



## Investment registration system in accordance with Law No 22/18 related to investment

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### **Abstract:**

The Algerian state seeks to provide a suitable business climate and investment environment that encourages investment. What is meant by the investment environment is the set of laws and economic, social and security conditions that affect the investor's confidence and his decision to invest. This was done by working to facilitate and simplify the investment practice procedures, by adopting the investment registration system, which is a system characterized by speed and simplification of the investment practice, so that the investor does not wait for a license or prior permission from the public authorities. It is evidence of the state's will to eliminate bureaucracy and improve the investment climate.

**Keywords:** investment registration, investment law, registration procedures, effects

### **Introduction:**

Law No. 18/22 related to investment dated July 28, 2022<sup>1</sup> .was issued in the context of continuing the economic reforms initiated by the Algerian state, and to meet the requirements of the growth of the national economy. This law aims to facilitate the investment process, improve the business climate, and enhance the competitiveness and attractiveness of Algeria as an important investment destination for foreign capital by devoting the principle of investment freedom, initiative, transparency and equality, while simplifying procedures and reducing administrative authority in handling investment files. This was done by introducing legal procedures, stipulated in Law No. 22/18 related to investment, that facilitate and simplify the procedures of the investment process in front of the investor, allowing him to practice the investment while benefiting from granted advantages. The most important of these procedures is the investment registration procedure, which was stipulated in Article 25 of Law No. 22/18, with reference to the regulation to determine the methods of investment registration. Indeed, Executive Decree No. 299/22 of September 8, 2022 was issued. It determines the methods of

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registering investments, assigning or transferring investments, as well as the amount and methods of collecting royalties related to the processing of investment files<sup>2</sup>

**Based on this, we pose the following problematic:**

What is meant by investment registration? What are the investment registration procedures?

To answer this problem in two basic ideas: In the first topic, we study the intended nature of investment registration, while in the second topic, we study the investment registration procedures in accordance with the provisions of Law 22/18 and what was stated in Executive Decree No. 22/299. To study this subject, I followed the analytical approach to analyze legal texts and materials, in addition to the descriptive approach.

**THE FIRST TOPIC: THE MEANT BY INVESTMENT REGISTRATION**

Article 25 of Law No. 18/22 stipulates that: “Investments must be subject, before realization, to registration with the competent one-stop shops mentioned in Article 18 of this law, in order to benefit from the granted advantages stipulated in the provisions of this law.

The investment registration is embodied in issuing a certificate immediately attached with a list of goods and services that can benefit from the granted advantages that authorize the investor to benefit from the privileges that he has the right to claim with the concerned departments and agencies.

The modalities of application of this article, as well as the list of goods and services that are not eligible for benefiting from the granted advantages specified in the provisions of this law, shall be determined through regulation<sup>3</sup>.

Through this text, the investment registration is a process that takes place before the realization of the investment, and to know what is meant by this process, it is necessary to address the study of the previous regulations.

**FIRST REQUIREMENT: PREVIOUS REGULATIONS PRIOR TO THE ISSUANCE OF LAW NO. 18/22:**

Under the socialist system, the state was in control of the national economy. Thus, there was an almost absence of private investment and a significant marginalization of the private sector, as the investor, before completing his investment project in Algeria, had to obtain a license called the prior license and be subject to a set of complex administrative procedures characterized by bureaucracy practiced by the administration represented by the bodies and agencies in charge of investment<sup>4</sup>, by virtue of The nature of the system that prevailed in that period.



After that, the liberal economic system was adopted in the 1990s. In light of these economic reforms, a number of legal texts devoted to this approach were issued, the most important of which was the issuance of Legislative Decree No. 12/93<sup>5</sup>, related to the promotion of investment. This legal text was considered an explicit approval by the state to open the field of investment. In Article 3 of it, it stipulated the principle of freedom of investment, and it also abolished the prior approval or prior license system and introduced a new system represented in the investment permit system. When the investor establishes his investment project, he must authorize his investment with the Investment Promotion, Support and Follow-up Agency (APSI). Through this permit, the investor benefits from the guarantees stipulated in Legislative Decree No. 93/12, but on the condition that the investor submits a request to benefit from the granted advantages with the investment permit, but despite this, this permit remains an administrative obstacle to the investor and violates the principle of investment freedom. Especially that the agency has a period of (60) sixty days to respond to the statement and the request for granted advantages, whether by acceptance or rejection, which disturbs the investor and makes him retreat from the investment, because he wants simple procedures that do not require time<sup>6</sup>.

