Law No. 90/10, issued on April 14, 1990<sup>26</sup>, concerning Monetary and Credit Law, is considered one of the most important fundamental pieces of legislation for the reforms. Its primary objective was to regulate the banking and financial sector, emphasizing the importance of the Algerian banking system. Furthermore, it established a new framework for handling foreign investment files at the Bank of Algeria. The Monetary and Credit Council was also tasked with issuing decisions on submitted projects. Therefore, while the Monetary and Credit Law is not solely an investment law, it is related to it, regulating the foreign exchange market and capital flows.

It can also be considered a qualitative leap in implementing the economic reforms undertaken by Algeria to transition from a planned economy to a market economy.

The first change introduced by the Monetary and Credit Law in the area of foreign investment was the replacement of the nationality criterion, which distinguished between foreign and local investors, with a residency criterion,<sup>27</sup> which differentiates between residents and non-residents

This law permits non-residents to transfer capital to Algeria to finance economic activities not explicitly designated for the State, its subsidiaries, or any legal entity specifically mentioned in a legal text. Thus, non-resident investors can establish wholly owned companies without any participation or contribution from Algerian companies.

Furthermore, Article 183 of this law authorizes non-residents to transfer capital to Algeria to finance any economic activities. It encourages investment relationships between national and foreign operators with the aim of creating and promoting new jobs, improving the skills of Algerian professionals and employees, acquiring technological and scientific resources, and

optimizing the local exploitation of patents, trademarks, and trademarks registered and protected in Algeria. Article 184 establishes guarantees regarding the methods of transferring capital, revenues, and interest for foreign investors. As for residents of Algeria, they have the right to transfer their funds abroad to finance activities that complement their work in Algeria. This law, a cornerstone in liberating the economy from its constraints, can be described as a departure from the idea of subjecting economic development to the dictates of sovereignty. It adopts an approach that prioritizes the economic aspect over the political one. Furthermore, it is a successful law because it disregards distinctions based on capital ownership or nationality, and it makes no distinction between domestic and foreign investors, applying the same criteria to both residents and non-residents. In addition, the law includes several guarantees, such as the freedom to transfer profits, and it ensures that foreign investments have a positive impact on the national economy, such as job creation and technology transfer.

### **Legislative Decree No. 93/12:<sup>28</sup>**

During this period, Investment Promotion Law No. 12-93, issued on October 5, 1993, was enacted. This law merely outlined the legal and legislative framework for investment promotion. Its true legal and economic impact could not be measured or assessed until the issuance of its implementing regulations, in addition to other laws related to economic reforms, such as the decrees on competition, the stock exchange and securities, and privatization.

The 1993 Investment Promotion Law primarily aimed to stimulate and increase foreign capital inflows, mobilize substantial domestic capital, revitalize the economy, and create a favorable environment for promoting and stimulating both domestic and foreign investments in a way that would stimulate economic activity and create new jobs.

This legislative decree, issued three years after the Monetary and Credit Law, demonstrates the state's clear commitment to promoting investment and implementing a policy of economic liberalization. It introduced several changes and is based on the following:

- Equal treatment for all investors.
- Exemption of the national and foreign private sector from the restrictions imposed under previous laws, reducing the requirement to a simple declaration instead of the previous approval procedures.
- Enshrining the principle of free movement of capital.
- Granting numerous incentives and privileges to investors to encourage and develop investment.

It is noteworthy that this law opened the door to foreign capital, authorizing it to invest in all sectors for the production of goods and services, with the exception of strategic sectors such as the hydrocarbons sector, where it opened the door to participation and partnership in projects due to the state's need for investment in this sector.

The most significant feature of the laws and decrees of this phase is the prioritization given to the private sector, unlike the previous phase. However, a criticism of these laws and decrees is that they were partial, as evidenced by the numerous amendments they underwent. This period was marked by the issuance of a number of important laws, which played a significant role in advancing Algeria's reform efforts aimed at promoting investment. These included:

- Executive Decree No. 319-94, issued on October 17, 1994, outlining the powers, organization, and operation of the Investment Promotion, Support, and Monitoring Agency (Official Gazette, October 19, 1994.)
- Executive Decree No. 320-94, outlining the conditions and procedures for designating, defining, and managing free zones, and specifying the procedures for concluding agreements

related to the transfer of the exploitation and management of a free zone. This decree implements the provisions of Article 34 of Legislative Decree No. 93-12, issued on October 5, 1993, which aims to promote investment.

- - Executive Decree No. 321-94 of October 17, 1994, issued pursuant to the provisions of Article 24 and specifying the conditions for designating and defining the boundaries of special zones, Official Gazette, October 19, 1994.

- Executive Decree No. 322-94 of October 17, 1994, concerning the transfer of private domain lands located in special zones within the framework of investment promotion, Official Gazette, October 19, 1994.

