

The importance of the stability of the investment law on foreign investment in the Algerian economy

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Abstract:

The foreign investor attaches importance to the legal regime governing his investment, whether he or she is in line with his or her interests, or what profit opportunities can be made in his or her context and whether he or she is stable. The stability of the investment law is an additional guarantee that allows investors to operate on a stable and well-known legal basis, since a change in the investment legislation may lead investors to miss out on profit opportunities.

How has the Algerian legislature established the legal investment system to encourage, stimulate and reassure foreign investors? Through the adoption of the descriptive approach and the analytical approach, the study found the most important result. The Algerian legislator worked to draft and amend the laws that help and stimulate foreign investment in the text of Act No. 09-16 of 3 August 2016, which contains a series of encouragement and the removal of barriers and obstacles.

Keywords: foreign investment; Stability of an investment law; Incentives and guarantees.

Jel Classification Codes: E2, F0, F35

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1. INTRODUCTION

Foreign investing is starting to receive attention from various developing countries, through their economic growth. Investment attracting laws and legislations and fields competitive strengthen in order to attract the largest number of investors. However, reality shows that developing countries, including Arabs, suffer from the decrease of direct foreign investments due to some obstacles which tends to its reduction and fall back.

Also, despite all kinds of encouragement and motivations that all countries sought to provide in order to attract foreign investments and to push the economic development wheel ; the bigger problem that faces the foreign investor is seeking political economic stability ; alongside the legal stability and the legal security .The reason for that is the foreign investor pays more important to the legal system that govern it's investment and weather it slides with their interest or what are the gaining opportunities that can be achieved and is this legal system is stable or not .

And that is what the Algerian legislation had worked from on many levels in order to improve law and guarantees. Since the issuance of the act number 12-93 which is related to improving investments, the 01-.03 order that relates to developing amended investment the order 08-06 until we reach the issuance of the bill number 09-16 that discusses the advancement of investing in which the legislator tries to encourage foreign investments by giving legal insurances that urges foreign investors to come to Algeria in order to rise and develop the national economy and benefit from the foreign experience and techniques

The study problem:

And from this comes this problem:

What is the concept of investment law stability? And how did the Algerian legislator set its investing law corporation to encourage and comfort the foreign investor ?

The main hypothesis:

This study is derived from a creation main hypothesis ;which states that : The foreign investor is interested in the range of stability and legal stillness that governs investments in hosting countries especially , the developing ones which, usually ; are known for their legal and political and economic instability.

Importance of the study:

The legal stability that is applied on investment is considered one of the essential assurances that any foreign investor seeks .to have in hosting countries /developing ones .that is for how

much protection and security provides for him. Helping him achieve his goal according to his previous plans .when he decided to invest with no fear of any surprising /new amendment or procedures that may harm his benefits.

Methodology:

In order to answer the main hypothesis and test its liability .the researcher tends to use a mix of both ,analytical and descriptive approaches .the descriptive for explaining the general concepts of foreign investments and understanding it's components while also analyzing it's dimensions exporting ; at the same time the importance of investment regulations how it's stability helps attract the foreign investor. The analytical approach is used to read and analyses the most important guarantees and motivations of the act 09-13 issued in August 3rd, 2016. In order to evoke and attract foreign investments with the Algeria legislation it is also used to seek how important is national security investment acts.

2.General concepts of direct foreign investment:

Investment is considered the gain of economy development process, and sensitive /useful too/ to lift the economy and different fields .It also occupies a major statue in financial ,economical and legal studies .regarding all this ;the methods in which this primer goal is achievable differs from country to another mentioning also that applying this system is spreading widely nowadays

2.1. Identifying direct foreign investment:

- World trade Organization Identifies : It as the investment that happens when and investor of certain country (Mother Country) owns properties in another country (hosting country) with the will to run those properties. (youssef, 2008, p. 163)
- The International Monetary Fund : Identifies it as a type of investment , that reflects the aim of having a permanent benefit to reside entity in another foundations economy along with a long-term relationship between the foreign investor and the foundation. (Amira Muhammad, 2018, p. 44)
- Any kind of investment that occurs out of its home country ,searching for a hosting country that seeks to achieve certain economical ,financial , social or political gains weather for temporary or not periods of time like : direct or indirect investment ;is considered a property of one or multiple countries /one or multiple companies. (Farid Ennadjar, 2000, p. 23)

