

# Investment Crimes and Means of Combating Them in Algerian Legislation - A Study in the Light of Ordinance 22/18 on Investment and Penal Codes –

جرائم الإستثمار وسبل مكافحتها في التشريع الجزائري  
- دراسة على ضوء الأمر 18/22 المتعلق بالإستثمار والقوانين الجزائية -

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## Abstract:

Investment crimes are multifaceted. In view of an overwhelming desire for rapid wealth and profit, some investors may engage in illegal acts. Some abuses may as well occur by the state or people against investors and the investment process in general, which adversely affects the economic development and financial recovery, forcing Algerian legislators to establish legal protections for the investment activity to create a secure investment space that attracts domestic and foreign capital, and dispels investors' concerns. This paper will therefore include the mechanisms founded by the Algerian legislator in the field of investment crimes, prevention, and the means to combat them. This is accomplished through (1) highlighting the preventive and protective aspect that deters the occurrence of abuse, particularly under Ordinance No. 22/18 on Investment, and (2) the repressive aspect that includes the deterrent mechanisms contained in the Criminal Code, both substantive and procedural, against investment crimes provided for in the Penal Code or in certain special laws specifically enacted to protect and secure Algeria's investment climate.

**Keywords:** Investment Crimes. Investment Code, Preventive Mechanisms, Control Mechanisms.

## Introduction:

Investment is nowadays one of the most important development mechanisms for improving economic growth in most developing countries that need capital to promote their developmental projects. This prompted these countries to adopt economic programmes and policies, based mainly on foreign or domestic investment, in development. It also sought to develop its legislative policies and generate an appropriate legal regime to provide an appropriate investment environment.

Algeria is one of the countries that strives to attract, encourage and promote national and foreign investment through the economic and legal reforms it has adopted, beginning with its first Investment Law in 1963 and then 1966. The latter was followed by a series of decrees and orders, such as *Legislative Decree No. 93/12* on Investment Promotion dated October 5, 1993, *Order No. 01/03* on Investment Development, *Order No. 06/08* amended and supplemented by

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*Order No. 01/03, Act No. 16/09* of August 3, 2016, and finally *Act No. 22/18* of July 24, 2022 on Investment which adopted the principle of transparency, ensuring equality between different clients and stimulating foreign investments.

Despite these legislative reforms, investment in Algeria is subject to many excesses and crimes and by many parties that are detrimental to investment and thus economic development. Therefore, there was a need for penal, as well as civil and administrative interference, to protect investment from such abuses.

### **1. 1-Tilte I: Aims of the study**

This study aims to attain a set of objectives, including:

- Addressing the reality of Investment in terms of its concept, significance, its constraints and incentives.
- Identifying investment offences with an indication of their preventive measures.
- Identifying the mechanisms for the protection of applicable investment laws.
- The role of Algeria's Investment Law in achieving criminal protection of investment in this era of contemporary economic crimes.

### **2. 2-Tilte I: Significance of the Study**

It is manifested through scientific significance and practical significance:

#### **2.1- Scientific significance**

The importance of this study derives from the importance of the investment process for contemporary economy and from the fact that investment is pertinent to various fields. The term "investment" is used extensively in economic spheres, financial and information markets, and generally in everyday life, which demonstrates its importance, and thus the importance of studies dealing with its different aspects, such as this study. The latter is concerned with the criminal protection aspect of investment, since the several risks, excesses and crimes to which it is exposed limit its effectiveness and the attainment of its objectives.

#### **2.2- Practical significance**

Practically, investors in Algeria urgently need everything that might contribute to the penal protection of investment or move the process of internal or external investment forward; and the fight against contemporary economic crimes related to investment will undoubtedly help.

### **3. Problematic**

Offences of the investment process are an impediment to investors attraction and investment recovery in any country. They hinder entrepreneurship and the implementation of commercial and industrial schemes. This adversely affects the economic development and fiscal recovery, imposing on the legislature to find mechanisms to protect money, business and investment in order to create a secure investment space that attracts domestic and foreign capital and dispels investors' concerns. Accordingly, which mechanisms have been founded by the Algerian legislation to prevent and combat investment crimes, particularly through *Ordinance No. 22/18* on Investment and penal laws? And does Algeria's Investment Law play a role in the criminal protection of investment, especially in this era of prevalent contemporary economic crimes?

### **4. Methodology**

Examining the mechanisms established by the Algerian legislation in the field of investment crimes prevention and the ways of combating them can only be achieved using the analytical approach through tracking and comparing relevant legal texts with a view to reaching some conclusions and recommendations that contribute knowledge to the research area. Before that, however, the term 'investment' must be elucidated by studying the conceptual and historical rooting of the term. Such a study can only be based on a descriptive and historical approach.

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## 5. Structure of the Study

The attempt to answer the problematic of the study requires dividing the paper into the following sections:

- **Section I:** Conceptual Framework of Investment (What Is Investment)
- **Section II:** Forms of Investment Crimes Set Forth in the Penal Code and Ordinance No. 22/08 on Investment
- **Section III:** Preventive Mechanisms Against Investment Crimes
- **Section IV:** Rules of Procedure Against Investment Crimes

### **Section I: Conceptual Framework of Investment (What Is Investment)**

Ancient (Arabic) scholars did not use in their literature the term "investment" in its contemporary economic sense. Instead, they used the term "development" or "fruition" when searching for ways to develop and increase money and for speculative contracts. Al-Kasaani argues that “It is possible for speculators to travel with money because this contract is meant to raise money.”<sup>1</sup> Therefore, to dispel any uncertainty of the term, it needs to be defined linguistically, terminologically (in Economic and Islamic senses), and legally.

