

The legal status of the National Agency for Tourism Real Estate and its role in promoting tourism real estate investment in Algeria

Submission date: 31/03/2024

Accepted date: 26/05/2024

BAHRI Bouzid*
University of Khenchela
bahri.bouzid@univ-khenchela.dz

MAAMERI Abderrachid
University of Khenchela
maameri.abderrachid@univ-khenchela.dz

Abstract:

In the context of moving towards a free market economy, Algeria has adopted a new strategy based on an economic approach that focuses on investment in various sectors, including tourism, which has become a significant industry in many developed countries.

Since tourism real estate is a component of economic real estate, the Algerian authorities have paid particular attention to promoting its investment. This is reflected in the establishment of the National Agency for Tourism Real Estate by Executive

Decree No. 23-489 dated 30/12/2023, which includes the creation, organization, and operation of the National Agency for Tourism Real Estate, in accordance with the provisions of Article 7 of Law 23-17 dated 15/11/2023, which specifies the conditions and modalities for granting economic real estate owned by the state for the implementation of investment projects.

This article aims to clarify the legal status of the National Agency for Tourism Real Estate and its role in promoting tourism investment in Algeria, particularly through its preparation, protection, and utilization.

Keywords: *legal status; National Agency; Tourism real estate; tourism investment; promotion.*

Introduction:

This study addresses the role of the National Agency for Tourism Real Estate, established under Executive Decree No. 23-489 dated 12/28/2023, in promoting investment in the tourism sector, as it represents the state's tool for regulating and managing real estate directed towards tourism investment through the tasks assigned to it, in terms of preparation, protection, provision, and rational exploitation in coordination with the Algerian Agency for Investment Promotion,

* - Corresponding author.

which is entrusted with the authority to acquire tourist investment real estate and grant it under a transferable concession arrangement.

The tourism sector holds immense importance worldwide, as it has become an industry in many countries, significantly contributing to their economic growth, independently of the depleting resources of oil and gas. Therefore, Algeria has aimed to prioritize this sector by making it a target for local and foreign investment, primarily through providing its essential foundation: real estate. To ensure that this real estate is directed towards tourism investment, the state has worked on its preparation, protection, availability, and utilization by establishing industrial and commercial entities, the latest being the National Agency for Tourism Real Estate, created by Executive Decree No. 23-489 dated 28/12/2023, succeeding the National Agency for Tourism Development⁽¹⁾.

This study examines the legal status of the National Agency for Tourism Real Estate and its role in promoting investment in the tourism sector⁽²⁾. The agency serves as the state's tool for organizing and managing real estate intended for tourism investment by preparing, protecting, making available, and rationally utilizing it in coordination with the Algerian Investment Promotion Agency, which has the authority to acquire real estate for tourism investment and grant it within the framework of convertible concessions.

The problem of this study can be formulated in the following main question: **What is the legal status of the National Agency for Tourism Real Estate, and what is its role in promoting investment in Algeria?**

Answering the aforementioned problem requires us to follow a descriptive-analytical approach, according to a two-part plan. First, we will address the legal status of the National Agency for Tourism Real Estate, and second, we will discuss its role in promoting tourism investment in Algeria.

1- The Legal status of the National Agency for Tourism Real Estate

Defining the legal system of the National Agency for Tourism Real Estate requires first defining its concept and then explaining its organization and management, which we will review accordingly.

1-1- Concept of the National Agency for Tourism Real Estate:

To understand the concept of the National Agency for Tourism real Estate, we will first define it and then determine its legal nature.

1-1-1- Introduction to the National Agency for Tourism Real Estate:

Before defining the National Agency for Tourism Real Estate, it is appropriate to briefly discuss its origins.

1-1-1-1-Origins of the National Agency for Tourism Real Estate:

The National Agency for Tourism Real Estate, established by Executive Decree No. 23-489 dated 28/12/2023, which includes the creation, organization, and operation of the National Agency for Tourism Real Estate⁽³⁾, is a continuation of the National Agency for Tourism Development, previously established by Executive Decree No. 98-70 dated 21/02/1998. The name was changed by replacing "Tourism Development" with "Tourism Real Estate". It corresponds to the establishment of the Tourism Real Estate Agency (A.F.T) in the Tunisian organization under Order No. 216 of 1973 dated May 15, 1973, concerning the organization and management of the Tourism Real Estate Agency.⁽⁴⁾

It is worth noting that the new name has a certain limitation, as the tourism real estate managed by the National Agency for Tourism Real Estate is limited to real estate designated for tourism investment within the category of economic real estate. This excludes lands located within the perimeters of archaeological sites and historical monuments⁽⁵⁾, which, despite their touristic nature that would technically classify them as tourism real estate, are not available for investment. Consequently, it would be more appropriate to name the National Agency for Tourism Real Estate as the "National Agency for Real Estate Designated for Tourism Investment," because the term "tourism real estate" is broad and includes both investable and non-investable tourism properties.

1-1-1-2 Definition of the National Agency for Tourism Real Estate Under Executive Decree No. 23-489:

Article 2 of Executive Decree No. 23-489 defines the National Agency for Tourism Real Estate as "a public institution, characterized by its legal nature as having an industrial and commercial character, enjoying legal personality and financial independence, subject to the laws applicable to the administration in its relation with the state, and considered a trader in its relations with others."



