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Incentives and safeguards under Algeria's new investment law

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Abstract---Algeria has sought to create a more attractive investment climate through a series of reforms, including amendments to its investment law and signing partnership agreements with several countries. These reforms have offered incentives and safeguards to stimulate investment and attract foreign capital. Despite the challenges that remain, the country has achieved economic growth, albeit at a slow pace. This growth has motivated me to continue with the reform process and strengthen foreign partnerships.

Keywords---Investment climate, incentives, safeguards, investor, economic development.

Introduction

Foreign investment has become a significant driver of national economies in recent years. Developing countries, in particular, have increasingly relied on it to attract capital, foster economic growth, and fund projects amidst global economic crises such as the COVID-19 pandemic and the Russia-Ukraine war. The demand for foreign investment is high due to its potential to provide developing countries with abundant capital and facilitate technology transfer; however, foreign capital will only flow to a country if it offers an attractive investment climate that promises growth and provides genuine guarantees to assure investors of a stable investment environment.

An investment climate refers to the conditions and circumstances under which investment activities take place, which can either positively or negatively impact the success of investment projects. These conditions include political, economic,

social, and security factors. In essence, these factors either encourage or discourage investment in a particular country.

In this context, Algeria has sought to capitalize on its vast investment potential and strategic geographic location between Europe and Africa to enhance investment opportunities. This culminated in the amendment of the investment law and the introduction of successive reforms aimed at attracting investment¹.

Through these amendments, Algeria has granted incentives and guarantees aimed at facilitating investment growth and creating alternative wealth to reduce dependence on hydrocarbons.

This paper seeks to answer the following question:

What impact do the incentives and guarantees provided in the new investment law have on investors?

The answer to this question can be found in the following points:

Chapter One: Incentives Granted to Foreign Investors Under the Algerian Investment Law

Section One: Incentive Systems and Benefits for Eligible Investments

Section Two: Benefits for Investments with High Potential for Wealth Creation and Job Creation

Chapter Two: Safeguards Provided in the New Amendment

Section One: Administrative and Tax Safeguards

Section Two: Legal Safeguards

Chapter One: Incentives Granted to Foreign Investors Under the Algerian Investment Law

Law No. 22-18 of July 24, 2022, concerning investment, repealed Law No. 16-09 of August 3, 2016², concerning the promotion of investment, which had itself repealed Decree No. 01-03 of August 20, 2001³, concerning the development of investment⁴, and Legislative Decree 93-12 of October 5, 1993, concerning the promotion of investment, along with eight implementing decrees (22-296 to 22-303 of September 8, 2022)⁵. This new law constitutes the legal framework governing economic investment in Algeria and is the regulatory framework for foreign investments and agreements signed between the Algerian state and all countries. Law No. 22-18 is part of the economic reforms initiated by the Algerian state several years ago and, along with Decree No. 01-04 of August 20, 2001, concerning the organization, management, and privatization of public economic enterprises⁶, and other legislative and regulatory texts, forms the general legal framework governing investments in Algeria.

The Algerian legislature has granted several incentives and guarantees to encourage foreign investment. The Algerian legislator has been keen to attract foreign capital to Algeria.

Investment projects can benefit from tax exemptions and reductions according to the incentive system in which they are classified. Unlike the previous law, the new law 22-18 has divided incentives into incentive systems based on the new vision of the law and the impact of projects on economic and social development.

Section One: Incentive Systems and Benefits for Eligible Investments

Investments can benefit, at the investor's request, from one of the following incentive systems:

- The incentive system for priority sectors called the "sectoral system"
- The incentive system for regions to which the state gives special importance called the "regional system"
- The incentive system for structured investments called the "structured investment system"

Subsection 1: Projects Benefiting from the Sectoral Incentive System

The Algerian legislator, in the new amendment, has identified investment sectors that can benefit from the sectoral system, as they are considered attractive investment environments. These sectors are listed in Article 26 of Law 22-18:

- Mining and quarrying
- Agriculture, aquaculture, and marine fishing
- Industry, food industry, pharmaceutical industry, and petrochemicals
- Services and tourism
- New energies and renewable energies
- Knowledge economy, information and communication technology

Article 26 also excludes certain activities from benefiting from the sectoral system incentives.

a. Construction Phase:

Unlike the previous law, which attempted to consider the specific characteristics of each region in providing incentives to promote investment growth, the new amendment offers common benefits for all sectors at different stages of investment project development. During the construction phase, eligible investments can benefit from the following incentives in addition to the general tax, parafiscal, and customs incentives provided in the general law⁷:

