

Administrative and Judicial Guarantees Granted to Foreign Investors under Law 22-18 on Investment

Saad Fichouche
saad.fichouche@univ-msila.dz
University of Mohamed Boudiaf Msila, Algeria
 <https://orcid.org/0009-0000-1364-1673>

Received: 07/12/2024

| *Accepted: 02/01/2025*

| *Published: 15/01/2025*

Abstract:

Foreign investments are considered one of the most important sources of international financing and a basic channel for the flow of capital and scientific, technical and technological expertise. Therefore, Algeria, like other developing countries, has sought to provide an attractive business environment for these investments, as they are an alternative and effective means that replaces the hydrocarbon sector. This was translated by Law 22-18 on investment, which provided a set of sufficient legal, administrative and judicial guarantees for foreign investors and approved a set of incentives and privileges of an encouraging nature for investment in Algeria (tax, customs, financing and procedural)

Keywords: Investment; Administrative guarantees; Judicial; Foreign investment.

This is an open access article under the terms of [the Creative Commons Attribution-NonCommercial License](#), which permits use, distribution and reproduction in any medium, provided the original work is properly cited and is not used for commercial purposes.

1. INTRODUCTION

Investment in general, and foreign investment in particular, is one of the fundamental and critical issues driving the development process. It serves as the cornerstone of any serious and advanced economic revival. As Professor Robert Charvin aptly stated, "International investment is the key to development."

A distinguishing feature of the global economy is the competition among nations to support domestic investments and attract private foreign investments due to their pivotal role in achieving economic and social development. Such investments are vital for capital inflow, establishing economic and production projects, transferring technology, improving income levels and living standards, creating more job opportunities, enhancing production bases, and fostering a competitive environment among nations.

Like other countries, Algeria has sought to prioritize investment through laws issued in response to various economic phases. This began with Law No. 63-277 on investments and evolved to include Law No. 16-09 on the promotion of investments. The latest legislative development is Law No. 22-18, which introduced significant changes to the investment process from legal, regulatory, and technical perspectives.

In light of this, this article examines the administrative and judicial guarantees and incentives for foreign investors under Law No. 22-18. This law has attracted attention and analysis from various specialists, including economists, businesspeople, and, most notably, legal professionals. The study focuses on the guarantees and incentives offered by this law, as well as their impact on investment and, consequently, the national economy.

Reasons for Choosing This Topic:

The reasons for selecting this topic stem from both personal and objective motives. Personally, the subject aligns closely with my area of specialization, "Business Law." Objectively, investment is a highly relevant

and timely topic, particularly following the issuance of the new investment law. This law includes incentives and guarantees that warrant study and analysis to assess their effectiveness and impact on investment.

Objectives of the Study:

Through this study, I aim to achieve the following objectives:

- Highlight the administrative and judicial guarantees provided by Algerian legislators under Law No. 22-18 to encourage foreign investment. This includes comparing these guarantees with those provided under Law No. 16-09 to identify differences, similarities, and any new provisions.
- Assess the adequacy and effectiveness of the administrative and judicial guarantees in attracting foreign investors and capital to Algeria.

Central Research Question:

To address this topic, the following central research question is posed:

- Are the administrative and judicial guarantees included in Law No. 22-18 sufficient to attract foreign investment and create a conducive investment climate?

Sub-Questions:

This primary question is supported by several related sub-questions:

- What administrative guarantees does Law No. 22-18 provide for foreign investors?
- What judicial guarantees does Law No. 22-18 provide for foreign investors?

2. Administrative Guarantees Granted to Foreign Investors Under Law No. 22-18 on Investment

In addition to administrative guarantees such as the National Investment Council and the Algerian Investment Promotion Agency, which form the

foundation of the investment administration system, the Algerian legislator introduced new administrative guarantees. These include the establishment of the High National Committee for Investment Appeals and the Investor Digital Platform, aiming to reduce administrative difficulties and bureaucratic hurdles faced by foreign investors while aligning with modern technological advancements in investment management.

2.1. Guarantee of Recourse to the High National Committee for Investment Appeals

The High National Committee for Investment Appeals is a high-level mechanism outlined in Article 11 of Law No. 22-18 on Investment. It states:

"A High National Committee for Investment Appeals shall be established under the Presidency of the Republic to address appeals submitted by investors.¹"

2.1.1. Composition of the High National Committee for Investment Appeals

The composition of this committee is stipulated in Presidential Decree No. 22-296, which defines its structure and functioning. Article 3 of the decree specifies that the committee comprises:

- A representative of the President of the Republic as Chairperson,
- A judge from the Supreme Court,
- A judge from the Council of State (nominated by the Supreme Judicial Council),
- A judge from the Court of Accounts (nominated by its Judicial Council),
- Three independent economic and financial experts appointed by the President of the Republic².