Executive Decree No. 323-94 of October 17, 1994, specifying the minimum amount of private funds allocated for investment. Also noteworthy are Legislative Decrees No. 93-08 of April 25, 1993, amending and supplementing Ordinance-Law No. 75-59 of September 26, 1975, concerning the Commercial Code (Official Gazette No. 27).

- Legislative Decree No. 93-09 of April 25, 1993, amending and supplementing Ordinance-Law No. 154-66 of June 6, 1966, concerning the Code of Civil Procedure (Official Gazette No. 27)

### **Post-1990s Era:**

The process of enshrining investment freedom in Algerian law has witnessed several developments, particularly linked to the circumstances Algeria has experienced. It is noteworthy that investment was initially enshrined and guaranteed implicitly, before becoming explicitly guaranteed, as evidenced by the following:

#### **Constitutional Guarantee For Investment:**

The constitutionalization of investment signifies a clear declaration and guarantee from the state to enhance the value of investment and provide assurance to all economic actors that it is a fundamental and supreme constitutional principle.

The 1996 Constitution stipulated in Article 19 that the regulation of foreign trade falls under the jurisdiction of the state, and that the law defines the conditions for engaging in and monitoring foreign trade.

Article 37 further stipulated that freedom of trade and industry is guaranteed and exercised within the framework of the law.

In the 2016 Constitution, Article 21 stipulated that the regulation of foreign trade falls under the jurisdiction of the state, and that the law defines the conditions for engaging in and monitoring foreign trade.

Article 43 stipulated that freedom of investment and trade is recognized and exercised within the framework of the law. Here, we note that the constitutional framers used the term "investment" for the first time, and explicitly linked it to "trade".

Meanwhile, Article 23 of the 2020 Constitution states that the state regulates foreign trade, and that the law defines the conditions for engaging in and monitoring foreign trade. Article 61 also guarantees freedom of trade, investment, and entrepreneurship, which are exercised within the framework of the law.

Here, we also note that the framers of the Algerian Constitution again used the term "investment" and linked it to trade and entrepreneurship.

### **Legislative Guarantees for Investment:**

This period was characterized by a return to political and security stability and an improvement in economic conditions. This necessitated keeping pace with these new circumstances through the issuance of a large package of laws, decrees, and orders, all of which are integral to the reforms and have affected all sectors without exception. Among the legislations addressing investment are the following:

**Order No. 01/03 dated August 20, 2001, concerning investment development:** <sup>29</sup>

This order concerning investment development was issued to give new impetus to the investment process in Algeria, following the negative results of Legislative Decree No. 93/12. Experience had shown some shortcomings and deficiencies in that decree, as it failed to achieve its intended goals despite the guarantees and incentives it provided.

This decree also defined investment as the acquisition of assets within the framework of creating new activities, expanding production capacities, rehabilitation, or restructuring. It further defined it as contributing to the capital of an institution in the form of cash or in-kind contributions, and reclaiming activities within the framework of partial or full privatization, as stipulated in Article 2 of this decree.

Therefore, Decree No. 01/03 concerning investment development was introduced in a new form to strengthen incentives, encourage further investment, and address the shortcomings of the previous legislative decree.

Among the additional incentives and guarantees included in Decree No. 01/03 concerning investment development, the new law's provisions included numerous additional incentives. It also reaffirmed the provisions of the previous law and clarified its clauses definitively. The new law was based on fundamental principles, the most important of which are:

- Establishing the principle of complete freedom of investment and abolishing any form of prior authorization.
- Equality among all investors in rights and obligations, and subjecting both domestic and foreign investments to the same legal rules<sup>30</sup>, from the establishment of the investment until its liquidation.
- Investments completed under this agreement will not be subject to future revisions or cancellations unless the investor explicitly requests them.
- The investment process will be facilitated by establishing a framework to manage investor relations.<sup>31</sup>
- Investments will be protected against nationalization, administrative confiscation, or any similar measures.<sup>32</sup> The law guarantees the investor the freedom to transfer profits and capital at any time.
- Any dispute between a foreign investor and the Algerian state will be subject to the jurisdiction of the competent judicial authorities, except in cases where Algeria has entered into bilateral or multilateral agreements related to conciliation and arbitration, or in cases where a special agreement exists stipulating a settlement or agreement based on special arbitration.

Furthermore, the Algerian legislator has granted two categories of incentives, based on Articles 9 and 10 of Ordinance 01-03, which are included within two systems: the general system and the exceptional system. This is because, in addition to benefiting from the tax, quasi-tax, and customs incentives stipulated under the general system, investors also benefit from special advantages and exemptions under the exceptional system, particularly when they utilize specialized technologies that contribute to environmental protection, the preservation of natural resources, energy conservation, and the achievement of comprehensive development.