- ❖ Exemption from customs duties on imported goods directly used in the investment project.
- ❖ Exemption from value-added tax (VAT) on imported or locally purchased goods and services directly used in the investment project.
- ❖ Exemption from registration fees imposed on the constituent contracts of companies and capital increases.
- ❖ Exemption from registration fees and property advertising tax on national property assets, including the right to usufruct overbuilt and unbuilt real estate properties intended for investment projects.
- ❖ Exemption for ten years from real estate tax on real estate properties used for investment purposes, starting from the date of acquisition.

b. Exploitation Phase:

For a period of three to five years from the start of exploitation, Algeria offers the following incentives⁸:

- Exemption from corporate income tax (IBS)
- Exemption from the professional activity tax (TAP)

Subsection 2: Investments Made in Regions of Special Importance (Regional System)

This exception for these regions reflects the state's desire to develop them due to their strategic importance in terms of natural and real estate resources, to reduce development disparities between regions of the country.

Through this incentive system, the state aims to encourage balanced investment to achieve integrated development of all regions by utilizing their available resources.

The new amendment defines these regions as follows:

- Regions belonging to the high plateaus, south, and greater south
- Sites that require special state support for their development
- Sites that possess natural resources that can be valued

Article 28 of Law 22-18 leaves the determination of the list of regions to be regulated.

a. Implementation Phase:

Similar to the previous system, benefits are divided into phases based on the progress of the investment. The benefits granted during the construction phase, as outlined in Law 22-18, include⁹:

In addition to the tax, parafiscal, and customs incentives stipulated in the general law, investments eligible for the benefits of the regional system, and for which the activities carried out are not exempt, can benefit from the following advantages:

- Exemption from customs duties on imported goods directly used in the investment project.
- Exemption from value-added tax (VAT) on imported or locally purchased goods and services directly used in the investment project.
- Exemption from registration fees imposed on the constituent contracts of companies and capital increases.
- Exemption from registration fees and property advertising tax on national property assets, including the right to usufruct overbuilt and unbuilt real estate properties intended for investment projects.
- Exemption for ten years from real estate tax on real estate properties used for investment purposes, starting from the date of acquisition.

Surprisingly, the legislator has maintained the same benefits granted to the sectoral system during the construction phase, despite recognizing and acknowledging the difficulties faced by investment in these regions.

b. Operational Phase (5 to 10 years):

Investors benefit from corporate income tax exemptions and exemptions from business activity taxes. Notably, the legislator has reduced the minimum duration of benefit eligibility from ten years to five years, allowing for a flexible range of five to ten years.

Section Two: Benefits for Investments with High Potential for Wealth Creation and Job Creation

In addition to the common incentives previously mentioned, the legislator has introduced additional incentives, primarily related to specific tax and financial incentives stipulated by applicable regulations. These incentives cannot be combined with those provided under the Investment Law framework; in such cases, the most favorable incentive shall apply ¹⁰. Executive Decree 22-302 introduced a second category of additional incentives. This category pertains to projects creating more than 500 direct jobs and with an investment value equal to or exceeding 10 billion Algerian dinars, qualifying for the structured investment regime. Investments meeting these criteria ¹¹ are eligible. In addition to the common incentives previously mentioned, the legislator has introduced exceptional incentives for high-impact investments capable of creating wealth and jobs:

a. Implementation Phase: Investors receive all common benefits related to the implementation phase, along with exemptions or reductions, as per applicable legislation, for customs duties, taxes, and other levies, as well as grants, subsidies, financial support, and any other facilities that may be granted. Additionally, subject to the approval of the National Investment Council, the implementation phase benefits may be transferred to contractors engaged by the beneficiary investor, responsible for the implementation of the investment on behalf of the latter ¹². Beyond the tax, parafiscal, and customs incentives stipulated in the general law, investments eligible for the structured investment regime may benefit from the following: The implementation phase benefits may be transferred to the parties contracting with the beneficiary investor, responsible for the implementation of the investment, on behalf of the latter.

b . Operational Phase

For a period ranging from five to ten years, the investor benefits from exemption from corporate income tax and exemption from the professional activity tax¹³.

It is noted that the legislator has reduced the number of years and opened the possibility of benefiting from the incentives for a minimum period of five years and a maximum period of ten years, whereas previously it was a fixed ten-year period.