- It is also known as the movement of the capitals that resides in foreign country in order to benefit from certain advantages or to achieve certain goal. through buying the real assets, which known as direct foreign investment or buying fanatical assets which is a gain known as foreign investment is a long term investment that occurs out of the origin country boarder which also gives it owner the right to participate in running a project in aim to achieve profits that covers the project coast.

2.2. The legal concept of direct foreign investment in the Algerian legislation :

It has been identified in the Algerian legislation with the issuance of the bill 01/03 related to developing investment as :

- Buying assets that are listed in the frame of renewing economical activities : spreading productions ability or rehab /reframe the economy in general.
- Contributing in the capital of a foundation as financial or symbolic contribution .
- The recovery of economic activities in the frame of full/partial privatization.

Thus, according to the Algerian legislator; the investment is identified a renewing activities and production abilities through assets or financial/ symbolic contributions in a company capital. Also, making up activities within the frame of a full/ partial privatization, which means, giving advantages to achieving economic projects and activities that produce goods and services.

It is also mentioned in the Algerian law that investments is the (the transition of capitals from abroad to hosting countries seeking profit for the foreign investors which adopt production increase and development in hosting countries)

This is why, the Algerian Government sought to apply a repairing fundamental program considering foreign investments by issuing acts and bills to prepare a suitable atmosphere for the investments. (Farida Maarafi, December, 2015, p. 101)

2.3. Guarantees and Incentives for Law 09-16 issued August 03 2016 to encourage foreign investment:

Algeria has worked to process and adapt investment laws in several stages and levels according to the changes that have taken place with each stage; the 16-09 Act of 03 August 2016 on investment promotion is an attempt to encourage foreign investment through a range of benefits and guarantees granted:

- Granting exemptions and reductions for customs and tax rights and fees, and providing financial support and aid.
- The National Investment Council qualifies to grant exemptions or reductions of rights, taxes, or fees (fees on the added value) on the prices of produced goods that fall within the framework of the emerging industrial activities for a period not exceeding five years.
- Foreign natural and legal persons receive equal and fair treatment with regard to the rights and duties associated with their investments.
- The completed investments cannot be the subject of appropriation except in the cases stipulated by the legislation and is proportional to the expropriation of ownership fair and equitable compensation.
- Article 24 of the law states: "Every dispute between the foreign investor and the Algerian state caused by the investor or due to an action taken by Algeria against him shall be subject to the competent judicial authorities in the region, except in the case of bilateral or multilateral agreements concluded by the state relating to reconciliation and arbitration".(Official Gazette, August 3, 2016, p. 22). With regard to foreign capitals, the law is explicit in Article 25 and states: "Investors benefit from the guarantee of transferring the capital. The proceeds resulting from the investments made from the capital shares are in the form of cash shares imported through the bank and written in a free transfer currency priced by the Bank of Algeria regularly and assignment It is also accepted as external shares. Reinvestment in the capital for interest and dividends declared to be transferable according to the legislation and regulation in force. (Official Gazette, August 3, 2016, p. 23).

2.4. Privileges and principles of investment and foreign investor treatment:

The Algerian legislator has stipulated its legal system for all forms of foreign investment treatment. Article 14 of Ordinance No. 01-03 of 05/20/2001 on the development of investment states: "Foreign natural and legal persons are treated the same as Algerian natural and legal persons in the field of rights and Duties related to investment. All foreign natural and legal persons are treated the same, taking into account the provisions of the agreements concluded by the Algerian state with their countries of origin, that is, the Algerian legislature sets the principle of national treatment as a minimum for the treatment of foreign

investment. Privileges of the Host State's Foreign Investment Treatment (Mohamed Mounir Hassani, December 5-6, 2012, pp. 11-12).