**The following is a summary of the most important tax, quasi-tax, and customs incentives granted to investors:**

- Application of reduced customs duty rates for imported equipment directly used in the investment project.
- Exemption from Value Added Tax (VAT) on goods and services directly used in the investment project.
- Exemption from property transfer fees for real estate acquired within the framework of the investment project. Regarding the special exceptional system, <sup>33</sup>advantages have been granted to investments undertaken in regions whose development requires special state contributions, as well as investments of particular importance to the national economy, especially when they utilize specialized technologies that preserve the environment, protect natural resources, conserve energy, and lead to sustainable development.

**These investments benefit from the following special advantages:<sup>34</sup>**

- Exemption from transfer fees for all real estate acquisitions made within the framework of the investment.
- Application of a fixed registration fee of 0.2% for articles of incorporation and capital increases.
- Partial or full state coverage of expenses, after assessment by the agency, for works related to essential infrastructure necessary for the investment.
- Exemption from Value Added Tax (VAT) on goods and services directly involved in the investment, whether imported or purchased from the local market, provided that these goods and services intended for the execution of operations are subject to VAT. - Applying the reduced customs duty rate to imported goods directly used in the investment project.
- Commencement of operations: After verifying the commencement of operations, the following benefits are granted:
  - Exemption for 10 years from the actual operating period from corporate income tax (IBS), income tax (IRG) on distributed profits, lump-sum payment (VF), and professional activity tax (TAP).
  - Exemption for 10 years from the date of acquisition from property tax on real estate included in the investment project.
  - Granting additional benefits that enhance or facilitate the investment, such as deferral of losses and depreciation periods.

The 1996 Finance Law, Article 138 of the Direct Taxes Law, and Article 309 of the Tax Code all included several advantages for productive investors who export goods and services to foreign markets, including:

- A temporary five (5) year exemption from taxes on profits earned by companies engaged in the sale of goods and services for export.
- Exemption of companies from

**Orientation Law No. 01/18 for the Promotion of Small and Medium Enterprises, issued on December 12, 2001:<sup>35</sup>**

This law defined small and medium enterprises (SMEs) and the role they can play in driving development. It also outlined the necessary measures to assist, support, and promote them. A large number of SMEs were established under the provisions of this law and its implementing regulations and decrees.

Subsequently, Executive Decree No. 02/373, issued in November 2002, established a loan guarantee fund for SMEs to provide the necessary guarantees for obtaining bank loans.

**Order No. 01/04, dated August 20, 2001, was issued concerning the organization, management, and privatization of public economic enterprises.**

Additionally, Law No. 01/17, dated October 21, 2001, which addresses the organization and privatization of public economic enterprises, was also issued, primarily with the approval of the President of the Republic. It is worth noting Executive Decree No. 01/354, which defines the Privatization Operations Oversight Committee, its powers, and its organizational structure and procedures.

Given the numerous problems encountered in implementing and applying this law, the legislature issued the Guiding Law for the Development of Small and Medium Enterprises (SMEs) on January 10, 2017. This law introduced new provisions aimed at stimulating economic growth, improving the structure of SMEs, encouraging their competitiveness and export capabilities, and promoting a culture of subcontracting.

### **Order No. 03/11 of August 26, 2003, concerning Money and Credit:**

The 2003 amendment constituted a new formulation of Algerian banking law. It adopted new mechanisms for managing the banking system and repealed Law No. 90/10 concerning Money and Credit.

It also allowed for a review of the organization and operation of the banking sector, particularly regarding the roles of the Bank of Algeria and the Monetary and Credit Council, as well as the oversight of banks and financial institutions, exchange rate regulations, and capital flows. The most important aspects of this decree concerning the encouragement of foreign direct investment include:

- Non-residents are permitted to establish banks and financial institutions, either independently or in partnership with residents. Articles 84 and 85 of Decree No. 03/11 stipulate that foreign banks and financial institutions are allowed to open branches in Algeria, provided that reciprocity is granted.
- The transfer of income, interest, and capital is permitted. Article 126 of Decree No. 03/11 explicitly states that “capital, all results, income, interest, revenues, and other funds related to financing are permitted to be transferred and enjoy the guarantees stipulated in the international agreements signed by Algeria.” Order 10/04 of August 26, 2010, amending the Monetary and Credit Law:

This order reaffirms the responsibility of the Bank of Algeria to ensure the safety and security of the banking system by strengthening the legal framework for maintaining financial stability, as emphasized in Article 2.

### **Law No. 09-16 on Investment Promotion:**

This law was adopted to inject new dynamism into Algeria's policy towards foreign investment and its ability to attract it. To address the situation,<sup>36</sup> particularly after the significant decline in hydrocarbon prices on global markets, and to demonstrate the Algerian authorities' readiness to encourage and stimulate foreign investment, Order No. 03-01 was repealed and replaced by Law No. 09-16 on Investment Promotion, with the exception of Articles 6, 18,<sup>37</sup> and 22. This law introduced several amendments to the provisions governing investment.