Chapter Two : Safeguards Provided in the New Amendment 22-18

In addition to its domestic laws, Algeria has signed numerous bilateral agreements aimed at protecting and promoting investment, to gain the trust of foreign investors. These bilateral agreements typically define a set of principles and guarantees upon which investments are based, as well as outlining the rights and obligations of the contracting parties. Most investing countries, when entering into investment contracts with other countries, seek legislative stability, or what is commonly called "legislative stability"¹⁴, which is considered a guarantee that enhances the confidence of foreign investors.

The tax incentives granted by Algeria would be of little use unless accompanied by an exemption from taxes in the source countries for income earned by investors from their activities abroad, as far as foreign investors are concerned¹⁵.

The signing of bilateral agreements can be considered a guarantee and incentive for investors, and they are constantly increasing, especially at the African level, such as the agreements concluded with Libya, Tunisia, Niger, Mali, and others¹⁶.

Section One: Administrative and Tax Safeguards

The Algerian legislator has supported a set of administrative and tax safeguards stipulated in the new investment law by granting additional tax incentives.

First: Guarantee of Benefiting from Real Estate

Article 6 of Law 22-18 stipulates that investment projects approved to benefit from incentive systems can benefit from a plot of land owned by the state, which is granted by the bodies in charge of real estate, and information regarding the availability of real estate is made available to investors by the aforementioned bodies through the investor's digital platform.

Second: Exemption from Foreign Trade Procedures

Through this guarantee, the legislator sought to reduce the procedural burdens on investors wishing to enter Algeria. Article 7 of Law 22-18 stipulates: "Foreign equity contributions that are exclusively part of the transfer of activities from abroad are exempt from foreign trade and banking procedures. New goods that are part of foreign in-kind contributions are also exempt from foreign trade and banking procedures."

Third: Transfer of Funds

The right to transfer capital is one of the most important guarantees granted to foreign investors. Most agreements concluded by Algeria have stipulated a guarantee for transfer, as well as the currency in which the transfer is to be made, and the transfer deadlines.

Article 8 of Law 22-18 enshrines this guarantee. Investments made through capital contributions in the form of imported cash contributions, denominated in a freely convertible currency and regularly priced by the Bank of Algeria, and transferred in favor of the investor, and whose value is equal to or exceeds the minimum limits determined according to the total cost of the project, benefit from the guarantee of the transfer of the investor's capital and the returns generated therefrom. Reinvestment in the capital of profits and dividends whose transfer is authorized by the applicable laws and regulations is also accepted as external contributions. The transfer guarantee and the minimum limits mentioned in the first paragraph above apply to in-kind contributions made in the forms provided for by the applicable legislation, provided that their source is foreign and that they are valued by the rules and procedures governing the establishment of companies. The transfer guarantee provided in the first paragraph above also includes the net realized income resulting from the disposal and liquidation of foreign-sourced investments, even if the amount exceeds the initially invested capital.

For example, the agreement concluded between Algeria and Tunisia stipulates in Article 6 the form of funds constituting the investment and the proceeds thereof. The second paragraph of this article states: "The transfers referred to in the first paragraph of this article shall be effected without delay and in a freely convertible currency at the exchange rate prevailing on the date of transfer in the territory of the contracting party in which the investment was made, by the procedures provided for by the exchange laws in force, provided that these procedures do not contravene the freedom of transfer."

a. Guarantee of Transfer: The legislator in the new amendment and the agreements concluded by Algeria has granted the investor the right to transfer, as have the domestic provisions that have been keen to grant foreign investors the right to transfer their capital and the returns generated therefrom, given the role it plays in attracting foreign investors. This is evident in Law No. 90-10 on money and credit, which stipulates in Article 184 the granting of the right to foreign investors¹⁷ to transfer their capital, and Article 8 of Law 22-18 on investment¹⁸ also affirms this right.

b. Currency of Transfer: The legislator has not specified the currency of transfer but has stipulated that it must be a freely convertible currency priced regularly by the Bank of Algeria.

c. Transfer Deadlines: The duration varies from one agreement to another. For example, in the previous agreement, it is stated that: "The transfers referred to in the first paragraph of this article shall be effected without delay..." The duration is not specified, but the requirement of speed upon transfer request is stipulated.

d. Freedom of Transfer: Foreign investors are interested in the freedom granted to them by the investment law of the host country to freely transfer the principal of the investment and its returns abroad, as well as to transfer the proceeds of disposal or liquidation and other income because the foreign investor is not concerned with generating profits as much as he is concerned with the possibility of transferring them. Therefore, such a transfer is an obstacle to attracting foreign capital.