The principle of fair and equitable treatment: The host country is committed to ensuring the pattern of treatment conforms to the rules of customary international law and to the requirements of justice and fairness. Changing the investment promotion program of the host country is a matter that reduces the flow of foreign investors and violates the standard of fair and equitable treatment.

- The principle of non-discrimination: it is achieved if foreign investors in the host country are working in conditions similar to the application of investment promotion measures. However, some encouragement schemes may be limited to investments of the same size, sector, or in a specific region. Class domestic counterparts.
- The most-favored-state condition: it is a contractual provision according to which a state agrees to grant the other contracting partner a treatment that is not less than that which it accords to a third country. However, benefiting from the condition does not mean treating the beneficiary a treatment equal to the treatment of patriots because this matter is fulfilled by another principle in international dealings that It complements the MFN requirement, which is the principle of national treatment.
- The principle of national treatment: It is an agreement legal rule under which the host country commits to grant the foreign investor a treatment that is no less favorable than the treatment granted to national investors, and thus the foreign investor has the same terms of competition that the national investor has in the host country's market.

3.Stability / security concept of investment laws:

We have already said that the foreign investor attaches utmost importance to the legal system that governs his investment, mainly the investment law and whether it is in line with his interests, and therefore his direction to invest in a country depends on the extent of its stability and stability throughout the life of the investment to achieve the interests and objectives of the project.

3.1. Definitions of legal stability / security

- It expresses a set of measures and laws that a person puts in place to achieve protection for himself, honor, money and property and to achieve security, peace and tranquility in society (Mohamed Mounir Hassani, December 5-6, 2012, p. 85)

- It means the existence of a kind of relative stability in legal relations and a minimum level of stability for legal centers, regardless of whether they are public or private legal persons who can arrange their positions in accordance with the legal rules at the time they start their work and without being exposed to surprises that would destroy the corner of stability or undermine the spirit of confidence and Reassurance about the state and its laws (Abdul Majid Lakhdari & Fatima bin Jeddo, June 2018, p. 389)
- What is meant by the principle of stabilizing, stabilizing or freezing legislation is that the state pledges that if foreign investment is registered within the framework of a specific law, it is not possible to violate this law under which investment contracts or agreements were concluded (Kadiri Abdel Aziz, 2016, p. 37)
- The aim of its approval is to reassure the foreign investor that in the event of amending or canceling the law on investment, the legal system under which contractual obligations have been taken will remain in effect, and the provisions of the new law will not be applied to it, especially if it includes an increase in obligations, that is, the new procedures in the field of social rights and An increase in fees and taxes cannot be applied to the investments that have begun to be made (Abdel Nour Mubarak, December, 2018, p. 294)
- Legislative stability is defined as the necessary condition that aims to freeze the role of the state as a legislative authority and a party to the contract in amending the legal rules in force between them and between the foreign investor at the time of the conclusion of this contract in a way that might disturb the contractual or economic balance between the two parties to the contractual bond, meaning freezing the law that Accordingly, an investment contract was concluded between the state and the foreign investor, and it is a guarantee granted by the state to investors that makes it unable to make any amendment or addition to the first law (Walid Lamari, 2011, p. 15).

3.2. Based on that, we conclude that:

The idea of legal stability / security means the legislative authority's commitment to achieving a measure of consistency and stability in the legal investment relations and not permanent amendment aimed at spreading confidence and reassurance among the investing parties and their accuracy and clarity, so that legislation should not be characterized by surprises, turmoil or The reaction of laws or decisions that may undermine confidence in the state and its laws.

