

## **Attractive investment in Algeria In light of Law 16-09 related to investment promotion**

جاذبية الاستثمار في الجزائر على ضوء القانون 16-09 المتعلق بترقية الاستثمار

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### **Abstract:**

*The Algerian legislator has issued a set of international principles of investment, such as; freedom of investment, fair treatment and strengthening the system of granting benefits and privileges.*

*It also put guarantees to encourage and persuade the investor to invest in Algeria through the investment law 16-09 with the aim of achieving greater attractiveness to raise the number of investors and the size of the investment in general in order to give more dynamism for the national economy in light of the collapse of oil markets*

### **key words:**

*Benefits - privileges- fair treatment –legislative stability–arbitration.*

### **المخلص :**

كرس المشرع الجزائري مبادئ دولية للاستثمار كمبدأ حرية الاستثمار ومبدأ المعاملة المنصفة مع تعزيز نظام منح المزايا والامتيازات مع وضع مجموعة من الضمانات تشجيع المستثمر وإقناعه للاستثمار في الجزائر وذلك من خلال قانون الاستثمار 16-09 بهدف تحقيق جاذبية أكبر لرفع عدد المستثمرين و حجم الاستثمار بصفة عامة قصد اعطاء ديناميكية أكثر للاقتصاد الوطني في ظل انهيار أسواق النفط.

### **الكلمات المفتاحية :**

حرية الاستثمار- نظام المزايا- الامتيازات- المعاملة المنصفة – الاستقرار التشريعي-

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### **Introduction:**

The investment's legal system has known five laws. Though, at the beginning of 2014, it was at the bottom of the international lists of countries attracting investment; and according to international reports, the rate of investment in Algeria was going from bad to worse, due to the inadequate general environment.

Faced with this situation coupled with the willingness to attract investment, the Algerian legislator abolished the law of 01-03 and replaced it with the law 16-09 pertinent to promoting investment, thus corroborating the most important international principle, namely freedom of investment.

A set of incentives, advantages and guarantees were established to encourage and promote foreign investment along with the political and economic trend of Algeria. In order to liberate investment and ensure its flow, the law covers many regulations that encourage and attract investors.

Moreover, the investors have moved from being subjected to a warrant indicating whether their investments were approved or not, to just registering to get the incentives' results, which is the right of each investor.

**Under these regulations we may ask the following question: to what extent has the project succeed in establishing legal mechanisms to attract investment?**

In order to address this issue, not only have we used the descriptive approach through narrating and reviewing relevant legal provisions, but we have also used the analytical approach that we have applied through verifying and analyzing legal provisions related to the investment sector and its promotion.

Hence, we have divided the research into 2 chapters:

- First chapter: legal mechanisms to attract investment.
- Second chapter: the incentives offered to investors.

### **Chapter 1: legal mechanisms to attract investment**

The Algerian legislator has established legal, constitutional and legislative protection to the investors. The legislator has enacted a set of international principles that includes a minimum rate of protection and comportment<sup>1</sup>. In this research, we shall be tackling the most important principles.

## **A) First quest: upholding the foreign investment right's principle in Algeria**

The Algerian legislator has consolidated the foreign investment right's principle within the 2016 constitution in which article "43" stipulates that "investment and trade freedom is recognised and exercised within the framework of the law. It also stipulates that "the state endeavours to improve the business climate and encourage enterprises' flourishing without discrimination, for the sake of the national economic development.

The state ensures the control of the markets and the law protects consumers' rights and prevents monopoly and the unfair competition.

The issuance of 16-09 law was the result of this investment freedom constitutional upholding that has addressed another principal which involves an essential aspect of liberating investments that is the principle of justice and equality; and this is what we are going to tackle next.

### **1- The first part: adopting the principle of freedom of investment**

The Algerian legislator has not only consolidated this principle in the regulations but he has corroborated it by the constitutional principle which is the freedom of trade and industry. This is considered as an important step in the history of the legal system for investment in Algeria. The 1989 constitution has paved the way by upholding the right of ownership in the article 49 "private property shall be safeguarded<sup>2</sup>".