Administratively, it is under the guardianship of the Minister in charge of Tourism, headquartered in Algiers, and subject to state supervision according to the legislation and regulations in force.

From the aforementioned definition, it is clear that the Algerian legislator largely follows the same definition given to the National Agency for Tourism Development under Executive Decree No. 98-70, with the difference lying in the change of name, headquarters, and state supervision. Now called "The National Agency for Tourism Real Estate" under Executive Decree No. 23-489, its headquarters remain in Algiers without the possibility of relocation, with the potential to establish branches nationwide⁽⁶⁾. The new executive decree subjects the agency to state supervision according to legislative texts, an oversight mechanism not specified in Executive Decree No. 98-70 for the previously existing National Agency for Tourism Development. The definition also touches on the legal nature of the National Agency for Tourism Real Estate, which we will discuss further.

1-1-2 The Legal Nature of the National Agency for Tourist Real Estate:

According to Executive Decree No. 23-489, the National Agency for Tourism Real Estate is considered a public institution of an industrial and commercial nature, enjoying legal personality, financial independence, and administrative independence. This is evident in the following:

1-1-2-1 Public Institution with an Industrial and Commercial Character:

Following the tasks assigned to the National Agency for Tourism Real Estate as stipulated in Articles 5 to 9, the agency engages in commercial and industrial activities similar to those of private law entities. Explicitly stated in Article 2, Paragraph 02 of its establishing decree, it is considered a trader in its dealings with others. Among its tasks are the preparation of tourism real estate, developing various service activities either independently or through partnerships, leasing them, as well as establishing properties for commercial use, and all promotional activities related to its field, in exchange for receiving service fees performed on behalf of the state. It is subject to the rules applicable to the administration (public law rules) in its relation with the state, and accordingly, it is subject to public law rules when dealing



with the administration as a public service and to private law rules when dealing with non-administrative entities.

1-1-2-2 Legal Personality:

The Algerian legislator explicitly recognized the legal personality of the National Agency for Tourism Real Estate in Article 2, granting it a form of financial, administrative, and legal independence, though this independence is organically and functionally limited as outlined in its establishing and organizing decree. In this context, the agency has a specific domicile, represented by its headquarters in Algiers alone⁽⁷⁾. Furthermore, the agency has the capacity to litigate, represented by the General Manager, who represents it before administrative and ordinary courts, whether as a plaintiff or a defendant⁽⁸⁾. The legal personality of the National Agency for Tourism Real Estate implies its responsibility for its errors in the performance of its duties, and the lack of legal personality would place the responsibility on the state⁽⁹⁾.

1-1-2-3 Financial Independence:

Financial independence grants the agency the right to prepare its budget proposal, to vote on it, and to execute it in terms of revenues and expenses, and to maintain accounts for this purpose, as well as to own premises and material resources at its disposal for its purposes, managed by the General Manager⁽¹⁰⁾. This includes the agency's right to accept donations and legacies and to enter into contracts and agreements related to bank loans and similar transactions.

1-1-2-4 Administrative Independence:

The agency's administrative independence is evident through its administrative structure, particularly represented by the Board of Directors and a General Secretariat led by the General Manager, who oversees service provision with employees appointed, classified, and assigned by the agency, along with determining their tasks and salaries. This is in addition to the freedom of circulation and voting granted to the members of the agency's Board of Directors⁽¹¹⁾. Its relative independence is highlighted, on one hand, by stipulating its subordination to the guardianship of the Minister in charge of Tourism in several instances of its establishing decree, especially Article 3. On the other hand, through the imposition of state supervision over it according to Article 4 of the same executive decree, as well as through the obligation of the agency, through its General Manager, to submit a report accompanied by a balance sheet and results accounts and to send

it to the Minister in charge of Tourism⁽¹²⁾. This supervision, in our opinion, is commendable as it contributes to monitoring how well the agency executes its assigned tasks, especially in addressing the deficiencies observed and the recommendations deemed appropriate for promoting tourist real estate, preparing it for investment, and protecting it from plunder.

1-2- Management and Administration of the National Agency for Tourism Real Estate:

The management of the National Agency for Tourism Real Estate is carried out by two administrative bodies. One operates in a collective deliberative manner, which is the Board of Directors, and the other has an executive nature, which is the General Manager. We will detail this as follows:

1-2-1 The Board of Directors as a Deliberative Body

In this section, we will discuss the collective composition of the Board of Directors of the National Agency for Tourism Real Estate, then the term of office of its members, and finally, the tasks and operation of the Board of Directors.

1-2-1-1 Composition of the Board of Directors of the National Agency for Tourism Real Estate:

According to Article 11 of Executive Decree No. 23-489, the Board of Directors of the National Agency for Tourism Real Estate is chaired by the representative of the Minister in charge of Tourism and consists of 12 members including the Minister's representative, representing various ministries, including the Prime Minister's office represented by the representative of the Algerian Agency for Investment Promotion, operating under the supervision of the Prime Minister⁽¹³⁾. Additionally, the General Manager attends the board meetings in an advisory capacity. Therefore, its composition is collective, including representatives from various ministerial departments⁽¹⁴⁾, adding to the agency's diversity and specialization and a form of organic independence through the freedom of discussion and voting for the Board members as per the law⁽¹⁵⁾.