Due to these shortcomings, Order No. 01/03 related to investment development<sup>7</sup> was issued. This matter simplified and eased the investment practice procedures, and made the investment permit procedure a non-compulsory procedure. It also stipulated that in the event that the investor wants to benefit from the granted advantages, he submits a request for that, which is subject to the agency's approval only, and this matter has reduced the response period from (60) days to thirty (30) days<sup>8</sup>.

Despite this, investment procedures remained complex and subject to bureaucracy, perhaps to a lesser degree than before, and constitute an obstacle to the investor and his reluctance to invest in Algeria. In order for the state to provide a suitable business climate that encourages investment, Law No. 16/09 related to investment<sup>9</sup> promotion was issued. This law adopted a new system by which the investment permit system was abolished. This new system is represented in the registration system, investment registration with the National Agency for Investment Development, as it is not subject to the approval of the administration, and is based on a document or form that is filled out and deposited at the agency level or the decentralized one-stop shop, which embodies the elimination of bureaucracy and the simplification of investment procedures, which works on Improving the business climate<sup>10</sup>, due to the simplicity of this system, was emphasized in Law No. 22/18 related to investment, which canceled Law No. 16/09.



What is noted on Law No. 16/09 and Law No. 22/18 is that the legislator established the investment registration system before the completion of the investment, and linked obtaining the legally stipulated granted advantages to the investment registration procedure, meaning that every investment that was registered acquires by force of law and automatically all rights to obtain granted advantages. What is, then, meant by investment registration?

## **SECOND REQUIREMENT: DEFINITION OF INVESTMENT REGISTRATION**

Referring to the text of the aforementioned Article 25 of Law No. 22/18, we find that it did not give a definition of the investment registration procedure, and the reference was made to the regulation. Referring to the regulation, which is Executive Decree No. 22/299 that defines the modalities for registering investments in Article 2 of it that states:

“Registration of investment is the procedure that expresses the way the investor intends to make an investment in an economic activity to produce goods or services.”

This text defined registration as a procedure taken by the investor to express his desire to make the investment, but is this procedure a written procedure? Because under Law 09/16, Executive Decree No. 102/17 of March 5, 2017 was issued, specifying the modalities for registering investments as well as the form and results of the certificate related to it<sup>11</sup>. It stipulated that it was a written procedure, and Executive Decree 299/22 did not provide for that. Referring to the text of Article 3, paragraph 2 of this decree, it states that the investment is registered according to the form specified in the appendix to this decree, which means that the investment registration procedure is a written procedure that has a legally defined form.

Through all of the above, the definition of investment registration is a mandatory formal procedure through which the investor expresses his desire to make an investment in a specific economic activity, while benefiting from the granted advantages prescribed by law.

Law No. 22/18 made the investment registration procedure a condition for obtaining granted advantages, as once the investment is registered and the investor obtains the registration certificate, the investor benefits automatically and by the force of the law from the granted advantages stipulated in Law No. 22/18.

We note that the investment registration procedure was included in Law No. 22/18 in Chapter Four of it entitled Incentive Systems and Eligible Conditions for Benefiting from Granted advantages. Consequently, the legislator considered it one of the conditions that qualify for benefiting from the granted advantages, and it also combined the application for investment registration and the application for



granted advantages in one document, which is the application for registration, with the aim of exercising post-control, which is mainly to monitor the proper management and utilization of the granted advantages.

## **THE SECOND TOPIC: INVESTMENT REGISTRATION PROCEDURES**

We said that the investment registration procedure is a simple formality, that is, it takes place according to a legally defined form. Investment registration takes place according to a request called the investment registration application, which is a form downloaded from the Agency's website or submitted by the decentralized or national one-stop shop. Here, the investor fills out this form and re-deposits it or submits it at the level of the one-stop shop or the digital platform<sup>12</sup>, and here we find two cases.

### **FIRST REQUIREMENT: TYPES OF INVESTMENTS SUBJECT TO REGISTRATION**

The legislator provided for the registration of the following investments

If the investment project is one of the investment projects whose amount is less than two (02) billion Algerian dinars, the registration application is filed at the local one-stop shop.

either If the investment project is one of the major projects whose amount exceeds two (02) billion Algerian dinars, or it is a foreign investment whose capital is wholly or partly owned by foreign persons, it is registered at the national one-stop shop level.

In all cases, the investor must deposit the investment registration application form attached with a list of goods and services that are directly involved in the realization of his investment in accordance with the appendix to Executive Decree No. 299/22. This is to mark the goods and services benefiting from the tax granted advantages, in case they are identical to the activity benefiting from the granted advantages, and to withdraw, when necessary, those that are not eligible for benefiting from the granted advantages<sup>13</sup>.