In general, and foreign investment in particular, the aim is to inject new dynamism into investment projects in Algeria and enhance its capacity to attract foreign investors. This includes:

Introducing flexibility to the rules governing foreign investment, with the goal of eliminating discriminatory treatment and subjecting all types of investment to similar administrative procedures<sup>38</sup>.

Law No. 09-16 also addresses the issue of investment incentives and tax treatment, dedicating 16 articles to this topic. These articles introduce numerous amendments to the financial and tax concessions offered by the state to both domestic and foreign investment. Law No. 09-16 significantly simplified the procedures for benefiting from incentives. It abolished the investment declaration system and its mandatory nature for applying for incentives,<sup>39</sup> replacing it with a registration procedure. Article 4 stipulates that investments, prior to their implementation, must be registered with the National Investment Development Agency to benefit from the incentives stipulated in this law. Furthermore, it eliminated the application for incentives and stripped the agency of its broad discretionary power in assessing the eligibility of projects for these incentives. The registration procedure, by force of law and without any further action, entitles all foreign investments not included in the negative lists to benefit from the shared incentives and the incentives allocated to investments undertaken in the southern regions, the high plateaus, and any region whose development requires special state contributions, as well as certain additional incentives as applicable<sup>40</sup>.

It should be noted that, according to Article 14 of Executive Decree No. 102-17, when the value of an investment equals or exceeds five billion dinars, or when the investment is of particular importance to the national economy, it can only benefit from incentives after obtaining prior approval from the National Investment Council. Law No. 09-16 did not deviate from the forms of incentives established by its predecessor, but rather expanded the scope and extent of some of them as follows:

- Common incentives granted to all types of eligible investments.
- Additional incentives granted to investments undertaken in concessionary activities and those that create jobs.
- Exceptional incentives granted to investments of particular importance to the national economy.

Furthermore, it made some concessions regarding the protectionist principle established by the repealed law, thereby eliminating the distinction between imported and locally produced goods. It also allowed investments, during the implementation phase, to benefit from an exemption from value-added tax on imported goods, similar to that granted to locally acquired goods, provided these goods are directly used in the project's execution<sup>41</sup>.

Moreover, it put an end to the National Investment Council's direct intervention in granting exceptional privileges, eliminating the possibility of the Council intervening in granting exemptions and reductions in duties, taxes, or fees on the prices of goods produced within the framework of emerging industrial activities, according to Article 5 of Law 13-18, which includes the Supplementary Finance Law for 2018.

Furthermore, in order to restore confidence among foreign investors and encourage them to resume investing in Algeria, the law established investment guarantees, all of which are compiled in Chapter Four under the title "Guarantees Granted to Investments." This chapter emphasizes the protection of each investor's property from risks, including protection against expropriation and seizure. Article 27 stipulates that, in addition to the rules governing expropriation, completed investments cannot be subject to seizure except in the cases stipulated by applicable legislation.

It also affirmed that every investment benefits from the principle of legislative stability, and reformulated other guarantees for foreign investors<sup>42</sup>, relying on the principle of fair and equitable treatment instead of the principle of non-discrimination<sup>43</sup>. Furthermore, it granted investors the right to resort to alternative dispute resolution methods, implicitly and unintentionally expanding the scope of this right, and reinstated the guarantee of capital transfer<sup>44</sup>.

Despite the foregoing, this law, in turn, failed to remove all obstacles imposed on foreign investment. It disregarded the constitutionally enshrined freedom of investment and failed to abolish the quantitative restrictions imposed on it or eliminate the 49/51<sup>45</sup> rule. Moreover, it established the right of pre-emption and broadened its scope<sup>46</sup>.

**Law No. 18-22 of July 24, 2022, concerning investment:**

This law repeals the provisions of its predecessor, Law No. 09-16, with the exception of Article 37. It aims to standardize the rules governing investment, the rights and obligations of investors, and the incentive schemes applicable to investments in economic activities for the production of goods and services carried out by national or foreign natural or legal persons, resident or non-resident<sup>47</sup>.

Article 2 further clarifies the objectives of investment:

- Developing priority sectors of activity with high added value.
  - Ensuring sustainable and balanced regional development.
  - Valuing local natural resources and raw materials.
  - Prioritizing technology transfer, innovation, and the knowledge economy.
  - Promoting the widespread use of modern technologies.
  - Creating permanent jobs and enhancing the skills of human resources.
  - Strengthening and improving the competitiveness of the national economy and its export capacity.
- This law also applies to all acquisitions of tangible or intangible assets directly related to the production of goods and services, whether within the framework of establishing new activities, expanding production capacities, or rehabilitating production equipment. It also covers contributions to the capital of an enterprise in the form of cash or in-kind shares, as well as the transfer of activities from abroad.