1-2-1-2 Tenure of the Board Members:

Based on Article 12 of Executive Decree No. 23-489, the appointment of the Board members of the National Agency for Tourism Real Estate by the Minister in charge of Tourism, on the proposal from the respective ministers, is subject to a tenure system



with a duration of three (3) years, renewable, plus the obligation to fill any vacant seat for the remainder of the term in case of an impediment. This system underscores the functional independence of the Board members through their impartial and objective task performance⁽¹⁶⁾; on one hand, allowing appointed members to perform their duties without succumbing to any pressure from their authorities, and on the other hand, limiting the administration's freedom to terminate their duties at will.

In this regard, specifying tenures in the management of the National Agency for Tourism Real Estate significantly enhances transparency and effectiveness in performance, enforces accountability, and delineates the responsibilities of each tenure's members towards achieving the agency's goals. This introduces a form of state-imposed oversight on the agency's actions as specified in Article 4 of the mentioned Executive Decree No. 23-489, although this oversight is limited to ensuring the agency's goal achievement and the legality of its actions. Notably, the General Manager of the National Agency for Tourism Real Estate attends the Board meetings in an advisory capacity, not as a deliberative member⁽¹⁷⁾.

However, the Algerian legislator is criticized for adopting a short-term mandate system with open renewal (without specifying the number of renewals) for the members of the Board of Directors of the National Agency for Tourism Real Estate. This leads members to seek the favor of the overseeing authorities to renew their confidence in them. Therefore, it would be more appropriate for the legislator to establish either a non-renewable short-term mandate, a long-term mandate, or at least limit the number of renewals to provide the Board members with greater independence both in membership and function⁽¹⁸⁾. This is similar to the case with the members of the National Agency for Industrial Real Estate, where the mandate is set at three (03) years, renewable only once.

1-2-1-3 Tasks of the Board of Directors, its Operation, and Procedures:

According to the procedures outlined in Articles 17 to 21 of the decree establishing the National Agency for Tourism Real Estate, the Board of Directors of the agency is responsible for deciding on the matters specified in Article 16 of the same decree. These matters include financial aspects such as the agency's budget proposal, financial



statements, and the annual management report of the agency's activities as reflected in the administrative and financial accounts documents. They also encompass the wage system and contractual aspects such as the conditions for concluding contracts and agreements, including wills, donations, partnership agreements, and real estate development activities. Additionally, they cover administrative aspects such as the creation of branches and subsidiaries across the country, and any matters that could improve and organize the agency and its operations. It is not required for these matters to be proposed by the General Manager of the agency, unlike the previous practice under the now-canceled Executive Decree No. 98-70, which regulated the dissolved National Agency for Tourism Development.

The Board of Directors deliberates on the assigned matters in meetings held three (3) times a year, requiring the presence of 2/3 of its members, under penalty of nullity, based on an invitation attached with the agenda and files from its president at least 10 days before the meeting date. It may also convene extraordinary sessions upon the request of its president, the General Manager, or by the absolute majority proposal of its members, i.e., 3/4 of them, through an invitation sent at least 5 days before the meeting. Meetings, whether ordinary or extraordinary, conclude by approving deliberations by a simple majority of the members, with the president's vote being decisive in case of a tie. Deliberations of the council are only valid with the presence of 2/3 of its members; if quorum is not met, a second meeting is held within the following eight (8) days, during which deliberations are valid regardless of the number of attendees, to be recorded in minutes and noted in a special numbered register signed by the council president. However, the minutes are not effective until sent within ten (10) days following the meeting for approval by the Minister in charge of Tourism within one (1) month from the date of the meeting, reflecting the guardianship and oversight of the agency's activities and the legality of its actions.

1-22- Method of Appointing the General Manager

In this section, we will examine the method of appointing the General Manager of the agency and then outline his duties as follows:

1-2-2-1 On the Method of Appointing the General Manager:

According to Article 22 of the decree establishing the agency and defining its organization and operation, the agency has a General

Manager who is appointed and dismissed in accordance with the same procedures, according to the applicable regulations. It is noteworthy that the text does not specify the type of these regulations. Thus, it is unclear whether the General Manager of the agency is appointed by presidential decree or executive decree, unlike Article 20 of Executive Decree No. 98-70 under the former National Agency for Tourism Development, where the appointment was made by executive decree upon the proposal of the Minister of Tourism.

Additionally, it is observed that the position has a dual rank: sometimes as the General Manager of the agency and other times as the Secretary-General of the Board of Directors. Generally, the General Manager is entrusted with a range of tasks outlined in Article 23 of Executive Decree No. 23-489.