#### **1. Investment linguistically**

The word investment in **Arabic** is rooted from the verb *استثمر* ‘invest’, *يستثمر* ‘investing’. It comes from the word *ثمر* ‘Thamar’ (meaning ‘fruit’). We say the tree is considered fruitful if it manifests fruition. Likewise, money is the fruit of a man if it is well raised and worked on. Accordingly, men invest money if they raised it and sought to increase it. Therefore, investment, linguistically speaking, is seeking to reach for the fruit because, in Arabic, one of the meaning of the words that rhyme with *استفعل* ‘istafa’ala’, (meaning ‘made done’) is seeking for something

NP: In English, however, the word ‘investment’ is borrowed from [Middle French \*investir\*](#) with the meaning of *to surround* (eg., to surround with troops or ships so as to prevent escape or entry); or from [Medieval Latin \*investire\*](#), from [Latin \*investio\*](#) (meaning “to clothe, to cover”). Semantically, to invest means to commit (money) in order to earn a financial return, or to make use of (money) for future benefits or advantages<sup>2</sup>.

#### **2. Investment in Economic Terms**

It is defined as the productive employment of capital or the directing of savings towards applications that satisfy economic needs<sup>3</sup>. The academic and professional Encyclopedia of Islamic Banks defined it as “any use of money for any time, in any asset, ownership right, properties, or shares held for the preservation or development of money, whether through periodic profits, increases in the value of funds at the end of the period, or by non-material benefits.”<sup>4</sup> It is also defined as any use of capital for future profit whatever the form of use<sup>5</sup>.

#### **3. Investment in Islamic legislative**

It is defined as the employment of a Muslim's money or effort in a legitimate economic activity to gain him/her or others circumstantial or financial benefits<sup>6</sup>; ie, it is the case when an individual, community or both are working to develop, increase and revive money in what Allah the Almighty has permitted by all legitimate means in Islam<sup>7</sup>. So, investing money means asking for the fruit of money that is its development and benefits. Therefore, it encompasses all legitimate ways of increasing and developing money from trade, murabaha, farming, industrialization and other traditional or modern ways of raising money<sup>8</sup>.

#### **4. Legal definition of Investment**

In accordance with *Article 02 of Act No. 16/09*<sup>9</sup> on Investment Promotion, the Algerian legislature defines investment as the selection of assets within the framework of the development

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of new activities, the expansion of production and/or rehabilitation capacities and contributions to the company's capital. However, it was not defined under *Law 22/18*<sup>10</sup> on Investment, which merely defined the investor in *Article 05*, paragraph 01, as follows: “The investor is any natural person or legal entity, whether national or foreign, resident or non-resident, within the meaning of the regulation of exchange, who shall make an investment in accordance with the provisions of this Law,” which is the approach that was adopted by the legislature under *Legislative Decree 93/12*<sup>11</sup> on Investment Promotion. In the latter, investment was not defined, yet, its forms and areas were simply identified in *Article 01* and *02* of the decree. The same approach was taken in *Ordinance 01/03*<sup>12</sup> on Investment Development, which repealed *Legislative Decree 93/12*, but introduced the expansion of investment areas after the addition of privatization as a new form of investment. This form was reversed by the promulgation of *Act No. 16/09* on Investment previously indicated.

### **5. Investment Constraints**

There are many impediments facing investment processes and hindering them, most notably:

- Complexity of the procedures and ill-treatment of governing authorities towards the investor.
- Offering weak incentives for investors and imposing high taxes and fees on investment projects.
- Impediments related to the administrative and technical competence, practical experience, and the skills required by the investors and their assisted managers and workers.
- Economic and financial constraints such as economic deterioration, inadequacy of local market to commercialize the investment project's products, financial inability of the investor, or inadequate estimation of the optimal capital to start the project<sup>13</sup>.
- Political, security and economic instability.
- Lack of information on investment opportunities.
- Complexities of government measures, restrictions on the capital mobility, and the State's control over the economic activity.
- Fragility of infrastructure, which prevents establishing investment projects.
- Lack of clarity in the rights and duties of the parties leading to an impairment between them.
- Fragility, default, or ineffectiveness of investment legislation and laws.
- Vulnerable judiciary
- The prevalence of administrative corruption, mismanagement of different sectors, and the length and complexity of procedures.

### **6. Investment Motives**

There are factors that encourage domestic and foreign investment that responsible authorities of investment should pay attention to, namely:

- Political stability
- Economic stability
- Clarity of economic policy
- Simplicity and promptness of procedures
- Placing investment-related authorities and entities in one department in the country. The distribution of these entities may result in conflicting authorities and instructions, and prolonged procedures which would further impede investment projects.
- Keeping abreast of today's development.

## **SectionII: Forms of Investment Crimes Set Forth in the Penal Code and Ordinance No. 22/08 on Investment**

Investment offences are part of economic and financial crimes because investment is a method of financial and economic development. What applies on money from conventional or modern crimes applies also on investment, so the identification of investment crimes as well as their sanctions find their source in the Penal Code and its complementary laws.

Economic crimes are defined as an act or a detrimental abstention to the national economy that is criminalized by the law and liable to penalty<sup>14</sup>. Economic crimes generally include an infringement or a threat to economic interests, whether individual or public, against the law<sup>15</sup>.

By the same token, investment offences can be defined drawing from the financial and economic offences' definition as any act or inaction that damages the investment process; it is criminalized and prescribed a penalty by the law.

### **I. Forms of Investment Crimes Contained in Penal Laws**

Contemporary and traditional economic crimes that applies on investment, as well as on other areas, activities and financial and economic rights, are numerous; thus, it is difficult to count all investment crimes. Economic and financial offences have become one of the most serious crimes on the national economy. *Article 211 bis 2of Ordinance 20/04* amending and supplementing *Ordinance No. 66/155*, which comprises of the Algerian Code of Criminal Procedure that established the Economic and Financial Penal Pole, contains a number of crimes that fall within the Pole's qualitative jurisdiction and which it considers to be more serious, namely:

#### **1. Crimes Under Act No. 06/01 of February 20, 2006 on the Prevention and Control of Corruption**

Corruption is one of the risks to foreign investment as it is characterized by the misuse of official position or authority for personal purposes.

The most important aspects of corruption that prevent investment development are:

- **Administrative Corruption:**

Administrative corruption refers to a staff member's career deviations. It is linked to a public service and a public official, for example, when they carry out a legal service with which they are charged in exchange for something, or when they provide a service against the law such as offering licences that are not legally permitted.

