

RESEARCH
ARTICLE

The Investment Law and Its Role in Promoting the National Economy

(A Study in Light of the New Investment Law No. 22-18)

Lecturer Class B

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Investment, economy, development, legislation, investors.

Abstract

This research aims to highlight the importance of investment as a key factor reflecting the applications of economic development and embodying its most important features. The Algerian legislature has enacted investment laws since the promulgation of the 1963 Law in 1993, followed by a series of legal texts in this field, culminating in Laws 22-18 on investment. This latest law introduced financial and institutional incentives and facilities aimed at opening the way for investors and encouraging them to enter the realm of investment. In conclusion, the study arrived at several findings, the most notable being that, despite all the incentives and facilities that have generated considerable benefits in the investment sector, the field still suffers from specific legislative gaps. These shortcomings necessitate a re-examination and adjustment of some of its provisions to establish a comprehensive and balanced investment environment.

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Introduction

The economic environment across various countries of the world is experiencing significant developments in multiple fields. Consequently, it has become a competitive arena in which both individuals and institutions participate. Through the economy, nations grow; indeed, it constitutes their primary foundation and serves as an indicator of their progress and their capacity to keep pace with current developments. Economic improvement ultimately leads to stability in all other spheres, including social and political spheres, among others.

However, achieving economic growth requires the implementation and consolidation of various mechanisms that contribute to this goal, among which is investment. Investment refers to the act of a natural or legal person dedicating their resources either individually or in partnership with actors from the public or private sector and employing their expertise and capital to establish a particular project, regardless of the nature or type of activity involved.

Our country, Algeria, like many others, has hastened to revitalise its economic system, mobilising numerous pillars to achieve this goal, among them the field of investment. The Algerian legislature has enacted investment laws since the promulgation of the 1963 Law up to 1993, during which development strategies over three decades were based on prioritising public investment by consolidating the public sector's control over various economic

activities and marginalising private investment, whether national or foreign, while maintaining a system of control over foreign investment.

In the 1980s, the Algerian legislature separated the legal texts governing public, private, and foreign investment activities into different laws by repealing Ordinance No. 66-284, mentioned earlier, and replacing it with a series of subsequent laws. These included Law No. 82-11 on national private economic investment; Law No. 82-13 on the establishment and operation of mixed-economy companies; Law No. 86-13, amending and supplementing Law No. 82-13 on the establishment and operation of mixed-economy companies; and, among others, leading to Law No. 16-09 on the promotion of investment, applicable to both national and foreign investments, aimed at strengthening the investment sector in Algeria. This was followed by Law No. 17-02, constituting the framework law for the development of SMEs intended to encourage their expansion and promote national production, notwithstanding its repeal of Ordinance No. 01-03. Finally, Laws 22-18 on investment introduced financial and institutional incentives and facilities designed to open the door for investors and encourage them to enter the investment arena.

Accordingly, and in light of the problem posed, the following legal question arises:

What are the most important financial and institutional incentives introduced by the new Investment Law Nos. 22-18?

Research Hypothesis

Investment is considered one of the pillars and focal points of international concern owing to the numerous advantages it generates, particularly in light of the proliferation of diverse activities and intense competition among various investors in the economic environment.

Study Objectives

The objective of this study is to identify the most significant financial and institutional facilities and incentives introduced by the new Investment Law No. 22-18 to encourage investment as one of the key elements that embody the concept of economic development.

Study Methodology

In this research paper, we adopted a descriptive method by presenting and defining the subject, alongside an analytical method, to examine various international legal provisions relevant to the topic of the study.

To address the problem under consideration, the discussion is structured into two sections: the first addresses the financial guarantees and incentives under the new Investment Law. In contrast, the second will examine the newly introduced mechanisms for implementing the provisions of the Investment Law and its incentives.