1-2-2-2 Tasks of the General Manager of the Agency:

The main tasks assigned to the General Manager of the National Agency for tourism Real Estate include:

- Financial and material management of the assets and resources at the disposal of the agency, which requires technical work that demands high competence and experience in management, especially since the law authorizes them to prepare and execute the agency's budget project, prepare financial status projects, and draft annual activity program projects.
- Making decisions related to the organization of bodies under their authority at the agency level or at the local level for agencies and branches opened across the provinces of the nation.
- Ensuring the execution of the Board of Directors' deliberations after sending their minutes to the Minister in charge of Tourism.
- Proposing the establishment of local branches for the agency nationwide and managing human resources, where the General Manager is responsible for appointing and dismissing agency employees, representing the highest peaceful authority to them.
- Representing the agency before various judicial entities as a plaintiff or defendant, acting as its legal representative expressing its will.
- Signing various contracts, agreements, and deals whose terms are set by the Board of Directors.
- Providing the Minister in charge of Tourism with all minutes and documents stipulated by Executive Decree No. 23-489, including the

annual report containing the outcomes and results of the agency's activities, the minutes of the Board of Directors' deliberations, the internal regulations of the agency, and the wage system of the employees⁽¹⁹⁾. This confirms the agency's relative organizational and functional independence under its subordination to the executive authority and its restrictions to it⁽²⁰⁾.

2- The Role of the National Agency for Tourism Real Estate in Promoting Tourism Investment:

The role of the National Agency for Tourism Real Estate in promoting investment in tourism real estate is evident through the tasks assigned to it. These tasks are part of the incentive measures taken by the state in the tourism sector. They range from the preparation, protection, and provision of tourism real estate to its utilization.

2-1 Promoting Tourism Real Estate Investment Through Its Preparation and Protection:

Law 23-17 introduced a new approach to managing economic real estate intended for investment. This approach focuses, on one hand, on the preparation of the real estate, which is a prerequisite for its investment viability, and, on the other hand, on its administrative and judicial protection.

2-1-1 Preparing Tourism Real Estate as a Mechanism for Promoting Its Investment:

The task of preparing real estate for tourism, as a type of economic real estate, is assigned to the National Agency for Tourism Real Estate⁽²¹⁾, acting as the entity embodying the state's contribution⁽²²⁾.

In exchange for a fee or service rewards, as specified in the terms and conditions and the revenues generated from its activities included in the agency's budget under the revenue section, according to Article 29 of Executive Decree No. 23-489.

For the preparation of the infrastructure for tourism real estate, the agency undertakes, according to Article 10 of Executive Decree No. 23-486⁽²³⁾ and Article 5 of Executive Decree No. 23-489, as well as the first article of the specifications annexed to Executive Decree No. 23-489, a series of tasks on behalf of the state⁽²⁴⁾, such as connecting tourism real estate to infrastructure networks, and preparing urban planning tools related to tourist preparation.

2-1-1-1 Connecting Tourism Real Estate to Infrastructure Networks:

The agency commits to connecting all state-owned tourism real estate within expansion areas and tourist sites listed in the territorial planning scheme⁽²⁵⁾ to various infrastructure networks, such as roads, water, electricity, and telecommunications networks. The preparation process also extends to the external connection of tourist areas and expansion sites to various networks according to the tourist planning scheme⁽²⁶⁾, including lands owned by the state and private individuals.

The effectiveness of preparing state-owned tourism real estate with various networks in promoting investment includes:

- Granting the property the status of economic real estate usable in investment projects. Unprepared lands, including those within expansion areas and tourist sites, are not considered economic real estate directed for investment.

- According to Article 11 of Law No. 03-01 dated 17/02/2003 related to sustainable tourism development⁽²⁷⁾, preparation is an incentive measure taken by the state to promote investment in tourism real estate as a sector supporting the tourism industry, which is relied upon to boost the national economy beyond oil and gas wealth.

- Prepared real estate attracts both local and foreign investors to establish tourism investment projects, leading to tourist influx⁽²⁸⁾, generating financial revenues, and absorbing unemployment.

- The exploitation of tourism real estate directed for investment is linked to its final preparation according to Article 04 of Executive Decree No. 07-23⁽²⁹⁾ dated 31/01/2007, which specifies the methods for the resale of lands within expansion areas and tourist sites or granting concession rights on them.

2-1-1-2 Preparing Urban Planning Tools Related to Tourist Preparation:

In the context of studies aimed at identifying tourist expansion areas and sites, the National Agency for Tourism Real Estate is obligated, according to Article 05 paragraph 02 of Executive Decree No. 23-489, to prepare urban planning tools related to tourist preparation. These tools include planning instruments related to development and urban planning as per Law No. 90-29 amended and supplemented⁽³⁰⁾, such as the General Urban Planning Scheme (PDAU)⁽³¹⁾, which must be submitted for consultation to administrative bodies including the



Tourism Directorate at the provincial level⁽³²⁾, and the Land Occupation Plan (POS), in addition to plans related to the tourism sector, like the Tourist Development Master Plan (SDAT)⁽³³⁾ and the Coastal Development Scheme (SDAP)⁽³⁴⁾, which are essential in preparing and protecting tourism real estate and consequently forming an infrastructure for tourism real estate investment.

The importance of relying on urban planning tools in promoting tourism real estate investment⁽³⁵⁾, despite the lengthy procedures, includes:

- Defining developmental objectives based on which investment forms are created to develop exceptional tourism hubs, attracting both tourists and investors in coordination with the Algerian Agency for Investment Promotion⁽³⁶⁾.
- Identifying tourist areas at the municipal level, expansion areas in urban fabrics, and areas that must be protected, including tourism real estate⁽³⁷⁾.
- Tourism real estate includes lands with defined rules for their use and construction in detail, as per the Land Occupation Plan, which must align with the Tourist Development Master Plan and the Coastal Development Scheme.
- The agency is responsible for preparing lands within tourist sites and expansion areas due to their tourist nature and suitability for executing appropriate tourism investment projects.
- Identifying areas worthy of protection within tourism real estate directed for investment, as well as agricultural lands within expansion areas and tourist sites⁽³⁸⁾, as agricultural lands or those intended for agricultural use are excluded from the category of economic real estate directed for investment according to Article 3 paragraph 1 of Law No. 23-17.