- **Bribery:**

Investors view bribery as an additional tax and an unjustified payment of unnecessary amounts of money that negatively affect trade and service activities of small enterprises owned by local investors. It also adversely affects the transaction's cost, increasing the cost of project completion more than is reasonable. Bribery also affects the area of trades that is linked with transactions abroad, contributing to the increased cost of imports, which has a negative impact on the further decline of the State's foreign currency.

In view of its serious implications for domestic and foreign investment, the Act on the Prevention and Control of Corruption criminalized bribery under its *Articles 25, 28 and 40*.

- **Lack of Transparency and the Spread of Bureaucracy:**

Algeria's foreign investors suffer from a crisis of complexity and contradiction of procedures. The proliferation of bureaucracy and administrative complexities has contributed significantly to the reluctance of many businessmen to invest in our country. This has led the State to seek for improving the conditions of the investment climate and its promotion through its recent promulgation of the aforementioned *Law 22/18* on Investment. The fourth section of which includes incentive regulations and investor benefits<sup>16</sup>. It has also established and

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restructured the institutional framework by defining the agencies responsible for investment, namely the National Investment Council and the Algerian Investment Promotion Agency; and also by introducing the single network for major projects, foreign investments and the single decentralized networks, that is mandated to carry out all necessary procedures to achieve and keep abreast of major investment projects and foreign investments, and to complete investment-related procedures.

## **2. Customs Offences**

Customs crime of various kinds is one of the crimes that significantly hampers the national economy, in general, and foreign investment, in particular. Customs smuggling crime is a form of customs offences and one of the most contributing crimes to the destabilization of the credibility of the State's investment guarantees. This means that the consequences of the offence of smuggling on foreign investment are reflected in the illicit movement of capital via smuggling operations carried out through the illegal entry or exit of products. The Algerian legislature has singled out a law on smuggling for smuggling offences, *Ordinance No. 05/06* on Combating Smuggling<sup>17</sup>. *Articles 11, 12 and 14* of which contain a number of offences that fall within the jurisdiction of the Penal Economic and Financial Pole. Smuggling in the concept of *Ordinance 05/06* refers to "the acts described as smuggling in applicable customs legislation and regulation as well as in this Order." Without identifying a precise definition for this crime, referring specifically to the Customs Code<sup>18</sup>, *Article 324* of which defines smuggling<sup>19</sup> as:

- Import and export of goods outside customs offices.
- Violation of *Articles 51, 53 bis, 60, 62, 64, 221, 222, 223, 225, 225 bis and 226* of this Act.
- Unloading and shipping the goods fraudulently.
- According to the meaning of *Article 288* of this Law, the acts mentioned in this Article or the breach of the provisions of the above Articles are not considered smuggling when it comes to low-value goods.

## **3. Money-laundering Crimes**

The Algerian legislation has provided a definition for the crime of money-laundering in section VI bis of the Penal Code, which was amended by *Act No. 04/15* of October 10, 2004 and specifically by *Article 389 bis* of the Penal Code. It is therefore defined as “the conversion or transfer of property, knowing that such property is originated from a crime, with the aim of concealing or disguising the illicit origin of such property or with the aim of assisting any other person involved in the commission of the predicate crime...”

## **4. Currency-Exchange Crimes**

There is a strong correlation between currency-exchange offences and foreign investment, considering that the latter is a fertile area for smuggling money abroad under the rubric of investment. Capital owners often use investment as a way to smuggling, money-laundering and committing various crimes. Therefore, by *Order 01/03* amending and supplementing *Order 96/22* on Penalties of Contraventions Against the Legislation and Regulation of Currency-exchange<sup>20</sup>, the legislator imposed controls on the movement of capital along with sanctions against foreign investors who violate the rules of control, thus, maintaining the balance of exchange<sup>21</sup> and the state's hard currency reserves<sup>22</sup>.

Thereof, currency-exchange crimes are considered according to the aforementioned *Article 02* of *Ordinance 01/03* as “any infringement or attempt to contravene the legislation and regulation concerning the exchange and movement of capital to and from abroad by any means of the following:

- Falsity of declaration
- Disregarding the declaration obligations
- No repatriation of funds

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- Disregarding the prescribed procedures and the required formalities
- Failure to obtain the required licenses and non-compliance with the terms associated with them.
- The offender cannot be condoned for their good will.

*Article 04* of the same Act also considers any operation of purchase, import, export, possession of gold bullion, gold coins, gemstones and precious metals carried out, without taking into account applicable legislation and regulation, a breach of the legislation and regulation on currency-exchange and movement of capital.

The Algerian legislation did not define currency-exchange offences, but it merely mentioned the material acts that lead to their establishment.

As for the relationship of exchange control and foreign investment, currency-exchange offences and capital movements to and from abroad are generated because foreign investment often takes the form of monetary capital in a foreign currency that is transferred to Algeria to reflect the investment project, as well as the transfer of pecuniary interests and the repatriation of investment funds and workers' wages from Algeria abroad. All these transactions need (1) an exchange of currencies from foreign currency to Algerian Dinar or the vice versa, under the supervision of exchange control, and (2) the responsibility of setting penalties for exchange crime and capital movement resulting from breaches of the foreign investment regulatory regime<sup>23</sup>. It can be reflected in *Order 03/01* as amended and supplemented<sup>24</sup>, provided that the capital is a contribution by means of a hard convertible currency, regularly priced by the Bank of Algeria and legally imported. Foreign investors are committed to exchanging the national currency under certain conditions stipulated by the law: before a bank, an accredited broker, or the Bank of Algeria; and through repatriation of foreign capital by opening bank accounts in their country or in Algeria<sup>25</sup>.