3.3 .The importance of stability / legal security for investment projects:

- Legal stability / security are a guarantee for the protection of individuals and their interests, and it is one of the necessities that economic activity entails. The legislator is obligated when developing laws to maintain the stability of legal centers, establish confidence in legal relations, the ability to anticipate matters in advance and draw and plan future relationships.
- Legal stability / security contributes to providing a sound legal environment for investment and creating legal mechanisms that stimulate investment, and the rule of law in the field of business if the national or foreign investor is always looking for: efficiency, speed, security, and confidence in the completion of commercial transactions and in In the event of a dispute about it, the legal mechanisms guarantee the protection of his rights, and therefore the investor, before undertaking any investment initiative, searches for the following data (Alawi Fatima, April 2016, p. 150)
- Legal and judicial guarantees granted to the investor.
- Laws regulating the investment sector.
- The legal guarantees that join the partnership between Algerian and foreign economic actors.
- The extent of Algeria's involvement in international agreements related to investment.
- The privileges granted by the investment law to foreign investors, whether in terms of tax or customs exemptions or registration fees.
- The exchange law and what entitles the foreign investor to transferring the invested funds and the profits resulting from them abroad.
- Facilities granted by the state in order to benefit from the lands located in the industrial zones.

3.4. The importance of ensuring the stability of the law applicable to foreign investment in Algeria:

The Algerian legislator stipulated the guarantee of the stability of legislation. Legislative Decree No. 93-12 of 05/10/1993 related to the development of investment in Article 39 thereof, which states: “The revisions or cancellations that occur in the future shall

not be applied to the investments made within the framework of this legislative decree except if the investor explicitly requests that, "the same wording is found in Ordinance No. 01-03 of August 20, 2001, with the exception of replacing the word legislative decree with the word command.

The principle was also enshrined and affirmed by the new Law No. 16-09 of August 3, 2016, as Article 22 of it states: "The effects resulting from the revision or cancellation of this law that occur in the future shall not apply to the investment made within the framework of this law unless the investor so requests.

These provisions are regarded as a pledge by the Algerian state not to apply any new law to investments under construction, unless the investor expressly requests the application of the new law so that future legal measures will not be applied on him only if they are in his favor. However, if the measures are to bring investors looking to stabilize the investment law, which is a catalyst for investors, it may be an obstacle for the receiving state to invest in the opportunities of any new legislation on the investor even though it serves the national benefits. (Abdel Nour Mubarak, December, 2018, p. 295) .

3.5. The institutional framework for foreign direct investment in Algeria:

In the area of strengthening the legal framework for investment in Algeria, administrative structures have been established to support and develop investment projects:

1. National Investment Development Agency (ANDI) (Official Gazette, Issue 47 dated August 22, 2001, p. 07)

It is an alternative to the National Investment Promotion, Follow up and Support Agency (APSSI) created under the Investment Act of 1993. It is a public institution of an administrative nature in the service of national investors operating under the supervision of the Prime Minister, either following up the agency's activity under the tutelage of the minister in charge of contributing and coordinating Reforms. The agency's functions include:

- Ensuring that investments are upgraded, developed and followed up
- Reception, information and assistance to resident and non-resident investors.
- Facilitate the establishment of institutions and the embodiment of projects through the services of the only decentralized windows.
- Managing investment-related benefits and running a fund support investment to develop it.

- Ensure that the obligations made by investors are respected during the exemption period.
2. National Investment Council (CNI) (DJOUAMAA Labiba, 2015, p. 328)

It is considered as the supreme body overseeing the development and identification of the investment development strategy and proposes all incentive measures for investment and separates the agreements between the National Investment Agency and the investor under the exceptional system, in the benefits granted to investors and the Board determines the areas which can benefit from the advantages of the exceptional system. In fact, its decisions are not directed directly to the investor but directed to the administrative bodies charged with applying Legal texts on investment promotion and the functions of the National Investment Council are as follows:

- Formulating strategy and investment priorities.
 - Zoning Development.
 - Approve the benefits and incentive measures and work on the approval of the draft investment agreements.
 - Propose to the government all the decision and measures necessary to implement and encourage investment support.
 - Encourages the creation of financial institutions and instrument to finance.
3. The ministry assigned to the head of the government in charge of contributing and promoting the investment (MDPI) (DJOUAMAA Labiba, 2015, p. 329)

It is responsible for the promotion of investment and privatization processes and does not have a structure for the follow-up of foreign investment. In addition to the overlap of powers between the functions of the National Investment and the Development Agency, especially in the field of promotion, and it does the following task:

- Coordination of systems by preparing and carpeting special programs.
- Follow-up the conduct of the council of state contribution, which works to value public sector companies.
- Promotion and development of investment through the agency (ANDI) supervisor to follow-up all his work.
- Carrying out the functions of the secretariat of the state contributions council and the National Investment Council.