Fourth: Guarantees Against Expropriation

Among the important guarantees that investors seek is protection from legal actions that the administration can take against the investor's property, such as requisition. Perhaps the most dangerous of these actions is expropriation, which can take several forms. It can be said that expropriation can take one of the following forms¹⁹:

- ❖ Either through an individual administrative decision to expropriate for public benefit,
- ❖ Or through a collective administrative decision to expropriate for public benefit, or what is known as "nationalization," and in both cases, expropriation is subject to compensation.
- ❖ Expropriation may also take the form of confiscation, without any compensation, which distinguishes it from the previous two forms.

Referring to the previous Algerian investment law (Law 16-09), we find that it stipulates in Article 23 a guarantee against seizure, stating that: "In addition to the rules governing expropriation, investments made cannot be subject to seizure except in the cases provided for by the applicable legislation. This seizure shall be subject to just and fair compensation."

The Algerian legislator, in Law 16-09, attempted to address the ambiguity and lack of precision in the previous text in Article 16 of Decree 03-01. While Article 40 of Legislative Decree 93-12 stipulated "requisition,"²⁰ which is another form of encroachment on property but temporary, confiscation, as defined, is a type of expropriation and is considered a punishment, without any compensation. However, Article 16 stated that confiscation is subject to just and fair compensation, indicating that the intended meaning was expropriation for public

benefit²¹, which is associated with just and fair compensation according to the regulating law, not confiscation, which does not require compensation²².

Therefore, Article 23 of Law 16-09 used the term "seizure" to encompass all forms of expropriation. However, the legislator seems to have reversed this approach in Law 22-18, Article 10, returning to guaranteeing protection only against requisition. This leaves many questions unanswered and may be exploited by the administration against investors.

Fifth: Compensation

Compensation is considered one of the most important guarantees for foreign investment in a state. Although a state has the right to expropriate foreign projects, it is obligated under both domestic and international law to compensate for the damage inflicted upon the foreign investor as a result of being deprived of their invested funds. This is generally manifested through compensation for these funds²³.

For example, the agreement concluded between Algeria and the Republic of Niger stipulates in Article 4, paragraph 3, the conditions for expropriation and the entitlement to compensation. Paragraph 4 states, « (Compensation must be equal to the actual value of the investment concerned, assessed by the economic conditions prevailing on the eve of the date of expropriation, nationalization, or similar measure taken or announced in respect thereof...)»

It can be observed from the text of the article that compensation must be:

a. Fair and equitable compensation: Fair and equitable compensation means comprehensive compensation that covers the loss incurred by the expropriated investor. Compensation must be based on the actual value of the invested funds and must cover all profits lost by the investor²⁴. This is confirmed by Article 21 of Law No. 91/11, which sets out the rules governing expropriation for public benefit²⁵, which stipulates that: "(The amount of compensation for expropriation must be fair and equitable to cover all the damage suffered and the profits lost as a result of expropriation...)" Article 10 of Law 22-18 also stipulates the characteristics of fair and equitable compensation.

b. Adequate compensation: This means that it must be paid in cash, in the form of funds convertible into foreign currency abroad, or convertible for investment within the state, if in local currency²⁶.

c. Prompt compensation: This means that compensation must be paid either before, during, or shortly after the expropriation proceedings. This is what investment protection agreements have adopted, as the agreement concluded between Algeria and Mali stipulates in Article 4 that "...it shall include provisions for the payment of prompt, adequate, and effective compensation.²⁷" However, the settled practice is that compensation is paid at the agreed time and according to the circumstances of the country, with the state being obligated to pay it within a reasonable period²⁸.

Sixth: Guarantee of Protection of Intellectual Property

Law 22-18 introduced this guarantee in Article 9, which stipulates a guarantee of protection of intellectual property under the applicable legislation.

Seventh: Guarantee Equality of Treatment

a. Standard of Fair and Equitable Treatment It is evident from the investment law and agreements related to the promotion and protection of foreign investment that there are several legal standards for the treatment of foreign investment, and for determining the guarantees and advantages it enjoys specially. The oldest of these standards, which has been established by international custom in this regard, is the "standard of fair and equitable treatment,²⁹" which has been adopted by the majority of investment treaties. For example, the Agreement on the Promotion and Protection of Investments between Niger and Algeria for the year 2000 stipulates that "Each Contracting Party shall ensure fair and equitable treatment in its territory to investments of investors of the other Contracting Party, determined by its laws and regulations for the promotion of investment." However, this principle is shrouded in ambiguity and its content is difficult to define unambiguously, as its application varies according to the circumstances of the state that adopts it. Therefore, it needs other texts and standards to regulate its content and define in a precise manner the rights and advantages enjoyed by foreign investment³⁰.