Article 5 defines an investor as any natural or legal person, national or foreign, resident or non-resident, as defined by the exchange control regulations, who undertakes an investment. The reason for adding this condition related to the concept of exchange is questionable. Furthermore, the law distinguishes between investments in establishment, expansion, and rehabilitation.

**This law also provides several guarantees, including:**

- The possibility of utilizing state-owned land, as stipulated in Article 6, with the obligation for real estate authorities to make information regarding the property available to the investor, particularly through the investor's digital platform<sup>48</sup>.
- Exemption from foreign trade and bank domiciliation procedures for in-kind foreign contributions that fall exclusively within the framework of transferring activities from abroad.
- Exemption from foreign trade procedures and bank localization, new goods that fall under foreign in-kind quotas<sup>49</sup>.
- Benefiting from the guarantee of capital transfer for investors and the resulting returns, investments made from capital shares in the form of cash shares imported through banks, issued in freely convertible currency, regularly issued by the Bank of Algeria, and transferred to it, whose value equals or exceeds the minimum limits determined according to the total project cost, with the acceptance as external shares the reinvestment of capital from interest and dividends declared convertible according to applicable legislation and regulations.

The legislator replaced the term nationalization with requisition, and according to Article 10, an completed investment can only be requisitioned by the administration in the cases stipulated by law, and requisition entails fair and equitable compensation. This leads us to



question the purpose of this article and whether it can be considered among the deterrents to investment in Algeria. - A new provision in this law is the establishment of a High National Committee for Investment-Related Appeals, attached to the Presidency of the Republic. This committee is tasked with adjudicating appeals submitted by investors. This demonstrates the significant importance given to investment. Furthermore, the law stipulates a response time of no more than one month from the date of notification for appeals, in addition to the possibility of escalating the appeal to the competent judicial authorities<sup>50</sup>.

- Any dispute arising from the application of the provisions of this law between a foreign investor and the Algerian state, whether caused by the investor or resulting from an action taken against them by the Algerian state, shall be subject to the jurisdiction of the competent Algerian judicial authorities, unless bilateral or multilateral agreements ratified by the Algerian state exist concerning conciliation, mediation, and arbitration, or an agreement is concluded between the National Investment Development Agency, acting on behalf of the state, and the investor, allowing the parties to resort to arbitration.

- This law is not retroactive. Therefore, any future revisions or repeals of this law will not affect investments made under its provisions unless the investor explicitly requests otherwise<sup>51</sup>.

It is noteworthy that the Algerian legislator titled Chapter Two "Guarantees and Obligations," meaning that while granting guarantees and advantages, the investor is also obligated to fulfill the duties stipulated in Article 15. These duties include ensuring compliance with applicable legislation and standards, particularly those related to environmental protection, public health, competition, labor, and the transparency of accounting, tax, and financial information. Furthermore, the investor is required to provide all necessary information requested by the administration for monitoring and evaluating the implementation of this law.

It should be noted that this law identifies the bodies responsible for investment: the National Investment Council and<sup>52</sup> the Algerian Investment Promotion Agency<sup>53</sup>

In addition to its provision in Article 19 regarding the Single Window for Major Projects and Foreign Investments, designating it as the sole point of contact with national jurisdiction, it is tasked with undertaking all necessary procedures for the implementation and support of major investment projects and foreign investments.

Furthermore, it introduced the concept of Decentralized Single Windows, designating them as the sole point of contact for investors at the local level. These decentralized windows are responsible for assisting and supporting investors in completing investment-related procedures.

It should be noted that the Single Window for Major Projects and Foreign Investments, as well as the central Single Windows, comprises representatives of the bodies and departments directly responsible for implementing procedures related to the realization of investment projects. This includes issuing decisions, licenses, and all documents related to the activity associated with the investment project, in addition to acquiring the designated land and monitoring the investor's commitments.

Representatives of the bodies and departments at the Single Windows are authorized to issue, within the specified timeframes, all decisions, documents, and licenses related to the implementation and operation of the investment project registered at the Single Windows. What also distinguishes this law is its focus on technology and digitalization through the creation of a digital platform for investors. This platform provides all necessary information, particularly regarding investment opportunities in Algeria, real estate offerings, investment incentives and advantages, and related procedures. It also dematerializes all investment-

related procedures and serves as a tool for guiding, supporting, and monitoring investments from registration through operation.

Regarding incentive schemes available to investors upon request, the law introduces new terms, such as the incentive scheme for priority sectors

Similarly, there is the incentive scheme for regions of special international importance

And the incentive scheme for structured investments

### Conclusion:

The new investment law is simply a reflection of the Algerian legislator's desire to remove the restrictions that hampered investment under previous laws, particularly those related to administrative bureaucracy, lack of transparency, and discrimination in granting various guarantees and benefits, in addition to the procedures for resolving disputes should they arise. However, the question remains whether the national or local one-stop shops will align with the new philosophy introduced by the investment law, and whether the time has come to utilize Algeria's human capital, given that the population has reached 45 million with a population growth rate estimated at approximately 2.2%, and the gross national income per capita has reached \$3,200.