The committee may also seek assistance from individuals with specialized expertise to support its members.

The members of the committee are appointed by presidential decree for a three-year term, renewable once. They are entitled to attendance and participation allowances, the amount and terms of which are specified in an executive decree. Article 4 of the same decree also provides³ that the committee shall have a secretariat and approve its internal regulations during its first meeting⁴.

2.1.2. Functioning of the High National Committee for Investment Appeals

As per Article 11 of Law No. 22-18 on Investment, the committee convenes as necessary and must issue decisions within one month of being notified⁵. The committee invites representatives from the relevant administrative bodies and public agencies involved in the dispute, as well as the foreign investor⁶, to present their views⁷.

The committee chairperson sends the appeal file to the concerned administrative body, which must respond within 10 days from the date of receipt. The committee is also authorized to review administrative documents related to the dispute⁸.

For its deliberations to be valid, at least two-thirds of its members must be present. Decisions are approved by a majority vote, and in the event of a tie, the chairperson's vote is decisive. The committee communicates its decisions to the concerned parties within eight days of issuance, using all possible means. Its decisions are final and binding⁹.

Additionally, every six months, the committee submits a report to the President of the Republic, detailing its activities, recurring challenges in investments, and recommendations for addressing these challenges¹⁰.

2.1.3. Conditions for Accepting Appeals

The Algerian legislator has set specific conditions for foreign investors to lodge appeals, as outlined in Articles 6, 7, and 8 of Executive Decree No. 22-296. These conditions include¹¹:

- Filing an appeal with the committee for disputes related to investment, particularly in cases of withdrawal or refusal of permits, documents, or authorizations by the relevant administrative bodies.
- The appeal must be lodged within 15 days from the date the investor is notified of the decision by the Algerian Investment Promotion Agency.
- Before submitting an appeal, the investor must file a preliminary grievance with the Algerian Investment Promotion Agency within one month of being notified of the decision. The agency's director-general must resolve the grievance within 15 days of receipt¹².
- The appeal must be individual, signed, and include the name, address, and status of the appellant or their authorized representative, along with a memorandum outlining the facts and grounds¹³.
- Appeals must be submitted directly to the committee or via the Investor Digital Platform, accompanied by all supporting documents and evidence¹⁴.

2.2. Guarantee of Access to the Investor Digital Platform

The Investor Digital Platform is an electronic tool for guiding, supporting, and monitoring investment projects from registration to implementation and operation. Article 23 of Law No. 22-18 establishes this platform, managed by the Algerian Investment Promotion Agency.¹⁵

The platform provides:

- Comprehensive information on available properties and their locations,
- Details on investment incentives and related procedures.

It digitizes all administrative procedures, eliminating physical processes and bringing administration closer to investors. This digital transformation enhances transparency and efficiency, aligning with contemporary investment practices.

3. Judicial Guarantees for Foreign Investors Under Law No. 22-18 on Investment

The differing interests and goals of states and foreign investors influence the mechanisms they prefer to resolve disputes. While states prioritize maintaining sovereignty through their national courts, foreign investors often prefer international arbitration to avoid stringent requirements and potential bias in the host state's judiciary.

3.1. Guarantee of Recourse to National Courts

Article 12 of Law No. 22-18 guarantees the right to seek resolution of investment disputes through Algerian national courts¹⁶, reflecting the state's inherent jurisdiction and sovereignty¹⁷. This provision ensures that disputes involving foreign investments conducted within Algerian territory are subject to the judicial authority of the host state¹⁸.

3.1.1. Jurisdiction of Algerian Courts in Cases of Investor Error

When a dispute arises due to an error on the part of the foreign investor, jurisdiction is assigned to competent Algerian courts. Although the investment law does not specify these courts, the general provisions of the Civil and Administrative Procedure Code designate specialized commercial courts as the appropriate venues (Article 536 bis).¹⁹

Furthermore, Article 41 of the same code allows Algerian courts to summon foreign entities when required, even if contracts were concluded abroad²⁰.

3.1.2. Jurisdiction of Algerian Courts in Cases of State Actions

When the state takes measures against a foreign investor—such as expropriation or requisition as per Article 10 of Law No. 22-18—the affected investor has the right to challenge the compensation provided, particularly if they deem it inadequate. Algerian courts are empowered to reassess the compensation to ensure fairness and equity²¹.

Despite concerns among foreign investors about the neutrality and independence of national courts, Algerian judicial rulings have frequently demonstrated fairness, even siding with foreign entities against domestic companies²².

2.3. Guarantee of Conciliation and Mediation

Conciliation and mediation are alternative dispute resolution mechanisms aimed at achieving amicable settlements through third-party facilitation²³. These methods are recognized under Algerian law and play a significant role in resolving investment disputes²⁴.