b. National Treatment The principle of national treatment is one of the guarantees granted to investors, and it means that foreign investment enjoys the same rights, guarantees, and advantages enjoyed by national investment in the host countries, under the same conditions for such investment³¹. Originally, this principle was stipulated in domestic laws, as the Algerian legislator did through Legislative Decree 93-12 on the promotion of investment in Article 38, paragraph 1, which stipulates that: "(Natural and legal persons shall enjoy the same treatment as Algerian persons in terms of rights and obligations concerning investment)³²." In Article 14 of Decree 01-03, as well as in Article 21 of Law 16-09 on the promotion of investment, the legislator directly referred to the priority of concluded treaties. In Law 22-18, through Article 03, although it was not explicit, its text stated: "This law enshrines the following principles: Freedom of investment: Every natural or legal person, whether national or foreign, resident or non-resident, who wishes to invest, is free to choose their investment, subject to respect for the applicable laws and regulations, transparency, and equality in the treatment of investments."

*** Exceptions to National Treatment:** Exceptions to the principle of national treatment exist because it is not applied absolutely, but has limitations linked to the economic circumstances of the state and its international obligations, such as granting certain privileges, such as loans, tax incentives, and benefiting from the application of reduced rates in the field of customs duties, as well as assistance and support for certain basic sectors of the national economy to contribute to economic development. The state works to provide protection for national companies and the necessary support for competition, thus imposing some exceptions to the principle of equality³³. Among these exceptions is allowing nationals to practice certain economic activities that are not allowed to foreigners due to the specific characteristics they possess. The state can also grant preferential treatment to an investor to encourage and promote investment in its territory, by the domestic laws and regulations it sets³⁴. It appears in Law 22-18 that the legislator has granted complete freedom, as stipulated in Article 03, and this is a risk taken by the Algerian legislator to attract a larger number of foreign capital. Algeria has included in the international agreements it has concluded

some exceptions to the principle of national treatment, which is primarily related to Algeria's international obligations arising from joining economic cooperation organizations and the establishment of a free trade area or customs union or common market, in addition to the need to maintain public order³⁵.

c. Most-Favored Nation Treatment: This is manifested in the state treating the foreign investor in the same manner as its nationals are treated in the territory of the state to which this investor belongs. This is an important and common means of determining the legal guarantees enjoyed by foreign investment. The state may stipulate it in its national laws, known as legislative reciprocity, as the Algerian legislator did in paragraph (02) of Article 14 of Law 16-09. It may be satisfied with actual reciprocity³⁶, where an agreement is often reached between two or more states through an international agreement³⁷.

Section Two: Legal Guarantees

First: Stability of the Law The stability of the law governing investment plays a significant role in attracting foreign investment. Investors are primarily concerned with the legal system that governs their investment and the extent to which it achieves their interests. Their decision to invest in a particular country depends on the stability of the legal system governing investment in that country³⁸.

Article 13 of Law 22-18 on investment states: "The effects resulting from the revision or cancellation of this law, which may occur in the future, shall not apply to investments made under this law unless the investor expressly requests it." Algeria has worked to allay the fears of foreign investors by including the principle of "stability of the applicable law" in its domestic law governing investment.

According to the above article, this principle requires the stability of the legal system applied to the investment throughout its lifetime. This guarantee, according to the text of the article, stipulates that new amendments or laws cannot be applied to investments made under this law.

However, an exception is provided in the second part (2) of the above article. As an exception to the principle of stability of the applicable law, the new law or amendments may be applied to the foreign investor if they expressly request it. This is usually the case when the new law contains better guarantees and benefits (the more favorable law). In this case, a declaration must be made to the National Agency for the Promotion of Investment (ANDI) and a request must be made to obtain the benefits of the new law³⁹.

Second: Dispute Settlement

The method of resolving and settling disputes that may arise from investment is one of the means and guarantees sought by foreign investors, which they can resort to resolving disputes between them and the host state. These disputes are characterized by their special nature⁴⁰.