Furthermore, the Algerian market's location can serve as a springboard to other markets due to its geographical proximity to Southern European and African countries.

In addition, there is the potential to benefit from the opportunities offered by the implementation of the partnership agreement with the European Union. This market is also characterized by its abundance of raw materials and energy resources, as well as the potential to benefit from the ZLECAF agreement and other attractive markets.

Despite efforts to improve the investment climate in Algeria, the Algerian economy still faces a number of obstacles that could limit the flow of investments if serious measures are not taken to address them. These include:

- Difficulty accessing bank loans.
- The problem of industrial land.
- The problem of the informal sector.

And problems of an administrative, regulatory, and bureaucratic nature.

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<sup>1</sup> Bahloul Mohamed Qassem: Algeria between the economic crisis and the political crisis, Dahlab Press 1993 - Algeria, p. 21.21.

<sup>2</sup> Ahmed Jamil, The Role of Banks in Economic Development, PhD Thesis in Economics, Egypt, 1994, p. 31.

<sup>3</sup> Hossam Mohamed Issa, Technology Transfer, A Study in Legal Mechanisms, Arab Future House, Egypt, Cairo, First Edition, 1978, p. 190.

<sup>4</sup> - Y. BERNARD, Dictionnaire économique et financier, édition seuil, Paris Vi ; 1975 .

<sup>5</sup> - Nabil Shaker, Preparing Studies of the New Projects and Evaluating New Projects, 2nd Edition, Ain Shams Library, Egypt, 1998, p. 385..

<sup>6</sup> - Selon l'économiste autrichien Eugen von BÖHM-BAWERK, le capital est « l'ensemble des biens indirects ou intermédiaires qui, à travers des détours productifs féconds et moyennant une dépense de temps, ont la vertu de rendre plus productif le travail ».

Pour l'école autrichienne, dont Eugen von BÖHM-BAWERK est l'un des représentants les plus fameux (avec entre autres Friedrich HAYEK et Joseph SCHUMPETER),

l'investissement se caractérise par le fait qu'il allonge le processus de production. Lorsque Robinson découvre l'idée du seau (plus plausible que l'aqueduc), il doit détourner une partie de ses efforts (utilisés habituellement pour produire de l'eau) pour fabriquer des seaux : c'est pourquoi on parle d'un « détour de production ». Par la suite, la production d'eau devra toujours passer par cette étape supplémentaire (la fabrication, l'entretien et le remplacement des seaux). Si Robinson effectue ce détour de production, c'est qu'il sait qu'il lui est profitable : il produira son eau plus vite grâce à son seau (la productivité a augmenté), et ce même en comptabilisant le temps nécessaire à la construction et à l'entretien du seau. Par conséquent, on peut penser que Robinson ne décide de construire son seau que si la rivière est suffisamment éloignée pour que la « perte de temps » nécessaire à la fabrication soit « rentable ». On touche ici à la question de la rentabilité de l'investissement, qui sera étudiée dans la suite de ce chapitre.

<sup>7</sup> - A. Aliouche Karboua Kamal, Investment Law in Algeria, University Publications Office, Algiers, 1999 edition, p. 2.

<sup>8</sup> Omar Sakhri, Macroeconomic Analysis, University Publications Office, Algiers, 2000, p. 168..

<sup>9</sup> - - Microsoft Encarta Electronic Encyclopedia, 2005 edition..

<sup>10</sup> - - Hussein Omar, Economic Encyclopedia, Arab Thought House, 4th edition, Egypt, 1992, p. 36..

<sup>11</sup> - - Taher Haider Hardan, Principles of Investment, Dar Al-Mustaqbal for Publishing and Distribution, Amman, Jordan, 1st edition, 1997, p. 13.,

<sup>12</sup> - - Tariq Al-Hajj, Economics and its Theory, Publishing and Distribution House, Amman, Jordan, 1998, p. 123.

<sup>13</sup> - - Hatem Fares Al-Ta'an, Investment: Its Objectives and Motives, College of Administration and Economics, University of Baghdad, 2006, p. 8.

<sup>14</sup> <https://www.iasj.net/iasj/download/76d58b3b02f1b851>

<sup>15</sup> - Abdul Aziz Saad Al-Najani, The Legal Status of the Foreign Investor in Yemen and Egypt: A Comparative Legal Study, 2002..

<sup>16</sup> - - Presidential Decree No. 420/90 dated December 22, 1990, ratifying the Agreement on the Promotion and Guarantee of Investments among the Maghreb States, signed on July 23, 1990, published in Official Gazette No. 06.

<sup>17</sup> - Law No. 18/22 dated 25 Dhu al-Hijjah 1443, corresponding to 24 July 2022, relating to investment

<sup>18</sup> - The preamble to the 1963 Constitution stipulated that the revolution was embodied in the establishment of a national economy managed by the workers.