Section One: Financial and incentive guarantees under the new investment law

As previously noted, investment is one of the key indicators reflecting the degree of a nation's economic success. Moreover, it serves as the driving force behind economic growth, functioning alongside other active mechanisms in this field. The new Investment Law No. 22-18 introduced a range of facilities, or more precisely, a framework of incentive guarantees, some of which are related to the principles of transparency and equality as rights for every investor, whereas others are financial. The latter will be examined as follows:

First Requirement: Guarantees Relating to Investors' Rights

An investor is, above all, a member of society entitled to a set of constitutionally guaranteed rights, which must, by their nature, be upheld in all fields, including the economy and investment. These rights include the following:

First Branch: Freedom and Equality in Investment

First: The Right to Equality in Investment

The principle of equality in the field of investment was established under Legislative Decree No. 93-12 on the Promotion of Investment.¹ In reality, this principle is constitutionally guaranteed, requiring the recognition of every person, respect for their rights, and the assurance of equal treatment with other members of society. This decree explicitly provides that all investors, whether national or foreign, will enjoy the same rights and obligations in matters of investment.

This principle was subsequently reinforced by later legislation supportive of investment, such as Law No. 16-09;² moreover, it was once again reaffirmed in the new Investment Law No. 22-18. The latter explicitly states the necessity of implementing the principles of transparency and equality in dealings within the investment sector.³ It is thus evident that the State is firmly committed to ensuring the obligatory adoption of equality in the context of all projects falling within the investment sector.

Second: The Right to Freedom of the Investor

This right is also among the incentives that, without a doubt, hold great importance in the field of investment. It entails the recognition of every investor's freedom to invest their capital wherever they wish and in any country they choose.⁴ As noted above, this is likewise a constitutionally guaranteed principle for all citizens.⁵

The new Investment Law No. 22-18⁶ further reinforces and clarifies this right, ensuring its effective implementation. Thus, no authority, regardless of its nature, within the State may interfere in order to restrict the investor's freedom by any means whatsoever.⁷

Second Branch: Guarantee of the Protection of the Investor's Property Rights

This right encompasses respect, protection, and safeguarding of the investor's ownership from one perspective and the right to intellectual property over the investment from another.

With respect to the right to protect ownership of the investment, it should be noted that property rights constitute one of the most fundamental rights upon which the economic system is based. However, this right is often subject to the principle of expropriation for public benefit, a practice applied in most countries worldwide, including Algeria. Nevertheless, such expropriation must be accompanied by the payment of compensation. It is

¹ Article 38 of Legislative Decree No. 93-12 of 5 October 1993 on the Promotion of Investment, *Journal Officiel*, no. 64 (1993), which states: "Foreign natural and legal persons shall enjoy the same treatment as natural and legal persons in Algeria with regard to rights and obligations pertaining to investment."

² Law No. 16-09 of 3 August 2016 on the Promotion of Investment, as amended and supplemented by Law No. 20-07 of 4 July 2020 on the Supplementary Finance Law for 2020, which states: "Subject to the provisions of bilateral and multilateral agreements signed by the Algerian State, foreign natural and legal persons shall receive the same treatment as Algerian natural and legal persons with regard to rights and obligations pertaining to investment."

³ Article 3 of Law No. 22-18 of 24 July 2022 on Investment, *Journal Officiel*, no. 50 (2022).

⁴ Obaya, Malika. "An Fa'aliyat Qawa'id al-Qanun Raqm 16-09 al-Muta'alliq bi-Tarqiyat al-Istithmar fi Istiqtab al-Istithmar al-Ajnabi" [On the Effectiveness of the Provisions of Law No. 16-09 on the Promotion of Investment in Attracting Foreign Investment]. *Al-Majalla al-Akademiyya lil-Bahth al-Qanuni* [Academic Journal of Legal Research] 10, no. 3 (2019), 124.

⁵ Article 1 of the 2020 Constitution states: "Freedom of trade, investment, and entrepreneurship is guaranteed and exercised within the framework of the law."

⁶ Article 3 of the aforementioned Law No. 22-18 states: "Any natural or legal person, whether national or foreign, resident or nonresident, wishing to invest is free to choose their investment."