- Proposing investments promotions and development policies and strategies.

4. National Agency for Real Estate Mediation and Regulation

The Agency is concerned with all real estate issues related to the investment process and performs the following tasks:

- Managing the remaining portfolio of privately owned public institutions and properties available in the industrial regions.
- Collecting and preparing information on available properties.
- Regulation of asset waivers.

5. Investment Support Fund

A fund has been set up to support investments in order to ensure the state's contribution to the cost of benefits granted to investments especially expenditures related to the work of the basic facilities to complete the investment from, and from the creation of industrial regions providing electricity, water and paving of the tart.

4. The impact of the stability / Security of the laws on attracting foreign investment:

4.1. The consequences of achieving stability /security for the law:

Legal stability is a catalyst for foreign investment that provides protection against all changes in the legal system that governs investment and the consequent protection and security of the foreign investors' rights. (Reda Abdelsalam, 2009, p. 334).

- Achieving and protecting the expectations of the foreign investor:

So law stability allows foreign investors to make grant profit within a clear transparent and somehow stable legal framework which contributes in protecting the legislative trust and encourages investment and economics points that stability helps meeting the expectation of the investors and what is meant here are legal expectations and not the personal

- Stability protecting and ensuring the rights of the foreign investor:

The condition of law stability that is applied on the investment has an important benefit to the investor by insuring any amendment or cancellation of any legislation governing the investment, so we find the foreign investor always includes the condition of the law stability in the terms and contracts of the investment with the host country.

If the foreign investment is affected by legal stability, not because it is the only one affected by the latter but there are different influences on the foreign investor, including the stability

of exchange and the market. This is to provide financial and human materials and infrastructure to establish investment in the host country.

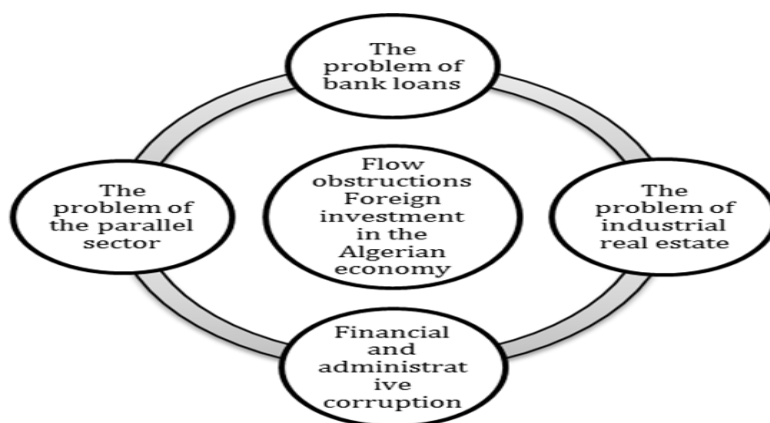
➤ The stability of the law is a magnet for foreign investment:

Experiments shows that foreign investors prefer countries with political, economic and legal stability and that markets openness and lack of regulation are key factors in attracting and maintaining foreign investment. In addition to the investment climate which is influenced by the decision of the foreign investor.

4.2. Legal impediments to foreign direct investment in Algeria:

There are a range of constraints on the Algerian economy that limit the flow of investments including:

Figure (1): Legal Obstacles to Attract Foreign Investment in Algeria



Source: Prepared by the researcher based on the data provided.