- Conciliation involves a third party assisting disputing parties in reaching a mutually acceptable solution. Articles 990 to 993 of the Civil and Administrative Procedure Code outline procedures for conciliation, which is now mandatory for resolving commercial disputes (Article 534)²⁵. Failure to engage in conciliation may result in the dismissal of the lawsuit.
- Mediation differs from conciliation in that the mediator does not impose solutions but facilitates discussions to help parties create their own agreement. Mediation can address entire disputes or specific aspects without precluding the court's involvement in unresolved issues²⁶.

3.3. Guarantee of Recourse to International Commercial Arbitration

Most investment contracts include a clause referring disputes to international commercial arbitration, a preferred method for foreign investors due to its neutrality and flexibility.

Law No. 22-18 acknowledges this, making arbitration a viable option for resolving investment disputes²⁷.

3.3.1. Definition of International Commercial Arbitration

Arbitration involves parties to a legal relationship—contractual or otherwise—agreeing to resolve disputes through chosen arbitrators rather than courts. Arbitrators may be designated directly by the parties or through an arbitration institution that oversees the process²⁸.

Law No. 22-18 and the Civil and Administrative Procedure Code (Articles 1007–1061)²⁹

provide the framework for arbitration, aligning with international standards. While the law does not explicitly define international commercial arbitration, Article 1039 of the procedure code adopts an economic criterion to determine the "internationality" of arbitration³⁰.

3.3.2. Conditions for Recourse to International Arbitration

Article 12 of Law No. 22-18 specifies two cases where international arbitration may be invoked³¹:

Existence of Bilateral or Multilateral Agreements

When Algeria is a party to international agreements that stipulate arbitration as the method for resolving disputes, foreign investors may invoke arbitration under such agreements. These agreements override national jurisdiction, ensuring that arbitration becomes a binding option.

- Arbitration Agreement in Investment Contracts

Arbitration can also be based on specific clauses in investment contracts, as acknowledged by Article 12 of Law No. 22-18. These contracts often include arbitration provisions to safeguard the interests of foreign investors.

investment contracts are betioeen the state and foreign investors for the benefit of both parties, which is long term and needs continuous organization.³²

Forms of Arbitration Agreements

Arbitration Clause

As defined in Article 1007 of the Civil and Administrative Procedure Code, an arbitration clause is a pre-dispute agreement included in contracts, binding parties to resolve future disputes through arbitration. It must be documented in writing and specify the arbitrator(s) or the method of their selection.

the article 08-10 postulates that the arbitration clause is binding under nullity in the original agreement or in the document referred to, and the clause shall include the court or the method of appointing it.³³

Arbitration Submission (Compromis d'arbitrage)

This post-dispute agreement arises after a conflict has occurred. It is formalized in a separate document and applies when the original contract does not contain an arbitration clause³⁴.

By ensuring judicial guarantees, including the options of national courts, conciliation, mediation, and arbitration, Algeria provides a balanced framework to protect the interests of both the state and foreign investors, fostering an environment conducive to foreign investment.

4. CONCLUSION

The Algerian legislator has provided a series of procedural guarantees aimed at ensuring flexibility and speed in the procedures for establishing investment projects, as well as the institutions responsible for serving and monitoring foreign investors. These guarantees also protect investors' rights in cases of abuse, strengthen the trust between the host state and foreign investors, and ensure transparency and fairness.

Procedural guarantees are divided into two main types: administrative guarantees and judicial guarantees. The administrative guarantees include the right to appeal to the National High Commission for Investment Disputes and the use of a digital platform for investors. Judicial guarantees include the right of the investor to resort to national courts and access to alternative dispute resolution mechanisms such as conciliation and mediation. Furthermore, foreign investors are ensured the right to international commercial arbitration, especially in light of bilateral or multilateral agreements signed by Algeria with the home countries of the investors.

From this, we can conclude that the Algerian legislator has created a conducive investment environment through various principles and

guarantees enshrined in the law. These principles, when implemented alongside the specialized bodies that have been established, are likely to lead to success in attracting foreign investment. This is especially true since the new law ensures fair and equitable treatment for foreign investors, sometimes even granting them better treatment than domestic investors, based on the agreements made between Algeria and the foreign investor's home country.

We recommend that the Algerian legislator consider reorganizing the Investment Law by dividing it into a more logical structure. For example, a detailed section could be dedicated to the guarantees provided to investors, clearly outlining the principles and mechanisms underpinning the law, with more detailed explanations of each.

5. Endnotes

¹ Article 11 of Law 22-18, dated 25 Dhul-Hijjah 1443 AH, corresponding to July 24, 2022, regarding investment, published in J-R-J-J, issue 50, dated 29 Dhul-Hijjah 1443 AH, corresponding to July 28, 2022.