⁷ Salem, Lili. *Al-Dhamanat al-Qanuniyya al-Mamnuhat lil-Mustathmir al-Ajnabi* [The Legal Guarantees Granted to the Foreign Investor]. Master's thesis, Faculty of Law, University of Oran, 2010-2011, 75.

inconceivable, for example, to expropriate an individual's private property for public benefit without providing the owner with compensation for the right that has been taken from them.⁸

The second aspect of the investor's right to ownership, namely, intellectual property, refers to the legal authority a person enjoys over all their intellectual and creative products that fall within the scope of their investment. An investment project may take the form of an idea or the invention of a particular innovation capable of practical, professional application.

In this context, it should be noted that intellectual property rights are divided into two categories:

- **Industrial property** encompasses all matters related to industrial designs and models, inventions and innovations, trademarks, formal designs, and integrated circuits.
- **Literary and artistic property**, which includes copyright and related rights, covers all artistic or literary productions that grant their author both material and moral rights.⁹

Intellectual property rights have also received significant attention from legislators, whether in texts relating to industry.¹⁰ Moreover, intellectual property rights are recognised within the framework of Investment Law No. 22-18, which explicitly stipulates that the State must guarantee intellectual property rights.¹¹ Notably, intellectual property rights are also guaranteed under constitutional provisions.¹²

Second Requirement: Financial and incentive privileges

In addition to the guarantees centred on granting rights to the investor, which are, in fact, legal rights, there also exists a set of financial and incentive privileges introduced by the new Investment Law No. 22-18. These are defined as follows:

First Branch: Transfer of Capital by the Investor and Protection of the Investment

First: The Right to Transfer the Investor's Capital

By the provisions of the new Investment Law No. 22-18, the foreign investor enjoys the right to transfer their investment capital and all resulting returns, provided these are in the form of monetary contributions imported regularly through banking institutions and whose value is equal to or exceeds the minimum threshold of the total cost of the completed project. These contributions may also be accepted, at the same time, as external shares in the investor's reinvestment,¹³ on the condition that the source of such contributions and returns is external. Moreover, they must be subject to proper valuation.¹⁴

Second: Ensuring the Protection of Foreign Investment

When a foreign investor wishes to invest in a particular country, the first factor they consider is the protection of their investment, specifically, whether that country accords due importance to the investor's ownership rights.

⁸ Hussein, Nuwara. *Al-Himaya al-Qanuniyya li-Milkiyat al-Mustathmir al-Ajnabi fi al-Jaza'ir* [The Legal Protection of the Foreign Investor's Property in Algeria]. Doctoral dissertation in law, Faculty of Law, Mouloud Mammeri University, Tizi Ouzou, academic year 2012-2013, 38.

⁹ Mohammed Al-Amin, al-Zein. "Qawa'id Himayat al-Milkiya al-Fikriyya 'ala Daw' al-Tashri'at wa-l-Ittifaqat al-Duwaliyya" [Rules for the Protection of Intellectual Property in Light of Legislation and International Agreements]. *Majallat al-Huquq wa-'Ulum al-Siyasa* [Journal of Law and Political Science], University of Rayan Ashour, Djelfa, 1, no. 1 (2008), 95.

¹⁰ Ordinance No. 03-05 of 19 July 2003 on Literary and Artistic Property, *Journal Officiel*, no. 44 (2003).

¹¹ Article 9 of the aforementioned Law No. 22-18.

¹² Article 74, paragraph 3, of the 1996 Constitution, as amended and supplemented.

¹³ Ben Obeid, Siham. "Dawr al-Qanun Raqm 22-18 al-Muta'alliq bil-Istithmar fi Tahsin Manakh al-Istithmar fi al-Jaza'ir" [The Role of Law No. 22-18 on Investment in Improving the Investment Climate in Algeria]. *Majallat al-Fikr al-Qanuni wa-l-Siyasi* [Journal of Legal and Political Thought] 7, no. 1 (2023), 526.

¹⁴ Article 8 of the aforementioned Law No. 22-18.