The constitutional amendment of 1996 has consolidated the freedom of trade and industry by the article 37 "freedom of trade and industry are guaranteed and exercised within the framework of the law<sup>3</sup>".

The Algerian legislator has passed a law of the competition by order 95-06 dated on 25/01/1995<sup>4</sup> a year before he had enhanced the freedom of trade and industry which is considered as one of the important underlying principles of competition; as a result of that, the principle of competition still depends on the legislator's recognition of the freedom of trade and industry principle.

In addition to freedom of both inflow and outflow capital transfer, the principle of the freedom of exercising insurance activity, the principle of the freedom of export and import and the principle of freedom of prices.

All these principles are included in the principle of the freedom of investment and acknowledging to the investors their freedom to establish investment projects and to be free from all restrictions, licences and accreditations. Also, to subject all investors, domestic and foreign, to the same

regulations, imposing the same proceedings on them and opening horizons to them<sup>5</sup>.

We were surprised that the law 19-09 pertinent to investment's promotion had omitted the article that stipulates the principle of investment's freedom. The law did not mention, through its regulations, the principle. However the law has stipulated the principle of freedom's investment only in the article 43 through the constitutional amendment of 2016. Although, the article 3 from the law 16-09 stipulates that "the mentioned investments in the regulations of this law are achieved in a full compliance with the law and the regulations acquired, especially those related to environment protection, activities and regulated profession and economic activities in general.

What is worth noticing in the wording of the above mentioned article is that the legislator has used, in purpose, the term investments «in general, therefore it includes both public and private investments. It also includes the concept of domestic and foreign investment. Hence, all these types and forms were subjected by the legislator to the same regulation and legal systems. However, we can rely on the constitutional provision that mentioned the following sentence; investments are achieved in complete freedom<sup>6</sup>.

## **2- The second part: limitations on the principle**

The Complementary financial laws had a direct impact in guiding and determining the flow rate of the foreign investment in Algeria, due to its set of new procedures and measures organising the foreign investment process especially the complementary financial law of 2009 and 2010. These latter have brought new procedures to the abovementioned law in order to protect the national economy. And they cover the following restrictions:

- The system of partnership and the rule of 51/49:

Through the financial law, The Algerian legislator has consolidated a substantive rule to incorporate a foreign project in Algeria namely the rule 49/51, as a type of protection and sovereign mechanism, under article 48 from the financial rule of 2009.

In the investment law number 19-09, the Algerian legislator has not mentioned the minimum partnership restriction and the partnership mechanism number 49/51. However, article 66 from the financial law of 2016 has kept this mechanism, to ensure the legal majority to make the decision.

Many foreign investors<sup>7</sup> have expressed dismay over this procedure; therefore, the year of 2010 has witnessed a decrease in the foreign investments,

since it had only 11 foreign investment projects compared to those established prior to this law. Consequently, employment opportunities have been reduced.

Although, these terms contradicted the article 43 from the constitution, which consolidates the freedom of investments, they remained on the article of the constitution and still maintained. Moreover, the financial law of the years 2009, 2010 and 2016 has covered new procedural terms that the investor should do to establish his project; namely:

Providing a surplus balance in hard currency<sup>8</sup> and obliging the investors to domestic fund, in addition to the right of first refusal which is considered as one of most obstacles that foreign investors face. This right has been mandated under the complementary financial law of 2009 which has consolidated in the law 16-09 related to promoting investment under the article 30. This latter stipulates that the state has the right to exercise the right of first refusal upon all concessions made by foreign investors. The concessions indicated in the social shares and stocks by the project.

The first refusal law is a serious constraint on freedom of ownership, action and contracting. Therefore, under this law the buyer will have to abandon the property he has purchased, so the vendor will be part in another contract with a different person. And the mediator will be a part in a new contract that he has not discussed its terms and conditions and he has not even participated in its convening.