2-1-2- Protecting Tourism Real Estate as a Mechanism for Promoting Its Investment:

Given the importance of tourism real estate directed for investment in economic development, the legislator has provided it with protection to preserve it from damage and encroachment. The National Agency for Tourism Real Estate is charged with this task according to paragraphs 07 of Article 5 and 07 of Article 23 of its establishing decree, where the agency, represented by its General Manager, is granted litigation capacity. This confirms the establishment of

administrative and judicial protection for tourism real estate directed for investment.

Administrative protection is embodied in urban planning tools, particularly in various types of planning and defining and demarcating boundaries; these tools enable the National Agency for Tourism Real Estate to monitor and maintain the common parts of expansion areas and tourist sites⁽³⁹⁾.

Non-compliance with urban planning and development tools constitutes violations⁽⁴⁰⁾, the observation of which by qualified agents⁽⁴¹⁾ leads to the judicial prosecution of the violator by the administration in charge of tourism⁽⁴²⁾, without granting this right to the National Agency for Tourism Real Estate, despite its litigation capacity on one hand and its responsibility for protecting tourism real estate⁽⁴³⁾ on the other.

2-2- Promoting Tourism Real Estate Investment through Its Provision and Utilization:

In addition to the National Agency for Tourism Real Estate's responsibility for preparing tourism investment real estate and protecting it from deterioration, the agency is also obliged to provide and utilize it in coordination with the State Property Management and the Algerian Investment Promotion Agency.

2-2-1 Providing Tourism Real Estate as a Mechanism for Promoting Its Investme:

The National Agency for Tourism Real Estate embodies the availability of tourism real estate directed for investment through defining its boundaries and demarcation and inventorying it.

2-2-1-1 Identifying and Demarcating the Boundaries of Tourism Real Estate and Its Importance in Promoting Investment:

According to Article 5 paragraph 4 of Executive Decree No. 23-489, to provide tourism real estate directed for investment, the National Agency for Tourism Real Estate is tasked with defining and demarcating tourism expansion areas and sites by identifying their physical components and determining their boundaries in the field. This is done through procedures that importantly involve the presence of owners or holders, as well as public services concerned to remind them of the obligation to define their property boundaries and to appoint a qualified representative for this purpose, documented in official boundary definition minutes and cadastral maps.

The task of defining and demarcating boundaries assigned to the National Agency for Tourism Real Estate requires coordination with the Directorate of Surveying and Land Registration, the National Agency for Planning, and the Algerian Agency for Investment Promotion. If the property is located in surveyed areas, it must coordinate with the provincial Directorate of Surveying and Land Registration; as it is technically qualified to set boundaries and determine the area, by preparing for each property set two types of cards: a "Share Card" (Model T4), designated to receive all elements related to the property set, and an "Owner Card" (Model T5), containing information to identify the owner or presumed owner of the property set. These documents, along with other land survey documents, especially cadastral maps, aim to establish and constitute the land registry cards for the real estate registry⁽⁴⁴⁾. The goal is to clear tourism real estate directed for investment and to confer legal security on transactions based on it. Hence, the legislator's intent to include a second representative of the Minister of Finance, affiliated with the General Directorate of National Properties, among the members of the agency's Board of Directors, is evident⁽⁴⁵⁾.

Regarding the National Agency for Planning, which is responsible for managing projects in urban planning and development, coordination with it occurs in the field of tourist development studies according to Article 5 of Executive Decree No. 09-344 dated 22/10/2009 concerning the establishment of the National Agency for Planning⁽⁴⁶⁾; to issue the executive decree establishing tourism zones and expansion sites based on a report from both the Minister of Urban Planning, Environment, and Tourism. Coordination with the Algerian Agency for Investment Promotion allows it to inform investors about the real estate offer, as this is no longer within the competency of the National Agency for Tourism Real Estate, previously under the jurisdiction of the now-defunct National Agency for Tourism Development⁽⁴⁷⁾.

The role of the National Agency for Tourism Real Estate in promoting tourism investment through defining and demarcating tourism expansion areas and sites is evident in the following points:

- Achieving legal security for investors regarding the validity of the real estate granted to them; investment in the real estate sector is built upon property that is stable both factually and legally⁽⁴⁸⁾, and

conversely, the lack of property ownership documents deters both foreign and national investors from investing.

- Defining and demarcating tourism real estate within tourism expansion areas and sites means including it within the economic real estate directed for investment, according to Article 3 of Law No. 23-17 mentioned earlier, unless it is part of archaeological sites and historical landmarks.

- Enhancing the role of the digital platform for investors established at the Algerian Agency for Investment Promotion, which provides information related to the real estate offer in the tourism investment field⁽⁴⁹⁾, after receiving its inventory from the State Property Administration, which, in turn, receives it from the National Agency for Tourism Real Estate, aims to achieve transparency in dealing with investments and ensuring their availability⁽⁵⁰⁾.