This encompasses safeguarding the investor from exploitation, unlawful appropriation, theft, imitation of the investment, or any infringement of property rights, which in turn include all derivative rights such as the exploitation, use, and disposal of the investment.

This is the general right to investment protection. However, the new Investment Law No. 22-18 introduces an additional dimension: the protection of investment from requisition by the relevant administrative authorities, except within the limits prescribed by law, that is, only to the extent authorised by legal provisions. In this respect, foreign investments are subject to the same administrative procedures as are national investment projects.¹⁵ Furthermore, in cases of expropriation for public benefit, the new law stipulates the guarantee of fair compensation, unlike Law No. 16-09, which merely provided for requisition and expropriation without explicitly ensuring such compensation.¹⁶

Second Branch: Granting Financial Incentives

With respect to financial incentives, the legislator, through the new Investment Law No. 22-18, restructured this matter by defining the projects eligible for such incentives and identifying those with priority access to them. These have been determined as follows:

First: Sectors that prioritise benefiting from financial privileges

The new Investment Law No. 22-18 specifies the sectors that enjoy priority in receiving financial privileges granted by the State to investors. In essence, these include various projects of a special and sensitive nature, namely, mining, quarrying, agriculture and aquaculture, maritime fishing, industry, particularly the food industry, pharmaceutical products, the petrochemical industry, and renewable energies.¹⁷

Notably, this law has introduced and adopted new activities compared with the previous legal text, thereby opening the way for investors to benefit from these privileges.

Second: Investment Projects Benefiting from Financial Privileges Based on Special Zones

There are certain areas to which the State accords particular attention and importance, either owing to their geographical significance and strategic location, the wealth of resources they contain, or the challenges posed by their climate. All such areas receive treatment that is, to some extent, distinct from that of other ordinary regions. These zones are defined in Executive Decree No. 22-30, which provides a more detailed classification than that set out in Law No. 16-09.

This decree contains three annexes, as follows:

- **Annex I:** A list of areas belonging to the High Plateaux, South China, and Far South China.
- **Annexe II:** A list of various areas receiving exceptional support from the State.
- **Annex III:** A list of areas possessing exploitable or potentially exploitable natural resources.¹⁸

Third: Incentives Directed toward Structured Investments

This category refers to large-scale and major investment projects, or those with significant potential to generate wealth, create jobs, and absorb a certain level of unemployment. Such projects play an active role in driving economic growth and achieving comprehensive development.

¹⁵ Article 10 of the same law.

¹⁶ Article 23 of the aforementioned Law No. 16-09.

¹⁷ Article 26 of the aforementioned Law No. 22-18.

¹⁸ Article 15 of Executive Decree No. 22-302 of 8 September 2022 defines the criteria for qualifying structured investments, the modalities for benefiting from operational advantages, and the evaluation frameworks, *Journal Officiel* (2022).

For a project to qualify as a structured investment and benefit from these incentives, it must meet specific criteria: it must create at least 500 jobs, and the project's value must be equal to or exceed ten million Algerian dinars.¹⁹

The Investment Law grants such projects varying privileges depending on the nature, importance, and type of the project. These privileges consist of tax reductions and exemptions, particularly during the establishment phase, that is, the construction phase of the project, for a statutory period of five years for investments located in certain designated areas.

Exemptions also apply to corporate profit taxes and professional activity taxes during the operational phase of the project, for a period ranging from three years for investments carried out in areas accorded special attention by the State to between five and ten years for projects in structured zones. These statutory durations are determined by the evaluation framework specific to each incentive scheme.²⁰

Section two: Newly introduced Mechanisms for Implementing the Provisions and Incentives of the Investment Law

While the new Investment Law No. 22-18 contains a set of legal provisions that guarantee numerous financial advantages for investors, it also, within the exact text, provides for institutional mechanisms that work diligently to implement and activate these financial benefits.

First requirement: The National Investment Council and the National Investment Agency

Both the National Investment Council and the National Investment Agency are among the institutional mechanisms that serve as adequate guarantees for facilitating investment, in addition to the financial incentives provided.