### **B) Second quest: establishing a legal system to attract investment**

In this quest we deal with the legal system to induce investment, especially simple registration to obtain the investment benefits and the conditions to granting the benefits conferred in the investment law.

#### **1- The first part: Simply Register to Obtain the Investment Benefits**

Under the law of 16-09, the Algerian legislator has devoted a system of benefits and compelled the investor to accept it, incentivising him with this law. In this respect, and under article 04, all investments are subject to registration procedures so as to take advantage of investment benefits. This article stipulates:

“Prior to their completion and in order to benefit from the benefits established in the provisions of this law, investments are subject to registration with the National Investment Development Agency mentioned in Article 26 below. Modalities for registration of investments ought to be determined by regulation.”

In conformity with article 04 of the law 16-09, executive decree number 102-17 was issued<sup>9</sup>, providing a detailed explanation of registration procedures.<sup>10</sup> Under its article 02, registration has been defined as a written procedure, through which the investor expresses his desire to make an investment in an economic activity to produce goods or services that falls within the scope of the investment law.

In this regard, it could be easily noticed that when the legislator imposes registration as a paramount way to obtain such benefits, it raises some points of ambiguity for the investor, whose investment is accomplished away from the agency or its decentralized branches, especially considering the statistical role for it and this means excluding other investments so that the state does not have accurate numbers on the type and size of the completed investments, which hinders the prospecting process.<sup>11</sup>

The investment process and its registration remain also subject to other criteria, in terms of the amount of investment, where the legislator, in accordance with Article 14 of the Investment Promotion Law, has set a financial ceiling through which the investor benefits from the perks, namely 5 million Algerian dinars and above.

Moreover, investments of special importance to national economy are also subjected to the necessity of legally obtaining the approval of the National Qualified Investment Council before the registration procedure so as to obtain benefits. After 500 million DZD in the Supplementary Finance Law for 2009 under Article 58<sup>12</sup>, the ceiling was raised in 2014<sup>13</sup> to reach 1500 million Algerian dinars, to be installed by the legislator at the ceiling of 5 thousand million Algerian dinars and above.

The registration takes place in line with a form filled out by the investor and according to Article 9 of the aforementioned executive decree that states "the qualified departments of the agency must have, in order to prepare the registration certificate" while a certificate is delivered immediately and this is in accordance with Article 8 of Law No. 16-09 which declares: "The registration embodies a certificate that is received immediately."

Despite the catalytic nature of the new investment law along with its reinforcement of freedom, taking such advantages, with regard to such laws, has narrowed the application decrees; hence, it is clear that the powers of the National Investment Council, chaired by the Prime Minister, have been extended in terms of controlling the granting of investment benefits if the amount of the investment project reaches 5 thousand Algerian dinars. And in the case of the special

importance of the national economy and the expansion of the powers of the council was at the expense of the National Investment Development Agency; it is in a position of weakness and has no decision-making power in all important and critical issues<sup>14</sup>.

In this respect, such kind of restriction has a negative resonance, especially with the intense competition among different countries to satisfy the investor who finds many options at hand.<sup>15</sup>

## **2- The second part: Obtaining the Advantages Accorded in the Investment Law**

In the content of Law 16-09 related to investment promotion, the granting of benefits has been reclassified into four classifications of Articles 05 to 20, where these advantages are among the most important aspects of freedom of investment that are obtained, and thus the investor will benefit from them initially by registering. Therefore, by choosing one of the classifications, the investor will benefit from the system, and these advantages, in turn, are subject to guarantees that attract the investor.

More importantly, investment benefits are by definition, a set of measures of economic value granted by the state to investors, whether nationals or foreigners, to a host of achieve specific goals.

It relates to general<sup>16</sup> and exceptional systems, in addition to the incentive policy, and takes the form of fiscal exemptions by forfeiting the state's right to the taxpayer, or granting tax cuts. It is the same approach taken within the framework of the new law in terms of the exemption policy, the incentive policy, and all of that has been translated into benefits<sup>17</sup>.