Article 13 of the 1976 Constitution stipulated that the socialization of the means of production constituted a fundamental basis for socialism, and that state ownership represented the highest form of social ownership.

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<sup>19</sup> - Article 13 of the 1976 Constitution stipulated that the socialization of the means of production constituted a fundamental basis for socialism, and that state ownership represented the highest form of social ownership.

<sup>20</sup> Article 14 stipulated that state ownership was defined as ownership acquired by the national community, represented by the state, and that this ownership irrevocably included: pasturelands, nationalized lands (agricultural or arable), forests, water resources, subsoil resources, mines, quarries, natural energy sources, and the natural and living mineral resources of the continental shelf and the exclusive economic zone.

<sup>21</sup> - Law No. 277/63 of July 25, 1963, concerning investment (repealed)..

<sup>22</sup> -- See Order No. 284/66 dated 15/09/1966 containing the Investment Law, published in the Official Gazette No. 80 dated 17/09/1966.

<sup>23</sup> Article 11 stipulates that the following transfer rights are guaranteed for foreign investments mentioned in Articles 2, 3, 4, and 5 of this Order, as follows:

1- The transfer of the distributed portion of the company's net annual profits, after deducting necessary depreciation or reserves and taking into account the significance of its debt.

The distributed portion of profits is transferable only in proportion to the ratio of foreign contributions to the company's equity to its total equity, provided that these contributions correspond to the actual capital inflows into Algeria.

Actual transfers of profits abroad may not exceed 15% annually of the amount of foreign contributions to the company's equity in Algeria, as detailed above.

Profits that are transferable and reinvested are considered as imported capital.

2- . The transfer of proceeds from the transfer or liquidation of an establishment, or from the sale or transfer of shares or nominal capital, is permissible, depending on whether the buyer is an Algerian natural person or a legal entity under Algerian supervision, or, in other cases, whether the transaction is authorized by the Central Bank of Algeria.

The procedures for implementing the provisions of this article will be determined by a decision to be issued by the Minister of Finance and Planning.

<sup>24</sup> - Law No. 82/13 dated 28/09/1982 relating to the establishment and operation of mixed economic companies, published in the Official Gazette 35.

<sup>25</sup> According to Article 12, a mixed-economy company, upon its establishment, is entitled to the following tax advantages:

Exemption from the transfer of ownership for all real estate purchases necessary for its activity.

Exemption from property tax for five years from the date of purchase of the property in question.

Exemption from the tax on industrial and commercial profits for the first three fiscal years, and a 50% reduction for the fourth fiscal year and a 25% reduction for the fifth fiscal year.

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A reduced 20% tax rate on reinvested industrial and commercial profits.

Furthermore, interest accrued on current accounts and closed accounts held in the mixed-economy company's accounting records is exempt from the tax on interest, deposits, and guarantees.

Exemption from all taxes on overtime pay. It should be noted that benefiting from the aforementioned tax advantages does not exempt mixed-economy companies from the obligation to file tax returns.

See Article 15 of Law 82/13 concerning the establishment of mixed-economy companies. Article 20 of Law 82/13 stipulates that the mixed economic company shall be established in accordance with the procedures stipulated in the Commercial Law in the field of companies by shares.

<sup>26</sup> - Law No. 90/10 issued on April 14, 1990, relating to money and credit, Official Gazette No. 16 issued on 18/4/1990

<sup>27</sup> - Article 181 of the Monetary and Exchange Law states: Any natural or legal person whose main center of economic activity is outside of Algeria shall be considered a non-resident.

<sup>28</sup> - Legislative Decree No. 93-12 of October 5, 1993, relating to the promotion of investment, Official Gazette No. 64 of October 10, 1993, amended and supplemented by Law No. 98-12 of December 31, 1998, containing the Finance Law for the year 1999, Official Gazette No. 98, issued on December 31, 1998, is repealed.

<sup>29</sup> - Presidential Decree No. 03-01 of August 20, 2001, concerning investment development, Official Gazette, No. 47.

<sup>30</sup> - - See Article 14 of Decree No. 01-03 of August 20, 2001, concerning investment development.

<sup>31</sup> - - See Article 15 of Decree No. 01-03 of August 20, 2001, concerning investment development..

<sup>32</sup> - See Article 16 of Order No. 01-03 of August 20, 2001, concerning investment development.

<sup>33</sup> - - See Article 10 of Order No. 01-03 of August 20, 2001, concerning investment development..

<sup>34</sup> - See Article 11 of Order No. 01-03 dated 20/08/2001 relating to investment development.

<sup>35</sup> - - Law No. 18-01 dated 12/12/2001 containing the guiding law for the promotion of small and medium enterprises, Official Gazette No. 77, p. 5.