First Branch: The National Investment Council

The National Investment Council is an institutional mechanism established in 2001 under Ordinance No. 01-03,²¹ which stipulated its creation under the authority of the Minister responsible for investment promotion and placed it under the chairmanship of the Prime Minister. The Council is entrusted with a set of tasks and powers focused on implementing the provisions of the Investment Law, the most prominent of which are as follows:

- Overseeing matters related to investment strategies and support policies.
- Approving and providing opinions on agreements concluded with the National Agency for Investment Development.
- Approving the criteria for selecting major projects that serve as an investment in general.
- Approving or rejecting projects that contribute to supporting the national economy.²²

An examination of the provisions of this Ordinance revealed that the legislator initially granted the Council a considerable degree of autonomy by broadening the scope of its powers and responsibilities. While these powers were aimed at serving investment and the national economy, they imposed certain restrictions on investor freedom.

With the enactment of the new Investment Law Nos. 22-18, the legislator introduced a degree of flexibility to the Council's functions, narrowing its powers to some extent so that they are now limited to making strategic

¹⁹ Article 16 of the aforementioned Executive Decree No. 22-302.

²⁰ Article 3 of the same decree.

²¹ Ordinance No. 01-03 of 20 August 2001 on the Development of Investment, *Journal Officiel*, no. 47 (2001).

²² Article 18 of the aforementioned Ordinance No. 01-03.

proposals to the State in the fields of investment and the economy in general, along with the obligation to prepare an annual evaluation report to be submitted to the President of the Republic.²³

Previously, the investor's freedom was more restricted, as any agreement concluded with a designated investment agency that required the Council's approval. Furthermore, the reform has led to the unification of points of contact for investors through the consolidation of service desks.

Second Branch: The National Agency for Investment Promotion

First: Definition of the National Agency for Investment Promotion

Formerly referred to as the Algerian Agency for Investment Promotion, this body was renamed the National Agency for Investment Promotion under the enactment of the new Investment Law.²⁴ The legislature also modified its administrative oversight, placing it under the authority of the prime minister, whereas previously, it operated under the supervision of the minister responsible for investment promotion.

The National Agency for Investment Promotion may be defined as a public administrative institution with legal personality and financial autonomy.²⁵ It constitutes a fundamental and essential body in driving investment in Algeria, actively engaging in various activities that contribute to the advancement of the investment sector.

Second: Functions of the National Agency for Investment Promotion

In practice, the National Agency for Investment Promotion is entrusted with numerous tasks and powers focused on promoting investment and encouraging and supporting investors. Some of these fall within the domain of information provision, others within the sphere of facilitation, and others within the direct support and guidance of investors. These can be outlined as follows:

- **Functions within the framework of facilitation and privileges:**

In this respect, the agency manages and oversees a digital platform designed to engage with the realities of investment, assess achieved results, and carry out evaluations. It issues opinions and prepares reports on various matters related to investment while also proposing solutions and measures when specific problems arise, particularly those concerning investment opportunities that may hold significant benefits for the national economy.

The agency is also responsible for the following:

- Issuing and amending investment registration certificates.
- Identifying structured projects.
- Verifying and ensuring the eligibility of registered investments for granted advantages.
- Endorsing lists of goods and services provided by the investor.
- Issuing decisions to withdraw benefits.
- Preparing inspection reports regarding the commencement of the operational phase.
- Following up on communication with relevant administrations and bodies.

²³ Article 17 of the aforementioned Law No. 22-18.

²⁴ Article 18 of the same law.

²⁵ Article 2 of Executive Decree No. 22-2989 of 8 September 2022 establishing the organisation and operation of the Algerian Agency for Investment Promotion, *Journal Officiel* (2022).

- Addressing various difficulties encountered by investors.
- **Functions within the framework of promoting investment and supporting investors:**

The agency undertakes initiatives involving any activity adopted by public or private institutions, whether in Algeria or abroad. This is carried out by formulating a policy for a specific project and proposing a plan to facilitate matters for the investor, enabling them to determine the amount of project capital and form an initial concept. At the same time, the agency accompanies the investor through all stages of the project's implementation.