Benefits can be divided by looking at the subject or activity, and here we are facing specific activities in the law and can classify them according to the form of benefits, be financial or taxable. We will supply them in the manner mentioned in the provisions of the Law on Investment Promotion and it is divided as follows<sup>18</sup>:

**The First Category:** this includes general provisions for construction investments, the expansion of production capabilities and/or rehabilitation related to activities and goods that are no exception of these benefits.

**The Second Category:** it is granted according to two stages: completion and then exploitation; the latter can be utilized by means of the project inspection report in the exploitation stage, which was previously known as “the public order benefits<sup>19</sup>.” They are benefits for all types of investment included in the content of Law 16-09 related to investment promotion as mentioned in article 02 and 05.

Added to this, it is mentioned in the content of article 12 and generally comes in the form of tax exemptions where each investor benefits from them in the aforementioned two stages.

**The Third Category:** it is related to benefits for activities of interest and/or job positions; they are the same common benefits related to the stage of exploitation and granted by article 02/12 of the law with an increase of the exploitation from 3 to 5 years, but on condition that these projects must create more than 100 permanent job positions from the date of registration to the end of the first year of the exploitation stage. The aim behind this lies in the attempt to eliminate or alleviate the problem of unemployment in Algeria, which is not something new to the Algerian legislator; this condition was previously included in Article 35 no. 01/09 which included the financial fund law in 2009<sup>20</sup>.

**The Fourth Category:** it is related to the exceptional benefits for investments that have an utmost importance to the national economy. Thus, the legislator has compelled the investor and the National Investment Development Agency to negotiate, on condition of getting acceptance from the National Institution of Investment.

## **Chapter II: The Guarantees Granted to the Investor**

Providing an effective legal protection for the foreign investor is among the key precepts of a suitable investment climate, compelling legislators to put in place a set of measures and safeguards in the shape of an array of legal and judicial guarantees in order to enshrine the principle of free investment.

### **A) First quest: Legal Guarantees:**

Chapter 4 of the Investment Law 09/16 included several legal guarantees approved by the legislator for the benefit of investors in order to provide a suitable investment climate and ensure higher levels of confidence in capital investment. These guarantees are justice and equity (or *ex aequo et bono*) in addition to legislative stability, which will be discussed subsequently:

#### **1- Justice and fairness**

The principle of non-discrimination and equality in treatment, whose international existence is partly due to the Organization for Economic Cooperation and Development which contributed in its inclusion within the objective guarantees for foreign investment, and thus, investment was guaranteed to be treated as national and a general commitment to non-discrimination between residents and non-residents was put in place. According to this principle, governments are obligated to inform multinational companies when undertaking any action, in order to monitor and examine the extent to which the principle of



non-discrimination has been upheld. The oversight function has been entrusted to the Organization for Social Development<sup>21</sup>.

However, the problem lies in setting limits for the principle of freedom of investment in order to protect the economic interests of the state and its development priorities, enabling the legislator to define the areas in question relating to the activities codified in explicit, clear and unambiguous texts<sup>22</sup>.

This principle guarantees a fair and equitable treatment between Algerian and foreign investors. They benefit from the same advantages and incentives, such as tax and tariffs incentives, without any discrimination or exclusion<sup>23</sup>, seeing as it is an international principle established in the majority of international agreements and conventions. The investor benefits from this principle at all stages of the investment process.

The legislator has applied this principle in some texts and ignored it in others for political reasons. It is enshrined in the Legislative Decree n. 93-12, and explicitly read in the text of its Article 38, then it was reaffirmed under Article 21 of Law 16-09 which states: "Foreign natural and legal persons shall receive a fair and equitable treatment with regards to investment-related rights and obligations.

The principle of non-discrimination has two effects which may be dispensed with.

The first effect: The foreign investor enjoys the same rights and is subject to the same obligations as the national investor, which is commonly known as the "national treatment" principle for foreign investments.