Recognizing the importance of these means and guarantees, and their role in attracting foreign investment, states have sought to include provisions in their domestic laws for the resolution of investment disputes, and have also initiated joining many international agreements related to the settlement of investment disputes, and have included related clauses in investment protection and promotion agreements signed by Algeria.

a. Settlement of Disputes within the Framework of National Courts: Algerian investment law has established various means for settling investment disputes,

some of which are judicial, such as resorting to national courts and international arbitration, while others are amicable, such as conciliation and mediation. This is stated in Article 12 of Law 22-18, which stipulates: "Any dispute arising from the application of the provisions of this law between a foreign investor and the Algerian state, caused by the investor or due to a measure taken by the Algerian state against him, shall be subject to the competent judicial authorities, unless there are bilateral or multilateral agreements ratified by the Algerian state whose provisions relate to conciliation, mediation, and arbitration, or an agreement is concluded between the agency mentioned in Article 18 below, which acts on behalf of the state, and the investor, allowing the parties to resort to arbitration." The agency referred to in the article is the National Agency for the Promotion of Investment.

According to this article, Algerian courts were originally competent to resolve investment disputes between foreign investors and the Algerian state represented by its various institutions. This applies the principle of state sovereignty over persons and property within its territory. As long as the dispute has arisen within the state's borders, jurisdiction to hear it lies with the national courts unless there is a special agreement to the contrary, such as allowing the dispute to be resolved through amicable means such as conciliation, mediation, or private arbitration, or any other settlement clause agreed upon by the parties⁴¹.

Algerian investment law refers to the settlement of disputes and litigation procedures regarding investment to the civil procedure law in force in Algeria, and the matter is decided based on national law, including conflict of laws rules, as it does not contain special procedures for litigation in this matter.

b. Settlement of Disputes within the Framework of International Agreements:

Foreign investors seek to avoid domestic means of dispute resolution, primarily domestic courts, due to the nature of the dispute, given that one party is a sovereign state and the other is a private foreign party, which may affect the credibility and impartiality of the judiciary. This has led them to seek other more neutral and powerful means and guarantees, which are the international means or guarantees for the settlement of investment disputes. This is what the Algerian legislator has guaranteed for foreign investors by allowing recourse to international means for settling disputes, for which international agreements have been concluded, focusing in particular on international commercial arbitration, which is of great importance in international investment disputes, in addition to other means⁴².

Resorting to international agreements for the settlement of investment disputes cannot be considered a transfer of jurisdiction to these agreements in the settlement of such disputes, as they are applied directly because Algeria has ratified them. Rather, it is a reassurance to the foreign investor and an incentive for him to invest in Algeria due to the great protection provided by these agreements⁴³.

Conclusion

The Algerian legislator has made significant efforts to encourage foreign investment, particularly from African countries, through various legal means,

both at the domestic level in the investment law and at the international level through bilateral and multilateral agreements, by guaranteeing protection and providing financial and procedural incentives. All of this is aimed at attracting a larger volume of direct investment.

However, the volume of this investment remains modest compared to investments in other African countries. This is primarily due to the identified shortcomings and several legal and procedural obstacles that continue to hinder the flow of foreign investment, making investors hesitant to invest in Algeria, as revealed by most international reports issued by specialized bodies such as the World Bank and the United Nations Conference on Trade and Development, which have ranked Algeria in low positions, particularly regarding administrative and bureaucratic procedures, whether when declaring investment and requesting benefits or about bank transfers, customs procedures, and commercial registration, in addition to difficulties in obtaining property and widespread corruption affecting various state bodies. This is despite Algeria's enormous potential, which can be used to achieve national and African economic growth, as it is characterized by its proximity to European markets and its openness to them, especially after the conclusion of the European Partnership Agreement.

Based on this, most studies in the field conclude that:

- ✓ The reforms and privileges offered by Algeria in recent years remain insufficient to attract foreign investment, especially with the significant delay in their implementation on the ground.
- ✓ Privileges, incentives, and guarantees are not the only factors in attracting foreign investment, but it is also necessary to know the extent of the obstacles that foreign investment may face and the seriousness of the state in addressing them.
- ✓ Granting privileges and exemptions is not an indication of the success of investment policy if it is not linked to the factors that influence the African investor's decision, but rather these privileges and exemptions can create a situation of unequal opportunities and undermine fair competition.

Among the suggestions of several legal and economic experts to improve the investment climate in Algeria and encourage foreign investors are the following:

Formulating a comprehensive system of tax incentives in line with other factors that attract investors and within the framework of consistent legal, financial, and economic policies.

Develop a comprehensive database containing all investment opportunities by sector, along with the associated guarantees and incentives, so that all investors can access it and build their projects based on it. Accuracy and regular updates must be ensured to be more beneficial to foreign investors, building trust between them and official bodies.