## **II. Types of Investment Crimes Contained in Ordinance No. 22/18 on Investment**

*Ordinance No. 22/18* on Investment listed the following types of investment crimes:

### **1. Offence of Non-compliance with Obligations Arising from the Application of the Provisions of Law 22/18 on Investment or Commitments Undertaken by the Investor**

*Article 36*, paragraph 2, of *Act No. 22/18* stipulates that in the event of non-compliance with the obligations deriving from the application of the provisions of this Act or the commitments undertaken by the investor, as set forth in *Article 15* of this Act:

- Ensuring compliance with applicable legislation and standards, particularly those relating to environmental protection, public health, competition, labour and transparency of accounting, fiscal and financial information,
- Provide all necessary information requested by the Department to monitor and assess the implementation of this Law's provisions,

The violator is subject to the possibility of withdrawing these advantages from her/him, fully or partially, and the cancellation of the investment registration certificate by the agency. The withdrawal of the exploitation benefits lead to paying back all benefits used by the investor. Moreover, s/he is also subject to the penalties provided for in applicable legislation. The Algerian Investment Promotion Agency's preparation of the preliminary report on the total exploitation is regarded as a recognition of the investors' fulfillment of their underwritten obligations in exchange for the benefits offered. It also provides them the opportunity to register a new investment in the form of the expansion of production capacities or the rehabilitation of existing investments that have previously benefited from advantages.

## **2. Investment Obstruction Offence**

*Article 37 of Act No. 22/18* criminalizes and penalizes anyone who obstructs investment out of ill-will and by any means in accordance with the provisions of the applicable legislation.

### **A) Offences in the form of non-compliance with the obligation of preparing an annual statement for the submission of investment projects**

It entails suspending the investors' rights to privileges, which leads them to come before the office to provide plausible justifications. If they fail to respond within one month, they shall be liable to a penalty of deprivation of their rights, revocation of the registration certificate, as well as paying back for all exploited features. They shall also be liable to the penalties provided for in the applicable legislation, if these penalties are abolished by the Agency wherein the results of the appeal are submitted to the Agency, the National High Commission for Investment Appeals or the relevant judicial authorities.

### **B) Offences in the form of non-compliance with other underwritten commitments and obligations**

It entails deprivation, total or partial withdrawal of advantages. This relates to the obligations set out in *Article 02*, paragraphs B, C and D, of *Executive Decree 22/303*<sup>26</sup>. However, the deprivation is issued only after informing the investor as soon as s/he responds to the first summons no later than 60 days from the date of the notice. If the deadline is overdue, the decision of deprivation shall be made even if it is heard after the deadline; however, the investor has the right to appeal against the decision. And in case the decision was positive whether by the Commission or the judiciary, the deprivation shall be lifted. The return of the notice or summons due to a wrong or an unknown address, or the refusal to receive the letter is not an obstacle to make a deprivation decision.

- Dispute concerning the investor's right to waive his/her rights and obligations in the investment project.
- Investor's lack of commitment to the minimum of investment.  
Investor's lack of commitment to human development and local employment training.
- Investor's lack of commitment to preserving the security of society and the environment.
- Investor's lack of commitment to economic development and failure to supply the state.
- The lack of commitment of the investor in the host State to the best and most appropriate resources.
- Investor's non-commitment to the project under contract.
- The investor's lack of commitment with informing and being transparent with the host State about all the circumstances surrounding the investment project.

## **Section III: Preventive Mechanisms Against Investment Crimes**

The preventive aspect that obviates the occurrence of investment offences is manifested through the investment agencies included in the Investment Act, and some departments and bodies provided for in *Executive Decree 22/303* on Investment Follow-up and Measures to be Taken in Case of Non-compliance with Underwritten Obligations and Commitments.

### **I. Agencies Provided for in Law 22/18 on Investment**

The agencies responsible for investing in accordance with *Article 16 of Act No. 22/18* on Investment are:

#### **1. National Investment Council**

It was initially established pursuant to *Article 18 of Ordinance No. 01/03*, which remained in force despite the repeal of this ordinance by *Law No. 16/09*, which this law excludes from repeal. Even under *Law 22/18*, the text of *Article 18* remained valid<sup>27</sup>



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The Council's functions are:

- Proposing the country's investment strategy.
- Ensuring its overall consistency.
- Assessing its implementation.

Moreover, the Investment Council prepares annual evaluation reports to the President of the Republic, regarding him as a higher investment authority who expresses opinions about the investment operations. The council also issues investment recommendations that include decisions and measures to implement the investment support procedure and encourage or urge the establishment of a financial institution to fund and promote investment.

## **2. The Algerian Investment Promotion Agency**

To promote investment, the Algerian legislature established a body under *Law 22/18*, named the "Algerian Investment Agency", after being called the National Investment Promotion Agency under *Ordinance 01/03* and *Law 16/09* referred to earlier.

The second paragraph of *Article 02* of *Decree No. 22/298*<sup>28</sup> states that it is a public institution of an administrative nature, endowed with a legal personality and financial independence and placed under the supervision of the Prime Minister.

The Algerian Investment Promotion Agency carries out a number of tasks in various fields:

- From a follow-up perspective and through contacting the relevant departments and bodies, it is ensured that the commitments undertaken by investors are respected, investor petitions and complaints are addressed, and that monitoring, listening and follow-up services are developed to support the registered investments.
- As for facilitation, the Agency develops and operates an investor's digital platform, evaluates the investment climate and proposes measures to improve it, and provides all necessary information on investment opportunities in Algeria, real estate offers, incentives and benefits of investment and the relevant procedures.

Some of the Agency's functions in supporting the investor are:

- Establishing a service to guide and support investors, a consulting service with recourse to external expertise when needed, and assisting investors in other services.

In the field of investment promotion, the Agency is assigned with:

- Initiating all activities with public and private bodies in Algeria and abroad with a view to promoting investment in Algeria, preparing and proposing a plan for the promotion of investment at the national and local levels, and designing and implementing capital movement processes necessary for their completion and execution.
- Preparing and proposing a plan for investment promotion.

As for the tasks of follow-up, the Agency ensures:

- Respecting the commitments made by investors through contacting the relevant departments and bodies.
- Processing Investors' petitions and complaints.

The development of the monitoring, listening and follow-up services to support the registered investments.