<sup>36</sup> - Through Ordinance No. 03-01 concerning investment development, the Algerian authorities demonstrated serious efforts to attract foreign investment. However, starting in 2009, the text underwent numerous amendments through finance laws, particularly the 2009 Supplementary Finance Law (Order No. 01-09 of February 17, 2009, published in the Official Gazette No. 44 on July 26, 2009) and the 2010 Supplementary Finance Law (Order No. 01-10

of August 26, 2010, published in the Official Gazette No. 49 on August 29, 2010). These amendments shifted the state's policy from encouraging foreign investment to one based on significant state intervention, coupled with considerable caution towards foreign investment. This caution manifested in the requirement for prior declaration and a preliminary study by the National Investment Council before undertaking any project, as well as the imposition of certain conditions. On local financing in everything that falls outside the formation of capital, and the state's exercise of the right of pre-emption over every transfer of shares or stakes of foreign investment, which caused a considerable decline in the investment rate.

<sup>37</sup> - - Law 09-16 of August 3, 2016, Official Gazette No. 46, issued on August 3, 2016, as amended and supplemented by Law No. 13-18 of July 11, 2018, containing the Supplementary Finance Law for 2018, Official Gazette No. 42, issued on July 15, 2018.

<sup>38</sup> - Law 09-16 was enacted to improve administrative procedures by::

<sup>39</sup> Eliminating all forms of discrimination between domestic and foreign investment and subjecting them to the same investment procedures and benefits.

Simplifying and streamlining investment procedures, reducing all documentation and steps to registration with the Agency, which allows investment to benefit from all the advantages previously afforded by the previous series of procedures.

<sup>40</sup> - To simplify procedures and facilitate investor access to the services provided by the Agency, four centers were established: the Benefits Management Center, the Procedures Completion Center, the Business Creation Support Center, and the Regional Promotion Center, in accordance with Article 27 of Law 09-16. - Oubaia Malika, The Administrative Treatment of Investment in Financial Activities According to Algerian Law, Thesis for the Degree of Doctor of Science, Law Specialization, Mouloud Mammeri University, Tizi Ouzou, 2016, p. 419.

<sup>41</sup> See Article 12-b of Law No. 09-16.

Furthermore, in order to protect domestic production, the repealed law granted advantages in the form of exemption from value-added tax only for acquisitions of Algerian origin, and did not extend to imported goods, unless it was confirmed that no similar local product existed, in accordance with Article 60 of Ordinance No. 01-09.

<sup>42</sup> - See Article 22 of Law No. 09-16.

This principle is shrouded in ambiguity due to its general nature.

<sup>43</sup> See Article 24 of Law No. 09-16.

According to this article, the Algerian legislator recognized the right to resort to arbitration, but made it an exception to the jurisdiction of national courts. This is very similar to the repealed provision.

<sup>44</sup> - See Article 25 of Law No. 09-16, which expanded the scope of foreign investments benefiting from the capital transfer guarantee, but linked benefiting from it to respecting a minimum amount of capital provided and other conditions that vary according to the funds invested.

<sup>45</sup> - Article 58/3 of Order No. 01\_09

<sup>46</sup> Article 30 of Law No. 09-16 established the State's right of pre-emption over foreign investments in Algeria, stipulating that the State has the right of pre-emption over all transfers of shares or equity stakes made by or to foreigners.

Article 31 amended the right of purchase previously granted to the State and its institutions under the repealed law regarding transfers made abroad at various levels, transforming it into a right of pre-emption. It stipulated that the State exercises this right of pre-emption over a percentage of the capital corresponding to the capital being transferred abroad, without exceeding the share held by the transferor in the equity capital of the company subject to Algerian law.

<sup>47</sup> - See Article 01 of Law 18-22 relating to investment.

<sup>48</sup> - See Article 7, paragraph 1 of Law 18-22 on Investment..

<sup>49</sup> - See Article 7, paragraph 2 of Law 18-22 on Investment.

<sup>50</sup> - See Article 8 of Law 18-22 on Investment.

<sup>51</sup> - - See Article 13 of Law 18-22 on Investment.

<sup>52</sup> - Effective under Order No. 03-01 concerning investment development, the agency is tasked with proposing the state's investment strategy, ensuring its overall coherence, and evaluating its implementation.

<sup>53</sup> - - The National Investment Development Agency, established under Article 6 of Order No. 03-01 concerning investment development, has been renamed the Algerian Investment Promotion Agency. It is responsible for coordinating with relevant departments and bodies on the following:

Promoting and enhancing investment in Algeria and abroad, and promoting Algeria's attractiveness, in coordination with Algerian diplomatic and consular missions abroad.

Informing and raising awareness among the business community.

Ensuring the smooth operation of the digital platform for investors.

Registering and processing investment files.

Assisting investors in completing the procedures related to their investments.

Managing incentives, including those related to the portfolio of projects authorized or registered before the date of issuance of this law.

Monitoring the progress of investment projects.