In the field of information, the agency promotes various investment projects through its communication with different media outlets. This is aimed at opening opportunities for investors to become aware of the facilities, activities, and incentives available in the sector. Through this process, the agency enables investors to access any information they may be seeking.

Within the framework of its information activities, the National Agency for Investment Promotion also works in coordination with all entities active in the investment field, including financial, administrative, and advisory institutions, among others.

Second Requirement: The Units Comprising the National Agency for Investment Promotion

The National Agency for Investment Promotion is structured and operates through a set of service units, which are as follows:

First Branch: Definition of the Service Units and Their Functions

According to Executive Decree No. 22-298, the service units of the National Agency for Investment Promotion, as noted above, comprise a central national service unit responsible for overseeing major projects and all foreign investments, in addition to other service units distributed across the various provinces of the country.²⁶

- **Single Central National Service Unit:** Specialised in major projects and various foreign investments.
- **Single National Service Unit:** This unit is also dedicated to major projects and various foreign investments.
- **Decentralised Service Units:** These units operate at the local level to manage investments carried out within the respective provinces.
- **Digital Platform for Investment Management:** Used for processing and monitoring investment operations.

These units are tasked with overseeing all investments established within their territorial jurisdictions. They assist and guide investors through the various procedures that must be followed and ensure that these processes are carried out by the applicable regulations.²⁷

Second Branch: Functions of the Service Units

The service units forming part of the National Agency for Investment Promotion are entrusted with several tasks, notably:

- Guiding investors.

²⁶ Article 18 of the aforementioned Executive Decree No. 22-298.

²⁷ Articles 19 and 20 of the aforementioned Law No. 22-18.

- Receiving investors.
- Issuing decisions, permits, and all documents related to the implementation of investment projects.
- Monitoring projects through all their stages.
- Preparing reports on various projects and the results achieved.
- Promoting various investment projects.

Second Requirement: The Digital Platform

In addition to the service units, the National Agency for Investment Promotion also comprises a digital platform, which likewise has specific functions.

First Branch: Definition of the Digital Platform

This platform is an automated electronic tool created under the supervision, monitoring, and oversight of the agency and is designed to guide investors and investments and to monitor and support them remotely throughout all their stages. At the same time, it serves as a form of electronic administration, often simplifying matters for investors and saving them effort and time in obtaining information or completing specific procedures remotely.²⁸

Second Branch: Functions of the Digital Platform

The digital platform is entrusted with numerous tasks, all of which are centred on serving and promoting investment. These can be summarised as follows:

- Improving communication with investors.
- Facilitating various remote procedures for them.
- Saving investors time and effort.
- Eliminating all forms of administrative bureaucracy and ensuring transparency.

Conclusion

The new Investment Law No. 22--18 constitutes an imperative necessity, given the various benefits it brings, which affect the entire economic environment in general and the field of investment in particular. It achieves this goal by creating new opportunities for investors and relying on diverse economic sectors to open the way for investment and provide a range of incentives, both financial and institutional.

Accordingly, the following recommendations emerge:

- The new Investment Law plays an even more significant role at many levels, particularly the economic level, without diminishing its importance in other respects.
- Improving and creating substantial opportunities for investors by reducing some of the complexities they encounter in this field, especially in terms of procedures, compared with the previous investment law.
- Institutions should be adopted to support investment projects, facilitate procedures, provide accompaniment, and formulate the regulations governing these various economic activities.

²⁸ Article 27 of the aforementioned Executive Decree No. 22-298.

In conclusion, despite all the facilities and incentives that have generated significant benefits in the realm of investment, this has been accompanied by certain legislative shortcomings affecting the sector. These require a re-examination and refinement of some of its provisions to achieve a comprehensive and balanced investment environment. Among these shortcomings are as follows:

- A lack of precise clarity in these guarantees, whether financial or institutional.
- The failure to highlight the investment projects that should have priority in benefiting from these guarantees.

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