## **II. Agencies and Departments Provided for in Executive Decree 22/303 on Investment Follow-up and Measures to Be Taken in Case of Non-compliance with Obligations and Commitments**

Investment projects, that are beneficiaries of the advantages granted by the State, are subject to a permanent follow-up mechanism by the relevant departments. According to the above-mentioned *Executive Decree 22/303*, during the period when investments benefit from the advantages provided for in *Law 22/18*, the relevant departments follow up investments to ensure that the underwritten commitments are respected by the investors, monitor the incorporation of

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projects, and gather various statistical information on their progress. In addition to the Algerian Investment Promotion Agency, there are other involved agencies:

- 1. Fiscal and Customs Administration:** which ensures, in view to the investors' authorities, their compliance with their mandated obligations and underwritten duties as their granted advantages.
- 2. The National Property Department:** which ensures the maintenance of the real estate land granted by the real estate agencies in charge of investment implementation in accordance with the provisions of the terms of reference and the concession contract.
- 3. The National Fund for Social Insurance of Employees:** which ensures that the investors maintain at least the number of jobs at the same level that allows them to access the advantages allocated therein and during the period of benefiting from these advantages.

#### **Section IV: Procedural Rules Against Investment Crimes**

It deals with the procedural rules adopted by both the Criminal Procedure Code and *Law 22/18* on Investment to combat investment crimes.

##### **I. The Procedural Rules Provided for in the Criminal Procedure Code**

The Algerian legislature has generated a judicial body competent to deal with the most serious economic and financial crimes, that it considers as the most complex ones, under *Ordinance No. 20/04* amending *Order No. 66/155*, which contains Algeria's Code of Criminal Procedure, as well as the rest of the penal poles of broadened jurisdiction<sup>29</sup>.

##### **1. Definition**

The Algerian legislation does not define the Economic and Financial Penal Pole but rather defines the most complex economic and financial crime under *Article 211 bis 3* as “a more complex crime regarding the multiplicity of actors, partners, victims or due to the expansion of the geographical area.”

Based on the legislative definition of economic and financial crime, the Economic and Financial Penal Pole can be defined as “a penal committee competent to deal with the most complex economic and financial crimes, which require special means of investigation, specialized expertise or international judicial cooperation.”<sup>30</sup>

##### **2. The Territorial Jurisdiction of the Economic and Financial Penal Pole**

*Article 221 bis 1* of *Ordinance 20/04*, amending and supplementing *Ordinance 66/155* on the Code of Criminal Procedure, grants the Attorney-General of the Republic for the Economic and Financial Penal Pole, as well as the investigating judge and the President of the Pole, the right to exercise all of their authorities throughout the national territory due to the risk and threats of these crimes on the national economy. They also have a concurrent jurisdiction with that resulting from the application of *Articles 37, 40* and *329* for the same offences. This Pole is located in the Court of Algiers.

##### **3. The Qualitative Jurisdiction of the Economic and Financial Penal Pole**

The Economic and Financial Penal Pole deals with considering the most complex economic and financial crimes and the relevant offences. Economic and financial crime in the concept of this Ordinance takes several forms:

- Offences under *Articles 119 bis* and *389 bis, 389 bis 1, 389 bis 2* and *389 bis 3* of the Penal Code that deals with money-laundering crimes.
- Offences under *Act No. 06/01* on Corruption Prevention.
- Currency-exchange offences provided for in the amended and supplemented *Ordinance No. 96/22* that deals with the Suppression of the Breaches Against the Law and Regulation on Exchange and Movement of Capital to and from Abroad.

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- Offences under *Articles 11, 12, 13, 14 and 15 of Ordinance No. 05/06* on Anti-trafficking.

The Economic and Financial Penal Pole is also empowered to search, inquire, monitor, investigate and judge the most complex economic and financial crimes and the correlative offences. *Article 211 bis 3*, of the above-mentioned Ordinance in its second paragraph, defines the most complex economic and financial crime as “an offence which, in view of the multiplicity of actors, partners or affected persons; or because of the wide geographical location of the crime, the gravity of the damage involved, its organized or transnational character, or the use of information and communication technologies in its commission, requires the use of special means of investigation, specialized expertise or international judicial cooperation.”

## **II. Monitoring Procedures**

### **1. Initiation of Public Action**

The initiation of public proceedings for financial and economic offences is not subject to a special provision. Pursuant to *Article 06 bis of Ordinance No. 15/02* amending *Ordinance No. 66/155* of the Criminal Procedure Code, which was abolished pursuant to *Act No. 19/10*<sup>31</sup>, the initiation of public proceedings for such offences is no longer subject to the requirement of prior complaint by social bodies of economic public institutions against their managers. The initiation of proceedings for these offences is thus governed by general provisions.

### **2. Expension of Judicial Police Officers’ Authorities**

The amendments on the Criminal Procedure Code by *Ordinance No. 19/10* in order to combat this type of crime covered the following:

- The adoption of the qualitative competence of the judicial police for Military Security Services in the fight against corruption, which is considered one of the forms of economic and financial crimes, in accordance with *Article 15* of the Criminal Procedure Code, as amended by *Act No. 19/10* referred to above; “officers and non-commissioned officers of the Military Security Services, who were specially appointed by a joint decision of the Minister of National Defence and the Minister of Justice, enjoy the capacity of judicial police officer...”

- Review of the qualification requirement for judicial police officers by the Attorney-General under the amendment of the Criminal Procedure Code, as well as by *Law 19/10. Article 15 bis* of the Criminal Procedure Code was repealed under *Article 05 of Act No. 17/07* dated March 27, 2017, which stipulated that “except for the chairpersons of People’s Communal Assemblies, judicial police officers can carry out effectively the powers conferred upon them in this capacity only after being qualified by a decision of the Attorney-General of the Judicial Council, whose professional headquarters is at the level of their jurisdiction, based on the suggestion of their administrative authority.” Thus, under *Article 03 of Act No. 19/10*, amending and supplementing the Criminal Procedure Code, the qualification requirement set forth in *Act No. 17/07* was abolished, “The provisions of *Articles 06 bis and 15 bis* shall be revoked...”