2-2-1-2 Inventorizing Tourism Real Estate and Its Importance in Promoting Investment:

In addition to defining and demarcating tourism real estate, the National Agency for Tourism Real Estate is responsible for inventorizing tourism real estate directed for investment⁽⁵¹⁾. This inventory process is a technical administrative operation that involves recording descriptive and evaluative information about each tourist property by preparing an identification card⁽⁵²⁾ containing details about the property and the institution it belongs to. This procedure is mandatory for all establishments and services, including those managed commercially⁽⁵³⁾, like the National Agency for Tourism Real Estate, which is authorized to create an updated information bank related to real estate and tourism investment, according to Article 2 of the specifications annexed to its establishing and organizing decree.

Within the inventory framework, according to paragraph 6 of Article 5 of its establishing decree, the agency is committed to maintaining an updated registry for tourism real estate and economic operators alike.

Maintaining a special registry for tourism real estate and economic operators at the agency level contributes to investment promotion in the following aspects:

- The inventory allows for the recognition of new developments in tourism real estate directed for investment due to contracts made by the agency in this context; subsequently, informing the State Property Service regionally in the first month of each semester of any changes

that occurred in the previous semester in the physical contents of the registered private national properties⁽⁵⁴⁾.

- Updating the registry of economic operators enables the National Agency for Tourism Real Estate to identify operators who have failed to exploit the tourist real estate granted to them, especially those committing fraud and serious violations of tax and commercial legislations and regulations⁽⁵⁵⁾. This adds transparency to management, encouraging business people, particularly foreigners, to compete for investment in the field of tourism real estate in Algeria.

- Establishing a database in coordination with the concerned bodies about the availability of tourism real estate directed for investment⁽⁵⁶⁾, its inventory, and monitoring its exploitation achieves the desired objectives from it⁽⁵⁷⁾.

2-2-2 Utilizing Tourism Real Estate as a Mechanism for Promoting Its Investment:

The regulator, pursuant to Article 5 paragraph 4 and Article 7 of Executive Decree No. 23-489, has granted the National Agency for Tourism Real Estate the authority to exploit tourism real estate directed for investment. However, this authority is confined within the limits of:

- Monitoring and maintaining the common parts of expansion areas and tourist sites by regularly inspecting these common areas to ensure there are no issues or damages, such as those resulting from daily use or weather conditions, as well as cleaning facilities, and maintaining devices and equipment.

- Independently or through partnership, developing multi-service activity spaces that include structures, spaces, or buildings intended for rental, based on the specific needs of institutions and investors, by focusing on providing flexibility and integration in the design to accommodate a variety of uses.

- Enhancing partnerships and supporting Algeria's opportunities in investing its tourism real estate with local and foreign investors.

- Establishing properties for commercial use and equipping them within the framework of real estate marketing with the necessary facilities and services for commercial use⁽⁵⁸⁾, such as electrical, cooling, heating, and ventilation systems, and renting them to companies and investors interested in commercial use.

Thus, this authority is limited; it does not include the fundamental mechanism of exploitation in the field of investment, such as granting

and even acquiring concessions, unlike the situation previously with the National Agency for Tourism Development under Executive Decree No. 98-70, which was qualified in the context of exploiting tourism real estate by reselling it, and granting concessions for prepared lands in exchange for a fee to investors according to a specification related to the tourism project or spa, after acquiring it whether through amicable acquisition, exercising the right of pre-emption, or expropriation for public utility; to establish tourism structures and their accessories or for the tourism exploitation of mineral water sources with high therapeutic value⁽⁵⁹⁾.

It's worth mentioning that stripping the National Agency for Tourism Real Estate of the aforementioned exploitation and acquisition mechanisms has now become the jurisdiction of the Algerian Agency for Investment Promotion, according to Article 2 of Executive Decree No. 23-487. This agency is responsible for granting economic real estate, including tourism real estate, through its one-stop shop, in the form of a concession by mutual agreement for a duration of 33 years, renewable and convertible to a concession after the actual completion of the project and its operational start⁽⁶⁰⁾, while enabling the exercise of the right of pre-emption to expand the portfolio of tourism real estate owned by the state. This contributes to removing obstacles for investors and simplifying administrative procedures for them, by making their transactions confined to the Algerian Agency for Investment Promotion, sparing them the hassle of moving from one administration to another. Additionally, it preserves real estate as a non-renewable resource that requires rational granting and exploitation within a purely economic approach, as stated by Mr. Finance Minister Abdelaziz Fayed in front of the Council of the Nation members, while presenting the text of the law defining the conditions and methods for granting economic real estate owned by the state and directed for investment projects⁽⁶¹⁾.

Conclusion:

By reviewing the legal status of the National Agency for Tourism Real Estate and its role in promoting investment through its assigned tasks, our research paper concludes with the following findings:

- Including the term "tourism real estate" in the agency's name entails a drafting flaw, as tourism real estate includes properties that do not fall within economic real estate, such as archaeological sites and historical monuments.



- The National Agency for Tourism Real Estate is a public institution with an industrial and commercial nature, enjoying relative organizational and functional independence, which is contrary to the principles of a free market economy.