²Article 03 of Presidential Decree No. 22-298, dated 07 Safar 1444 AH, corresponding to September 04, 2022, which specifies the composition and operation of the National High Committee for Investment Appeals, published in J-R-J-J, issue 60.

³ Article 04 of Presidential Decree No. 22-298, dated 07 Safar 1444 AH, corresponding to September 04, 2022, which specifies the composition and operation of the National High Committee for Investment Appeals, published in J-R-J-J, issue 60.

⁴ Article 05 of Presidential Decree No. 22-296, specifying the composition and operation of the National High Committee for Investment Appeals, as per the previous source.

⁵ Article 06 of Presidential Decree No. 22-296, specifying the composition and operation of the National High Committee for Investment Appeals, as per the previous source.

⁶ Article 11 of Presidential Decree No. 22-296, specifying the composition and operation of the National High Committee for Investment Appeals, as per the previous source.

⁷ Article 11 of Presidential Decree No. 22-296, specifying the composition and operation of the National High Committee for Investment Appeals, as per the previous source.

⁸ Article 12 of Presidential Decree No. 22-296, specifying the composition and operation of the National High Committee for Investment Appeals, as per the previous source.

⁹ Article 13 of Presidential Decree No. 22-296, specifying the composition and operation of the National High Committee for Investment Appeals, as per the previous source.

¹⁰ Article 14 of Presidential Decree No. 22-296, specifying the composition and operation of the National High Committee for Investment Appeals, as per the previous source.

¹¹ Article 06 of Presidential Decree No. 22-296, specifying the composition and operation of the National High Committee for Investment Appeals, as per the previous source.

¹² Article 06, Paragraph 02 of Presidential Decree No. 22-296, specifying the composition and operation of the National High Committee for Investment Appeals, as per the previous source.

¹³ Article 07 of Presidential Decree No. 22-296, specifying the composition and operation of the National High Committee for Investment Appeals, as per the previous source.

¹⁴ Article 08 of Presidential Decree No. 22-296, specifying the composition and operation of the National High Committee for Investment Appeals, as per the previous source.

¹⁵ Koussam Amina (2022), The Algerian Agency for Investment Promotion Under the New Investment Law 22-18, Tabna Journal for Scientific and Academic Studies, Vol. 20, University Center of Berrika, p. 110.

¹⁶ Article 12 of Presidential Decree No. 22-296, specifying the composition and operation of the National High Committee for Investment Appeals, as per the previous source.

¹⁷ Shatouh Omar (2020), Dispute Resolution in Investment Between Courts and Arbitration: A Reading Under Law 16-09 on Investment Promotion, Proceedings of University of Algiers, Vol. 34, Issue 02, p. 88.

¹⁸ Bachar Mohamed Al-Assad (2006), Investment Contracts in Private International Relations, Halabi Publications, Beirut, p. 328.

¹⁹ Article 536 of Law 22-13, dated 13 Dhul-Hijjah 1443 AH, corresponding to July 12, 2022, R-J-J, issue 48, amending and supplementing Law 08-09, dated 18 Safar 1429 AH, corresponding to February 25, 2008, regarding Civil and Administrative Procedures Law, published in J-R-J-J, issue 21.

- ²⁰ Article 41 of the Civil and Administrative Procedures Law, as per the previous source.
- ²¹ Article 10 of Law 22-18 on Investment, as per the previous source.
- ²² Shatouh Omar, *op. cit.*, p. 89.
- ²³ Article 459 of the Civil Code, as per the previous source.
- ²⁴ Articles 990 to 993 of the amended and supplemented Civil and Administrative Procedures Law, as per the previous source.
- ²⁵ Article 534 of the amended and supplemented Civil and Administrative Procedures Law, as per the previous source.
- ²⁶ Articles 994 to 1005 of the amended and supplemented Civil and Administrative Procedures Law, as per the previous source.
- ²⁷ Nasser Abdel Rahim Namer Al-Ali (2017), *The Role of Arbitration in Resolving Foreign Investment Disputes, Real Estate and Environmental Law Journal*, Vol. 05, Issue 02, June, p. 47.
- ²⁸ Fattisi Shammah (2019), *Foreign Investment Disputes in Algeria: Between National Courts and International Commercial Arbitration*, *Voice of Law Journal*, Vol. 06, Issue 02, November, p. 1269.
- ²⁹ Article 12 of Law 22-2018 on Investment, as per the previous source.
- ³⁰ Articles 1007 to 1061 of the amended and supplemented Civil and Administrative Procedures Law, as per the previous source.
- ³¹ Article 12 of Law 22-18, as per the previous source.
- ³² Shatouh Omar, *op. cit.*, p. 95.
- ³³ Articles 1007 and 1008 of the amended and supplemented Civil and Administrative Procedures Law, as per the previous source.

³⁴ Article 1011 of the amended and supplemented Civil and Administrative Procedures Law, as per the previous source.