- Review of the provisions on Litigation Privilege under *Ordinance 20/04*. The latter, amending and supplementing the Algerian Code of Criminal Procedure, reviewed the provisions on the Privilege of Litigation, which enabled the State's high officials to conduct special follow-up and prosecution actions. *Article 573* of the Algerian Code of Criminal Procedure was amended pursuant to *Ordinance No. 20/04*, thus, it then states that “If a member of the Government, a judge of the Supreme Court, the State Council, the Conflict Court, a governor (Wali), the head of a judicial council, an administrative court, the Attorney-General of a judicial council or the State Governor of an administrative court may be charged with a felony or misdemeanour in the course of or on occasion of performing their duties, the Prosecutor-General notified of the case shall transmit the file by peaceful means to the Prosecutor-General of the Supreme Court, who thereof notifies the First President of the Supreme Court, who appoints another court to initiate follow-up actions, investigation and trial proceedings.” However, the first provisions of the

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above paragraph shall not apply if the Prosecutor-General of the Economic and Financial Penal Pole has made petitions to request the record of the proceedings during the preliminary investigation or follow-up phase as set forth in *Article 211 bis 17* above. In the cases provided for in the first paragraph of this Article, public proceedings shall be initiated only by the Public Prosecutor's Office.

The second paragraph of this Article adopts the non-application of the Litigation Privilege if the Economic and Financial Penal Pole has requested the file of proceedings during the preliminary investigation or follow-up stage. Accordingly, the amendment granted full powers to the Prosecutor-General of the Court of the Economic and Financial Pole to claim the file of proceedings during the preliminary investigation phase, if the offence attributed to the state official relates to corruption cases. Correspondingly, the President of the Supreme Court would not be able to choose the court to which the file shall be transmitted. They also do not benefit from litigation privileges<sup>32</sup>.

### **3. Special Investigative Techniques**

The Algerian legislation has developed special methods for investigating various forms of financial and economic crimes that are used during the preliminary investigation, some of which are adopted by the Code of Criminal Procedure, and others by specific laws, such as the Corruption Act, the Currency-exchange Act and the Smuggling Act. These methods are:

#### **a. Controlled Delivery**

It has been defined by *Article 02* of *Act 06/01* on Corruption Prevention and Control. This measure is intended to facilitate the passage of suspicious and illegal shipments under the surveillance and control of the competent authorities in order to investigate those crimes and unravel its perpetrators.

#### **b. Electronic Surveillance**

Its forms include interception of communications<sup>33</sup>, audio recording<sup>34</sup>, and photographing<sup>35</sup>. They shall be carried out in the case of investigating specific crimes listed in *Article 65 bis 5* of the Criminal Procedure Code, namely: Drug offences, transnational organized crimes, offences against automated data-processing systems, money-laundering offences, terrorism offences, offences relating to currency-exchange legislation, as well as corruption offences, in accordance with formal procedures and rules provided for in *Articles 65 bis 6* to *65 bis 10* of the Criminal Procedure Code.

#### **c. Leakage**

Leakage is a new technique of special investigation. Under *Article 65 bis 12* of the Criminal Procedure Code, the legislator defines it as the case in which an officer or a judicial police agent, under the responsibility of a judicial police officer who is responsible for coordinating the operation, supervises persons suspected of committing a crime or misdemeanour, by indicting them that he is a perpetrator or an accomplice. Its provisions regulate the texts of *Articles 65 bis 13* to *65 bis 18* of the Algerian Code of Criminal Procedure.

## **II. The Procedural Rules Provided for in Law 22/18 on Investment**

### **1. Jurisdiction**

*Article 12* of *Ordinance 22/18* on Investment stipulates that any disagreement between a foreign investor and the Algerian State, whether caused by the investor or because of an action taken by the Algerian State against him/her, is attributable to the competent national judicial authorities.

However, in the case of a bilateral or multilateral agreement ratified by Algeria, the provisions of which deal with Reconciliation, Mediation and Arbitration; or in the case of an

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agreement between the agency acting on behalf of the State and the investor, the parties are allowed to resort to arbitration.

**a. The Court House as an Inherent Jurisdiction in the Settlement of Investment Disputes**

In accordance with *Article 12 of Act No. 22/18*, if the investor breaches the offences set forth in *Executive Decree No. 22/303* on Investments Follow-up and the Measures to be Taken in the Event of Non-compliance with the Underwritten Obligations and Commitments<sup>36</sup>, and to ensure the proper implementation of the investment project, the legislator subjected it to monitoring by the National Investment Development Agency, the Fiscal and Customs Administration, the State Property Administration, the National Fund of Social Insurance for Employees.

Concerning the violations related to non-compliance with the obligation to prepare annual project submission disclosure, non-observance of obligations and other underwritten commitments, and various investment disputes, they have been subject to the jurisdiction of Algerian judicial authorities under the terms of *Article 12 of Act No. 22/18*, in keeping with the principle of the State sovereignty over persons and funds on its territory, provided that there is no convention or agreement allowing the parties to resort to alternative methods.

**b. Procedures**

Since the legislature did not determine special procedures to be followed for litigation on investment disputes, the procedures provided under *Law 08/09* on the Code of Civil and Administrative Procedure shall be followed.

**Conclusion:**

Investment crimes, its prevention and control mechanisms are the axes that this paper covered, which ultimately brought us to draw a number of conclusions. Accordingly, it led us to suggest a set of recommendations that may contribute to the foundation of effective protection for investment activity.

**1. Results of the Study**

- The importance of investment in the economic and developmental life of contemporary societies.
- *Law 22/18* on Investment does not comprise of a definition of Investment and merely defines the investor, as opposed to *Law 16/09* on Investment Promotion which defines certain terms, including "investment" by identifying its areas.
- The legislator's failure to allocate a separate chapter, in *Ordinance 22/18* on Investment, to penal provisions which identifies the breaches and offences of investment and their penalties.
- The Criminal Procedure Code, which was amended by *Law No. 19/10*, contains several procedural provisions to combat investment offences, such as repealing provisions that impede the initiation of public proceedings by limiting the restrictions imposed on the work of judicial police in combating financial and economic corruption, lifting the restriction in the functions of the Judicial Police on the military interests of security, and introducing the Economic and Financial Penal Pole consisting of specialized judges in tackling cases of financial and economic criminality.
- The Algerian legislature's attempt to create a more conducive environment and to set an abundant number of laws that encourage and motivate investment in Algeria.
- *Ordinance 22/18*'s containment to many advantages for investors. *Article 24* of this Ordinance stipulates that investments are entitled to benefit, pursuant to *Article 04*, from the advantages provided for in this Law in order to protect investment.