- The final and preliminary preparation of tourism real estate by the National Agency for Tourism Real Estate relies on lengthy administrative procedures in the planning field and requires substantial financial resources.

- Unprepared tourism real estate does not fall within economic real estate and, as a result, should not be available for both foreign and local investment.

- The role of the National Agency for Tourism Real Estate in the field of utilization is limited to creating rental spaces for institutions and investors, without extending to mechanisms for acquiring or granting the real estate.

- Assigning the mechanisms for granting and acquiring tourism real estate to the Algerian Investment Promotion Agency instead of the National Agency for Tourism Real Estate aims to impose direct and strict control over its investment, considering the Algerian Investment Promotion Agency's dependency on the Prime Minister. This would remove obstacles that investors face in acquiring real estate.

Based on the above findings, we recommend the following:

- Replace the name "National Agency for Tourism Real Estate" with "National Agency for Real Estate Designated for Tourism Investment" to better reflect the real estate subject to investment.

- Adopt a short-term or long-term mandate system for the members of the Board of Directors of the National Agency for Tourism Real Estate, instead of a short-term mandate renewable multiple times, to provide board members with greater organizational and functional independence.

- Simplify the procedures for preparing the tourism development plan, as its lengthy duration delays the preparation of development works. With the weak budget allocated to the Ministry of Tourism under the 2024 Finance Act, the state should financially support the agency or involve the private sector in this field, particularly through Build-Operate-Transfer (BOT) contracts.

- The agency should commit to increasing tourism expansion by preparing isolated areas and transforming them into tourist areas.

- Digitize the management of the National Agency for Tourism Real Estate, especially in maintaining a database of tourism real estate and economic operators, to achieve transparency, speed in management, and coordination with related institutions.

Referrals and References:

- (1)- Executive Decree No. 23-489, The establishment of the National Agency for Tourism Real Estate and its organization and operation, Official Gazette No. 85, 2023, P. 30.
- (2)- Saidani Rachid: The Importance of Tourism Investment in Economic Development - A Case Study of Algeria -, Al-Bashair Economic Journal, University of Bechar, Issue No. 02, 2017, p.12.
- (3)- Executive Decree No. 23-489, Op. Cit.
- (4)- from <http://www.aft.nat.tn/ar/aft-reglementation-fonciere.php>. Accessed on 15/05/2024 at 21: 57.
- (5)- Article 3 paragraph 5 of Law No. 23-17, defines the conditions and methods for granting economic real estate owned by the state's private properties for the purpose of implementing investment projects. Official Gazette No. 73, 2023, P. 5.
- (6)- Article 4 of Executive Decree No. 23-498, Op. Cit.
- (7)- Article 3 of Executive Decree No. 23-498, Op. Cit.
- (8)- Articles 2 paragraph 02 and 23 of Executive Decree No. 23-489, Op. Cit.
- (9)- Aarab, Ahmed, Independent Administrative Authorities in the Banking Sector, a thesis for obtaining a Master's degree in Business Law, University of Boumerdes, 2006-2007, p. 40.
- (10)- Articles: 16 paragraph 2, 23 paragraph 3, 28, 29, and 30 of Executive Decree No. 23-489, Op. Cit.
- (11)- Articles 16 paragraph 10, 20, and 23 paragraph 6 of Executive Decree No. 23-489, Op. Cit.
- (12)- Article 23 of Executive Decree No. 23-489, Op. Cit.
- (13)- Article 2 of Executive Decree No. 22-298, which defines the organization and operation of the Algerian Agency for Investment Promotion, Official Gazette No. 60, 2022, p. 06.
- (14)- Article 11 of Executive Decree No. 23-489, Op. Cit.
- (15)- Article 20 of Executive Decree No. 23-489, Op. Cit.
- (16)- Nouiri, Samia, Guarantees of the Independence of the Financial Information Processing Unit Against the Executive Authority, Professor Researcher Journal for Legal and Political Studies, Volume 5, Issue 01, 2020, p. 204.
- (17)- Article 11/02 of Executive Decree No. 23-489, Op. Cit.
- (18)- Article 13 of Executive Decree No. 23-488,, which includes the establishment of the National Agency for Industrial Real Estate and its organization and operation, Official Gazette No. 85, 2023, P. 24.
- (19)- Articles 21, 22 last paragraph, 24, and 25 of Executive Decree No. 23-489, Op. Cit.