Cooperating with neighboring countries in the legal and economic fields and working hard to build a common African market, encouraging competition, the movement of capital, and joint financing of investment projects, and eliminating parallel markets.

Promoting investment in Algeria and the advantages associated with it to improve its image among foreign investors and convince them of the viability of investing in it, and providing various services to reduce the costs of study and research for

investors, by providing information about the country, investment opportunities, and profit prospects.

Footnotes

1) - Atcham Farouk, The role and importance of the investment climate in raising the competitiveness of the economic institution, the first national forum on "The Algerian economic institution and the challenges of the new economic climate" April 22/23, 2003, University of Gassi Merbah Ouargla, p. 07.

2) - Law No. 16-09 dated August 3, 2016, on investment promotion, Official Gazette, No. 46

3) - Order No. 01-03 dated August 20, 2001, on investment development, Official Gazette, No. 47, repealed by Article 37 of Law No. 16-09.

4) - Legislative Decree No. 93-12 dated October 5, 1993, on investment promotion, Official Gazette No. 64, issued on November 10, 1993, and repealed by Order No. 01-03.

5) - Executive Decrees:

Presidential Decree No. 22-296 of September 4, 2022, set the composition and functioning of the National High Commission for Investment Appeals.

Executive Decree No. 22-297 of September 8, 2022, set the composition and functioning of the National Investment Council.

Executive Decree No. 22-298 of September 8, 2022, setting the organization and functioning of the Algerian Investment Promotion Agency.

Executive Decree No. 22-299 of September 8, 2022, set the procedures for registering investments or transferring or transferring investments, as well as the amount and methods of collecting the royalty related to the processing of investment files.

Executive Decree No. 22-300 of September 8, 2022, setting the lists of activities, goods, and services that are not eligible for benefits, as well as the minimum financing limits for financing to benefit from the transfer guarantee.

Executive Decree No. 22-301 of September 8, 2022, which specifies the list of sites belonging to the regions that the State attaches particular importance to in the field of investment.

Executive Decree No. 22-302 of September 8, 2022, specifies the criteria for qualifying structured investments and the methods for benefiting from exploitation advantages and evaluation networks.

Executive Decree No. 22-303 of September 8, 2022, relating to monitoring investments and the measures to be taken in the event of non-compliance with the obligations and commitments subscribed.

6) - Order No. 01-04 of August 20, 2001, relating to the organization, management, and privatization of public economic institutions, Official Gazette, No. 47.

7) - Law No. 16-09 of August 3, 2016 relating to investment promotion, previous reference, Article 12, paragraph 01, items (a), (b), (c), (d), (e), (f), (g).

8) - Ibid, Article 12, paragraph 02, items (a), (b), (c)

9) - Ibid, Article 13, paragraph 01, items (a), (b).

¹⁰⁾ - The National Agency for Investment Support, official website, <http://www.andi.dz>

¹¹⁾ - See Article 30 of Law 22-18.

¹²⁾ - Ibid, Article 31, paragraph 01, paragraph 02.

¹³⁾ - Ibid, Article 31, paragraph 03.

¹⁴⁾ - Iqlouli Mohamed : Conditions of legislative stability included in state contracts in the field of investment, Critical Journal of Law and Political Science, Faculty of Law, Issue 01, Mouloud Mammeri University, Tizi Ouzou, January 2006, p. 95, p. 96.

¹⁵⁾ - Ben Souih Khadija : The Legal System of Investment in Algeria, Master's Thesis, Department of Corporate Law, Faculty of Law, University of Algiers, pp. 41, 42.

¹⁶⁾ - Presidential Decree No. 03-210 dated May 5, 2003, ratifying the Investment Promotion and Guarantee Agreement between the Government of the People's Democratic Republic of Algeria and

the Great Socialist People's Libyan Arab Jamahiriya, signed in Sirte on August 6, 2001, Official Gazette, No. 33, issued on May 1, 2003. Presidential Decree No. 98-431 dated 12/27/1998, ratifying the agreement concluded between the Government of the People's Democratic Republic of Algeria and the Government of the Republic of Mali on the promotion and mutual protection of investments, signed in Bamako on 07/11/1996, Official Gazette, No. 97. Presidential Decree No. 15-336 dated December 27, 2015, ratifying the bilateral agreements concluded between the Government of the People's Democratic Republic of Algeria and the Islamic Republic of Mauritania, to avoid double taxation and avoid tax evasion and fraud about taxes on income and wealth, signed in Algeria on December 11, 2011, J.R., No. 70, 2015.