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- *Ordinance 22/18* includes several guarantees for investors: investment guarantees provided for in *Chapter II* of this Act, the guarantee of property use in the investment framework, the guarantee of exemption from foreign trade procedures and bank settlement, the guarantee of fair and equitable treatment, the guarantee of legislative stability under *Article 13* of *Law 22/18*, and the guarantee of ownership of the investment project.
- Judicial guarantees relating to the settlement of disputes between the investor and the host State mentioned in *Article 24* of *Act No. 16/09* are also included. The Algerian judiciary is competent to resolve conflicts and to settle investment disputes as an application of the State's sovereignty principle over its territory. However, it authorized the exception of dispute resolution through alternative amicable methods such as reconciliation, arbitration, mediation and conciliation based on a bilateral or multilateral agreement.
- Founding mechanisms and administrative bodies to support and promote investment in order to reduce bureaucracy, by starting agencies such as the National Investment Development Agency and the National Investment Council.
- National and international efforts are being made to address investment-related crimes through the enactment of national legislation, and the conclusion of treaties and conventions.
- Investment crimes have serious adverse effects on the state economy.

## **2. Recommendations**

- Allocating a separate chapter from *Investment Law 22/18* containing penal provisions, to identify the breaches or offences related to investment and the prescribed penalties to combat them. Otherwise, in accordance with the principle of criminal legality, it is recommended to stipulate investment offences in a separate law, which defines such offences and determines their appropriate penalties. This is due to the fact that the projection of economic and financial crimes for investment offences is legally unpalatable, since comparison is prohibited in criminal law, and the range of financial and economic offences was not defined exclusively, as it includes many offences provided for in specific independent laws, such as the Monetary and Loan Law, the Anti-Corruption Law, the Anti-Smuggling Law, etc.
- Encouraging national and foreign investments with the necessary facilities and incentives in priority sectors, and orienting investors towards them, mainly the agricultural, industrial, transport and communication, health and social services and educational sectors.
- Fostering the role of the National Investment Agency.
- Strengthening the coordination between relevant agencies and investment agencies, such as the Ministry of Commerce or Finance, the Central Bank, the Ministry of Foreign Affairs, the Ministry of Justice, the National Investment Agency or security agencies.
- Pursuing a moderate and accessible economic policy and reducing the State's intervention, by limiting its role to guiding towards priority areas, providing an appropriate investment climate, and working to streamline and facilitate the procedures.
- Operationalizing efforts to create an appropriate economic, administrative, legal and security environment for the execution of internal and external investments.
- Combating investment offences using all legitimate preventive and reformist means.
- Increasing focus on investment and seriously searching for means to protect it economically, civically and criminally while reviewing economic and development policies occasionally, pursuing a reform economic policy that prioritizes productive investments, and striving to provide economic and judicial incentives.
- Setting appropriate regulations and laws to counter investment offences in terms of criminalization and punishment in preventive measures.

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- The laws governing investment affairs should provide for gradual and varied penalties for those who violate the investment law or commit breaches and investment offences (whether citizens or foreigners), of a predominantly economic and financial nature because the penalty should be featured with the type of the act.
- Enacting penal laws that keep pace with the developments in the field of investment and include penalties commensurate with the gravity of investment offences, while enhancing the cooperation among States in facing such crimes.
- Activating the role of judicial bodies and ensuring their independence and efficiency.

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<sup>2</sup> : Abduhu Al-Rajih, Al-Tatbeeq Al-Sarfi, Beirut, Dar Al-Nahda Al-Arabia, (n.d), p. 40

<sup>3</sup> : Ahmad Zaki Badawi, A Glossary of Economic Terms, Beirut, Dar Al-kitab Al-Loubnani, p.152

<sup>4</sup> : Sayyid Al-Houari, The Scientific and Empirical Encyclopedia of Islamic Banks, The International Association of Islamic Banks, 1982, vol (6), p. 16

<sup>5</sup> : Muhammad Abdul Aziz Abdullah, Foreign Direct Investment in Islamic Countries in the Light of the Islamic Economy, Jordan, Dar An-nafa'es, 1<sup>st</sup> ed, 1425 H (2005), p.16

<sup>6</sup> : Hammad, Hamza Abed Al-Karim, Investment Risks in Islamic Banks, Jordan, Dar An-nafa'es, 1<sup>st</sup> ed, 1428 H (2008), p.40

<sup>7</sup> : Wasil, Nasr Farid, Legitimate Policy in Financial and Investment Transactions, Cairo, Dar El-Shorouk, 1<sup>st</sup> ed, 1427 H, p.121

<sup>8</sup> : Sano, Qutb Mustafa, Investment: Its Provisions and Controls in Islamic Jurisprudence, p.17-25

<sup>9</sup> : Law 16/09 of 03 August 2016 on Investment Promotion, Official Journal of the Algerian Republic, issued in 03 August 2016

<sup>10</sup> : Law 22/18 of 25 Dhul-Hijjah 1443 corresponding to 24 July 2022, on Investment, Official Journal of the Algerian Republic No. 50 issued on 29 Dhul-Hijjah 1443, corresponding to 28 July 2022.