The second effect: This effect is deduced from the first paragraph of Article 21, relating to the liability of observing the agreements' provisions with the investors' countries of origin, which may arouse suspicion among some, by interpreting that the law gives foreign investors greater protection and wider guarantees than those granted to national investors, and this weakens the legal position and moral weight of the national investor<sup>24</sup>.

In referring to the principle of non-discrimination, the Algerian legislator has relied on the principles of international investment law that stipulate a clause dedicated to national treatment, postulating equal treatment between national and foreign investors, while adhering to the provisions of international agreements ratified by the host country. Furthermore, there exists a general principle enshrined in International law, which is the prohibition of discriminatory measures in the treatment of investments, a principle enclosed in the majority of bilateral agreements and is a constant of international law.

The guarantees granted to the investor play an important role in attracting foreign investments, and at the head of these guarantees are the administrative procedures that the state follows in its dealings with the investor. The clearer and simpler the procedures and the fewer administrative authorities the foreign investor has to deal with, the more encouraged he is to invest capital, and vice versa.

## **2- Legislative Stability**

Despite the state's transition from the catalytic and encouraging role for investments to the protective role by strengthening the legal safeguards and establishing a number of legal mechanisms, which is a positive action, it was not sufficient. Providing a suitable investment climate and working to ensure the legislative stability of this country were also required. Hence, the government was compelled to act in a different manner in order to provide firm guarantees and include investment in the provisions of the constitution to safeguard it from any amendment. And effectively, the 2016 constitution was promulgated enshrining a very important principle whose foundation was laid in Article 43 which states the necessity of consecrating freedom and improving the investment climate.

This principle indicates the intention of the Algerian government to promote freedom of investment in its most important laws, which entailed a necessity for its enclosure within legal texts that are in line with this view, and thus, the entire investment law was revised.

### **B) second quest: Judicial and Financial Guarantees for the Foreign Investor**

Although the Algerian legislator has approved several legal guarantees to encourage the investor, they remain insufficient. Fear of playing the state's sovereignty card continues to be a concern for investors, something that necessitates the provision of legal and financial guarantees that would offer them more ease and reassurance in investing their capital. Therefore, guaranteeing the right to resort to arbitration and other financial safeguards will be discussed in this as follows:

#### **1- the first part: Guaranteeing the Right to Arbitration**

Arbitration is a consensual contract, however, the various legislations, laws, international agreements, and arbitration systems for international centers have not agreed on a precise definition. Some laws address the shape it can take and not its definition.<sup>25</sup>

Arbitration is agreeing to submit a dispute to a specific person or persons designated as arbitrators, to settle the dispute outside the competent court whose original purpose is to investigate and rule in similar issues. Another expert definition reads arbitration as the specialized procedural approach to settle a specific dispute by a third party.<sup>26</sup>

Despite the effectiveness of the arbitration system in settling disputes between the investor and the host country, it continued to be rejected by Algeria in view of its political and economic orientation of a socialist character at the time. It was natural that the state demonstrates a keen desire to exercise its full sovereignty, enact its legislations and exercise the full mandate of its judicial apparatus.<sup>27</sup>

This refusal is evident in Article 442 of the Civil Procedure Code.<sup>28</sup> It categorically prevents public institutions from resorting to arbitration, a position that was reaffirmed by several legal texts.

Nonetheless, Algeria quickly adopted several provisions authorizing public institutions to resort to arbitration through the issuance of the Legislative Decree 93/09,<sup>29</sup> amending the Civil Procedure Law. According to this decree, article 442 was abolished and an arbitration chapter was introduced under the title: "On the provisions relating to international commercial arbitration." The issuance of this decree constituted a real break with the anti-arbitration philosophy. However, it included an essential requisite for resorting to arbitration stipulated in Article 458 bis: The headquarters or domicile of at least one of the parties has to be abroad.