¹⁷) - Yousfi Mohamed: The content of the provisions of Order No. 01 - 03 relating to the development of investment, dated 20/08/2001 and its ability to encourage national and foreign investments, *Idarah Magazine*, Volume 12, No. 23, 2002, p. 32.

¹⁸) - Law No. 90-10 dated 04/14/1990, including the amended and supplemented Monetary and Credit Law, Official Gazette No. 16, issued on 18/04/1990.

¹⁹) - Dr. Duraid Mahmoud Al-Samarrai: Foreign Investment "Obstacles and Legal Guarantees", Center for Arab Unity Studies, First Edition, Beirut - Lebanon 2006, p. 36.

²⁰) - Confiscation is a temporary measure taken by the competent public authority, whereby it obtains the right to benefit from some funds for the public benefit in exchange for subsequent compensation that it pays to the owner of the property subject to the confiscation. Confiscation is an exceptional means of obtaining real estate and movable property, unlike expropriation, which is imposed on real estate property in a final manner. This is stipulated in the Civil Code in Articles 679 to 681.

²¹) - Confiscation is defined as the measure taken by the public authority, whereby it seizes ownership of all or some of the property or rights owned by a person, without paying any compensation. This may be done through the judicial authority, which is called judicial confiscation, or through the executive authority, which is called administrative confiscation. In both cases, it must be based on a legal text that authorizes this and within its limits. However, what can be said is that confiscation is often a penalty.

²²) - Lamari Walid : Incentives and legal barriers to foreign investment in Algeria, a thesis submitted to obtain a master's degree in law, Business Law Department, University of Algiers 1, 2011, p. 21.

²³) - Drid Mahmoud Al-Samarrai, op. cit., p. 157.

²⁴) - Aibout Mohand and Ali, Legal Protection of Foreign Investments in Algeria, Dar Houma for Printing, Publishing and Distribution, Algeria, 2013, p. 215.

²⁵) - Law No. 91-11, dated Shawwal 12, 1411 corresponding to April 27, 1991, which determines the general rules related to expropriation for public benefit, amended and supplemented, Official Gazette, No. 21, 1991.

²⁶) - Nadia Oudi, Protection of Foreign Investment under the Algerian Conventional Law, Master's Thesis in Business Law, Faculty of Law, Mouloud Mammeri University, Tizi Ouzou, 2004, p. 55.

²⁷) - Presidential Decree No. 98-431 dated 12/27/1998, ratifying the agreement concluded between the Government of the People's Democratic Republic of Algeria and the Government of the Republic of Mali, op. cit.

²⁸) - Nadia Oudi, op. cit., p. 56.

²⁹) - Dr. Drid Mahmoud Al-Samarrai, op. cit., p. 210.

³⁰) - Dr. Drid Mahmoud Al-Samarrai Ibid, p. 211.

³¹) - Walid Lamari, op. Cit. p. 37.

³²) - See Article 38 of Legislative Decree No. 93-12 dated 10/05/1993, op. cit..

³³) - Shushu Ashour : Conventional Protection of Foreign Investment in Algeria, a thesis for obtaining a Master's degree in Law, Faculty of Law, University of Ben Aknoun, Algeria, 2008, p. 221.

³⁴) - Shushu Ashour : Ibid.

³⁵⁾ - Aibout Mohand and Ali, op. cit, p. 276.

³⁶⁾ - Actual exchange means that the state is satisfied with granting the foreign investor the same rights and benefits that are being granted to its citizens in the foreign state, even if this is not under an explicit text.

³⁷⁾ - Lamari Walid : Ibid, p. 38.

³⁸⁾ - Lamari Walid : Ibid, p. 17.

³⁹⁾ - National Agency for Investment Support, official website, <http://www.andi.dz>

⁴⁰⁾ - Dr. Drid Mahmoud Al-Samarrai : Foreign Investment "Obstacles and Legal Guarantees", op. cit, p. 309.

⁴¹⁾ - Nadia Ouadi, previous reference, p. 60.)

⁴²⁾ - Aisha Ainouch, Mechanisms for Guaranteeing Foreign Investments in Algeria, Master's Thesis in Business Law, Mouloud Mammeri University, Tizi Ouzou, p. 111.

⁴³⁾ - Salah El-Din Belili, Settlement of Foreign Investment Disputes through Bilateral Agreements, Master's Thesis in Business Law, University of Oum El Bouaghi, 2018, p. 07.