<sup>11</sup> : Legislative Decree No. 93/12 of 19 Rabi II 1414 corresponding to 5 October 1993, on Investment Promotion, Official Journal of the Algerian Republic No. 64, issued 24 Rabi II 1414, corresponding to October 10, 1993

<sup>12</sup> : Order 01/03 dated 1st Jumada II 1422 issued 20 August 2001 on Investment Development, Official Journal of the Algerian Republic No. 47 issued 3 Jumada II corresponding to 22 August 2001

<sup>13</sup> : Mohamed Mallem Ahmed. Investment and its Criminal Protection: An Applied Fundamental Study of the Republic of Djibouti. Thesis for a Doctorate of Philosophy in Security Sciences. Naif Arab University for Security Sciences, Riyadh, 2001, p 46

<sup>14</sup> : Mustafa Mahmoud, Economic Crimes in Comparative Law, Cairo, Cairo University Press, 2<sup>nd</sup> ed, 1979, p.215

<sup>15</sup> : The Algerian legislation defines Economic Crime through Article 01 of Ordinance 66/180, which provides for the Establishment of Economic Councils for the Suppression of Economic Crimes.

<sup>16</sup> : Check the texts of Articles 24 to 33 of Law 22/18 on Investment referred to earlier.

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<sup>17</sup> : Ordinance No. 05/06 of 18 Rajab 1426 corresponding to 23 August 2005 on Anti-Trafficking amended and supplemented by Ordinance No. 06/20 of 11 December 2006.

<sup>18</sup> : Law 17/04 of 19 Jumada I 1438 H corresponding to 16 February 2017 amending and supplementing Law No. 79/07 of 26 Sha 'ban 1399 H corresponding to 21 July 1979 on Customs Law, Official Journal No. 11, issued on February 19, 2017.

<sup>19</sup> : The Islamic jurisprudence defines Trafficking as “the act which contradicts the rules established by the legislature concerning the regulation of the cross-border movement of goods. These rules relate either to the prohibition of the import or export of commodities or to the imposition of customs taxes on them if they are imported into or exported out of the territory of the State, in addition to customs-tax evasion.” Check Saleh Boukarouh, The Reality of Trafficking and the Means of Combating It in the Light of Ordinance 05/06, Master of Law Thesis, Ben Aknoun University, Algeria, 2012, p. 67

<sup>20</sup> : Ordinance No. 03/01 of 19 February 2003 amending and supplementing Ordinance No. 96/22 of 9 July 1996 on the Suppression of the Breaches of the Legislation and Regulations of Exchange and Capital Movements to and from Abroad, Official Journal of the Algerian Republic No.12 of 23 February 2003.

<sup>21</sup> : The balance of payments is considered one of the most important ways in which political and economic authority uses to define its strategy and determine the state's financial position among its creditors and indebtedness.

<sup>22</sup> : The national reserve is linked to the term "hard currency" which refers to each foreign currency that is freely convertible and regularly priced by the Bank of Algeria.

<sup>23</sup> : Mahfoudh Ben Shaalal. The Algerian Law's Criminalization to the Foreign Investor that Violates the Exchange Control and Capital Movement Rules, El-Bahith for Academic Studies, No. 3, 2014, p. 272.

<sup>24</sup> : Ordinance No. 01/03 of 20 August 2001, amended and supplemented, on Investment Development, Official Journal of the Algerian Republic No. 47.

<sup>25</sup> : Nour-Eddine Derboushi, Protecting the National Economy through the Suppression of the Breaches on Exchange and Capital Movements to and from Abroad, National Office for Pedagogical Works No. 49, Al-Kadaa Press, 1996, p. 25.

<sup>26</sup> : Executive Decree 22/303 of 11 Safar 1444 A.H. corresponding to 08 September 2022 on the Follow-up of Investment and the Measures to be Taken in the Event of Non-compliance with the Underwritten Duties and Obligations. Official Journal of the Algerian Republic No. 60 of 18 September 2022.

<sup>27</sup> : The Council's Composition, provided for in Decree No. 22/297 of 11 Safar 1444 H of 8 September 2022. Official Journal of the Algerian Republic No.60 of September 18, 2022.

<sup>28</sup> : Executive Decree No. 22/298 of 08 September 2022, identifying the Organization and Functioning of the Algerian Investment Promotion Agency. Official Journal of the Algerian Republic No.60, of September 18, 2022.

<sup>29</sup> : The legislature, specifically in Act 05/11 of 17/07/2005 on Judicial Regulation, has already established four specialized judicial bodies in four Wilayas: Algiers, Oran, Wargla, and Constantine under the enactment of Law 04/14 of November 10, 2004 amending Ordinance No. 66/156 on the Algerian Code of Criminal Procedure. It has amended Articles 37- 40 and Article 329; according to which, it has expanded the domestic jurisdiction of each of the Prosecutor-General, the Investigating Judge and the Court to the jurisdiction of other courts.

<sup>30</sup> : Asia Ben Bouaziz, Litigation Proceedings before the Economic and Financial Penal Pole, Journal of Governance and Economic Law, vol. 1, Issue I, 2021, p. 09.



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<sup>31</sup> : Article 03 of Act No. 19/10 states that Articles 6 bis, 15 bis, 15 bis 1, 15 bis 2 of Ordinance No. 66/155, which contains the Algerian Code of Criminal Procedure, are abolished.

Act No. 19/10 of 11 December 2019 amends Ordinance No. 66-155 of 08 June 1966 containing the Algerian Code of Criminal Procedure. Official Journal No. 78 Dated 18 December 2019.

<sup>32</sup> : Haider Jalloul, The Role of the Economic and Financial Penal Pole in Protecting Public Funds from Corruption Crimes in the Light of Algerian Legislation, Journal of Jurisprudence Review, vol. 13, No. 2, 2021, p. 920.

<sup>33</sup> : The Algerian legislator did not define the interception of communications. By reference to jurisprudence, this procedure is defined as an interception, recording or copying of communications that are carried out through means of communication and telecommunication channels, which are data that can be produced, distributed, stored, received or displayed.

<sup>34</sup> : The legislator defined this procedure under the text of Article 65 bis 5/2 of the Algerian Code of Criminal Procedure.

<sup>35</sup> : It refers to taking photographs of one or more persons who are located in a private place through special devices that take solely the photo or the picture and sound together without the knowledge of the person in question.

<sup>36</sup> : Executive Decree No. 22/300 of September 08, 2022 identifies lists of activities, commodities and services that are ineligible for advantages, as well as the minimum funding to benefit from the transfer guarantee. Official Journal of the Algerian Republic No. 60, dated September 18, 2022.