1. Financing and Bank Loans: the banking system is still below the level of domestic and foreign investors, as it suffers from a lack of professional experience among the supervisors of Algerian banks as well as reliance on roads traditional in the management of banks and the sovereignty of the public sector, therefore it is necessary to reform the banking system and modernize the means of management to keep pace with economic reforms to achieve results from upgrading domestic and foreign investment.

2. Industrial real estate difficulties: Projects often get stuck in the face of the real estate systems that regulate the acquisitions, exploitation and trading of these funds to guarantee the rights of dealers and the state, which leads to the establishment of trust,

tranquility, stability of legal centers and the prevention of conflicts. (Alawi Fatima, April 2016, p. 151)

3.The problems and difficulties faced by investors in obtaining industrial property are mainly:

- The nature of the designated industrial land and the type of activity are incompatible.
- The length of the return of the data charged with the allocation of industrial property which exceeds this year, a study showed that 40% of investors consume an average of five years to obtain an industrial property bug
- The weight of the procedures and the submission of the same file to the investment promotion bodies, the real estate allocation bodies again in front of the real estate managers.

4.The problem of industrial real estate in Algeria is of a regulatory administrative nature and real estate exists but is not fully exploited, 50% percent of which are untapped. This is to ease administrative procedures and reduce the time needed to obtain the necessary lands for foreign and local investors, which contributes to solving the problem of industrial real estate.

5.The problem of the parallel sector: the losses caused by the parallel sector through illegal competition are catastrophic, because producers working within a legal framework suffer from unfair competition due to the profits achieved by the parallel sector, and statistics confirmed that the parallel sector in Algeria controls 40 % percent of the monetary mass traded on the market patriotism confirms that the competent authorities do not control the phenomenon.

6.Financial and administrative corruption: The impact of corruption on domestic and foreign investment is shown as additional costs paid by the investor and absorbing part of his profits by exploiting the job to achieve personal gains. This latter hinders the realization of economic security and does not help to create wealth and employment opportunities.

5. CONCLUSION

It is clear that ensuring the stability of the legal system for investment has an effective role in encouraging and protecting foreign investment as it is a catalyst and reassuring for foreign investors to go to this country. Based on the hypothesis put forward that foreign investors care about the stability and persistence of the legal system that governs investment in host countries, especially developing countries, which is usually characterized by legal and

political instability and constantly changing, which leads to the destabilization of confidence in the same investor. This latter leads foreign investors to look for other countries more stable, especially that of long-term investments. In the future, instability in many countries has led to fear and the withdrawal of many investors and their orientation to other countries that have been proven correct by their findings.

As happened in Algeria after independence and during the 1990s because of the crisis it experienced and its effects to date on foreign investment in Algeria due to the constant change and the amendment of laws and regulations and the retreat from economic policies adopted in a short period of time make the investor in doubt.

We have therefore come up with a number of conclusions:

- Although the stability/legal security enshrined in Law 16-09 through Article 22 of it seemed to remain relative right the state changes its laws however it wants, and may decide the rights of It is then abolished and may be limited by other provisions that are not covered by the principle of stability, as may be the abolition of the law that has been decided by this principle, which makes the foreign investor reluctant to invest because he is always looking for stability and freedom and trying to build an investment strategy based on the legal system governed by the host country, which the State of Algeria cannot achieve because of legal amendments and changes.
- The institutional framework for investment in Algeria is noted in the tasks of some of the competent authorities to follow up on the investment.
- Failure to determine who will on the work of an agency (ANDI).
- Dispute between the powers of both the National Investment Council and the National Investment Development Agency with regard to by granting concessions to investors which creates Administrative barriers for foreign and local investors by understanding these advantages and how to grant them.
- Contrary to the objectives of the parties to the investment contract, the investor tries to maximize his economic profits by completing his investment on a foreign country at a low cost to the minimum possible, and the countries attracting the investment project aim to boost their national economy by attracting as many foreign capital stake as possible.
- The stability of the law governing investment is of great importance in attracting investment, because the trend of foreign investors to a particular country depends on

the legal system governing investments that serves their interests, and it brings about the stability of investment legislation, which in turn depends on political stability.

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