The application for registration is filed by the investor himself or by his representative on the basis of a power of attorney in accordance with the Appendix to Executive Decree No. 299/22.

Does the registration application accompany any file?

By examining all the articles and provisions contained in Law No. 22/18 or in Executive Decree No. 22/299, we find that originally it did not provide for any file to be submitted by the investor to request investment registration. Rather, the investor is satisfied with submitting the registration application accompanied by a list of goods and services that are directly involved in the realization of his investment, with the investor identification card<sup>14</sup>.



However, there is an exception to the original, which is that if the application for investment registration is related to structured investments, the investor must submit a technical and economic study that highlights the investment qualification criteria<sup>15</sup>.

And if the application for registration is related to investments that fall within the framework of an activity from abroad, the investor must submit a file that includes<sup>16</sup>:

\*A copy of the statute of the company subject to foreign law transferred and the company established under Algerian law for this purpose.

\* Technical card for the investment to be transferred.

\* An evaluation report of the shareholder appointed by the regionally competent court that was prepared, at most, six (6) months prior to the date of registration.

\* Certificate of renewal of supply goods prepared by an accredited inspection and control body in accordance with the applicable regulation.

When all the previous procedures are fulfilled, the application for registration is filed with the payment of a royalty called the royalty of studying the file. When the investor deposits the investment registration application form, he must pay the royalty of the investment file, which is the amount of dues resulting from the study of investment files. The amount of this royalty is determined according to the nature of the investment project<sup>17</sup> and is collected by the agency for the benefit of the public treasury.

## **SECOND REQUIREMENT: EFFECTS OF INVESTMENT REGISTRATION**

After depositing the application for investment registration at the level of the agency or the one-stop shop or at the level of the digital platform, the investor immediately receives the registration certificate, which is evidence of the approval of this investment according to which the investor benefits by force of law and automatically from the advantages stipulated in Law 22/18 while benefiting from the advantages prescribed in common law. These benefits shall be recorded in the registration certificate with reference to the materials it created. In the event of refusal to register any investment, this refusal must be justified and expressly by the agency. Through the foregoing, the most important effects of the investment registration is to benefit from the advantages stipulated in Law No. 22/18, which remain throughout the period of completion of the investment project until its completion, which is the normal case.

However, there are cases stipulated by the legislator in Executive Decree No. 22/299 in which benefit from benefits is canceled and thus the effects of investment registration expire. These cases are as follows:



**Case 1-** In the event that the investor, after the expiration of the completion deadlines and the extension deadlines, did not submit a request for inspection or a record of the inspection of entry into exploitation, which is considered an implicit waiver on the part of the investor to benefit from the advantages, because one of the obligations that fall on the investor is to submit a record of the inspection of entry into exploitation -

**Case 2-** In the event of a partial waiver of investment without authorization from the agency, benefit from the benefits will be cancelled

**Case 3 -** In the case of transferring the investment without a license from the agency, and transferring the investment means the total waiver of the investment, including the waiver of the social capital.

However, we note that the legislator in Executive Decree No. 299/22 did not address the case that the investor registered the investment but did not actually start to complete it. Returning to Law No. 22/18, we find that the legislator set the completion period to three (3) years, subject to extension, according to the progress of the project. This deadline is valid starting from the date of registration or from the date of handing over the building permit in cases where the permit is required. In the event that the investor does not comply with this legally specified period, these benefits will be withdrawn partially or completely. Is the withdrawal of benefits here accompanied by the cancellation of the registration certificate as well as a condition for benefiting from the benefits, i.e. attached to it, or are the benefits withdrawn only while maintaining the validity of the registration certificate for investment? So the legislator had to specify the validity period of the registration certificate, as he did in Executive Decree No. 17/102 in Article 31 of it, which he specified by the passage of one year (1) after its delivery if he did not start completing it, so that it becomes invalid<sup>18</sup>.

### **Conclusion:**

The investment registration system is a new automated system introduced by Law No. 16/09 to be confirmed by Law No. 22/18 related to investment. Investment registration is a mandatory formality and is a condition for benefiting from the granted advantages. It is carried out according to the registration application form, which is deposited at the level of the Algerian Agency for Investment Promotion, represented in the one-stop shops, whether local or national.

The investment registration procedure was stipulated by Law No. 22/18 to embody the true simplification of procedures and speed in realizing investments and applying for granted advantages. It is a strong evidence of the strong will of the state to eliminate bureaucracy to improve investment and business climate as a whole.



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