- (20)- Ahsen Gherbi, The Relativity of the Functional Independence of Independent Administrative Authorities, Journal of Humanitarian Research and Studies, University of August 20, 1955, Issue 11, 2015, PP. 253-257.
- (21)- Article 7 of Law No. 23-17, Op. Cit.
- (22)- Oudjdoub Ouahiba, Tourist Planning and Local Development the case of the municipality of Aokas, a master's in economic science, University of Bejaia, 2013-2014, P. 28.
- (23)- Executive Decree No. 23-486, which defines the components of economic real estate owned by the state's private properties directed for implementing investment projects and eligible for concession grants, Official Gazette No. 85, 2023, P. 05.
- (24)- Zouaimia, Rachid, The Legal Status of the Public Institution with an Industrial and Commercial Character, Academic Journal for Legal Research, University Abdel Rahman Mira Bejaia, Algeria, 2022, P. 14.
- (25)- Article 5 paragraph 02 of Law No. 03-03, Op. Cit.
- (26)- Executive Decree No. 07-86, which defines the procedures for preparing the tourist planning scheme for expansion areas and tourist sites, Official Gazette No. 17, 2007, P. 10.
- (27)- Law No. 03-01, concerning sustainable tourism development, Official Gazette No. 11, 2003, P. 04.
- (28)- Boukhalhal, Aicha, Tourism and its development as a mechanism for achieving sustainable development and investment flow in Algeria, Scientific Research Notebooks, Volume 10, Issue 1, 2022, P. 676.
- (29)- Executive Decree No. 07-23, defining the methods for reselling lands located within expansion areas and tourist sites or granting concession rights on them, Official Gazette No. 08, 2007, P. 05.
- (30)- Law No. 29-90, relating to planning and urban development amended and supplemented by Law No. 04-05, Official Gazette No. 51, 2004, P. 04.
- (31)- Article 31 of Law No. 11-02, concerning protected areas, Official Gazette No. 13, 2011, P. 09.
- (32)- Article 2 of Executive Decree No. 05-317, amending and supplementing Executive Decree No. 91-177 which defines the procedures for preparing, approving, and the content of the documents related to the master plan for planning and urban development, Official Gazette No. 62, 2005, P. 11.
- (33)- Article 38 of Executive Decree No. 01-20, Op. Cit.
- (34)- Article 02 of Executive Decree No. 09-114, which sets the conditions for preparing the beach planning scheme, its content, and the methods of its implementation, Official Gazette No. 21, 2009, P.11.
- (35)- Articles 14 and 15 of Law No. 03-03, Op. Cit.
- (36)- Article 18 of Law No. 22-18, concerning investment, Official Gazette No. 50, 2022, P. 05.
- (37)- IlhamBaaboua, The Legal Regime of Tourism Real Estate in Algerian Legislation, a thesis for obtaining a Doctorate of Science in Law, specializing in Real Estate Law, Faculty of Law and Administrative Sciences, University of the Brothers Mentouri – Constantine 1- Algeria, 2018-2019, P. 195.
- (38)- Ibid, P. 38.

- (39)- Article 5 paragraph 5 of Decree No. 23-489, Op. Cit.
- (40)- Abdel Raouf Hashem Basyouni, *The Theory of Administrative Control in Contemporary Positive Systems and Islamic Law*, Dar El-Fikr El-University, Alexandria, First Edition, 2007, P. 240.
- (41)- Hamid, Mahdid, *Protection of Tourism Real Estate in Algerian Legislation*, Al-Ijtihad Journal for Legal and Economic Studies, Volume 07, Issue 05, 2018, p. 306.
- (42)- Article 39 of Law No. 03-03, Op. Cit.
- (43)- Article 5 paragraph 6 of Executive Decree No. 23-489, Op. Cit.
- (44)- Zehouane, Sisson, *The Role of Real Estate in Stimulating Foreign Investment*, a thesis submitted for the Doctorate of Science in Law, specialization in Private Law, branch of Real Estate Law, University of the Brothers Mentouri Constantine 1, 2017-2018, P. 281.
- (45)- Article 11/1 of Executive Decree No. 23-489, Op. Cit.
- (46)- Aida, Mostafawi, *The Legal Organization of Tourism Real Estate*, the Algerian Journal of Legal, Economic, and Political Sciences, Volume 51, Issue 03, 2014, P. 152.
- (47)- Article 6 of Executive Decree No. 07-23 Op. Cit.
- (48)- Zehouine, Sisson, 23 Op. Cit, P.274.
- (49)- Article 23 of Law No. 22-18, Op. Cit.
- (50)- Article 3 of Law No. 22-18, Op. Cit.
- (51)- Article 11/2 of Executive Decree No. 23-489, Op. Cit.
- (52)- Articles 11 and 12 of Executive Decree No. 91-455, concerning the inventory of national properties, Official Gazette, No. 60, issued, 1991, P. 2343.
- (53)- Article 8 of Law No. 90/30, concerning national properties, Official Gazette, No. 52,, 1990, P. 1661.
- (54)- Article 11 paragraph 4 of Executive Decree No. 23-486, Op. Cit.
- (55)- Afif Ben Abou, *Challenges of Real Estate Directed towards Tourism Investment in Algeria*, Real Estate Law Journal, Volume 09, Issue 01, 2022,P. 105.
- (56)- Article 4 of Executive Decree No. 22-298 Op. Cit.
- (57)- Articles 5 paragraph 4 and 7 of Executive Decree No. 91/455, Op. Cit.
- (58)- Salem, Diab, *Creative Development in Real Estate Marketing*, University Press, Cairo, 1st edition, 2014, P. 08.
- (59)- Articles 4, 5, 6, 7, 14, and 22 of Chapter 1 on Expenses of Executive Decree No. 98-70, Op. Cit.
- (60)- Article 2 and 17 of Executive Decree No. 23-487, specifying the conditions and procedures for granting transferable concession to relinquish the economic real estate belonging to state private property aimed at implementing investment projects, Official Gazette, No. 85, 2023, P. 09.
- (61)- Algerian News Agency, Faïd presents the text of the law related to state-owned real estate directed towards investment, (www.aps.dz/ar/economie), (Consulted on 18/03/2024), at (12: 05 PM).