This flagrant shortfall of the Legislative Decree 93-09, which was the subject of several comments by an array of researchers and scholars, has been remedied by the legislator in the novel Civil Procedure Law<sup>30</sup>. Article 1039 of which stipulates that "Arbitration is considered international within the meaning of that law, arbitration relating to disputes in connection with the economic interests of at least two states" without any reference or mention of the headquarters or the country of the parties.

Thus, the legislator has closed the door to any confusion that would hinder or prejudice the parties' freedom to resort to arbitration.

It is worth mentioning that every dispute that occurs between the two parties is first presented to the Algerian judicial authorities in accordance with Article 17 of the Ordinance 01-03, in line with the well-known and established principle in international law, which is the principle of exhaustion of internal adjudication means.

Thus, the Algerian courts are initially competent, but this general principle regarding the jurisdiction of the national courts is answered by an exception that opens the door to the adoption of other means of settling disputes in relation to resorting to conciliation and arbitration. There are but two cases stipulated in the aforementioned Article 17,<sup>31</sup> through which jurisdiction of the national courts can be bypassed in favor of International Arbitration:

**The first case:** Relating to the existence of a bilateral or multilateral agreement that includes the possibility of resorting to conciliation and arbitration to settle disputes that arise between the Algerian state and the investor who holds the nationality of the state with which the agreement was signed.

**The second case:** Relating to the existence of a special agreement between the Algerian state and the foreign investor that includes the requisite of conciliation and international arbitration in the event of a future dispute or conflict, commonly known as the "arbitration clause". It can also be written in a subsequent agreement after a dispute has arisen, which is known as the "submission agreement".<sup>32</sup>

The Algerian investment law has adopted the principle of arbitration in its two forms: institutional arbitration and arbitration by a special committee; thus, the investor's right to resort to arbitration is guaranteed similar to arbitration rules in the most developed countries.<sup>33</sup> Therefore, it has added an important factor in attracting investment.

## **2- The second part: Financial Guarantees**

Financial guarantees are mainly a set of measures that the legislator grants to a foreign investor in order to ensure freedom in handling and exploiting their capital. These measures are embodied in two main points:

### **First: Ensuring that no expropriation or nationalization is used**

This guarantee plays a very important role in alleviating any concern that might arise for the foreign investor. This right has been enshrined in the Algerian Constitution in Article 22 thereof, which states that: "Expropriation is only carried out within the framework of the law, and it entails fair and equitable compensation", and Law 16/09 related to the promotion of investment, whereby the Algerian legislator ensured that the state would not be able to expropriate or seize the property on which the foreign investment project resides except in special circumstances and with fair and equitable compensation to the foreign investor, as stipulated in Article 23 thereof: In addition to the rules that govern expropriation, investments can only be seized in special circumstances stipulated

in the applicable legislation, and this seizure shall result in just and fair compensation.

The guarantee of compensation is an important safeguard for foreign investment that the host country provides, because even if the state has sovereignty over its territory and has the right to seize the projects residing on its lands using legal methods, it is compelled, on the other hand, to make just reparation to the owner of the expropriated property, who is the foreign investor, in accordance with the rules of domestic and international law of *ex aequo et bono* that ensure compensation for the invested capital, which the desire to invest in a project in a particular state resides on.<sup>34</sup>

### **Second: free movement of capital**

This guarantee, provided by the host country within organized frameworks, plays a very important role for foreign investors. There is no benefit in achieving profits without being able to transfer those profits abroad. Therefore, hindering this transfer is an obstacle to attracting foreign capital, and the Algerian legislator has enshrined this principle into law. Article 25 of the investment law 09/16 explicitly stipulates this essential guarantee, and the freedom of transfer covers the quotas from foreign sources, that is, brought by the foreign investor before the start of his project, in addition to the net real income resulting from a waiver in the event of its occurrence, or the liquidation of the foreign investment even if it exceeds the initial invested capital. There from, it is apparent that this factor is also very important in encouraging foreign investment, for this guarantee grants foreign investors the freedom to transfer capital, i.e. principal of investment and the net real income resulting from it within the limits of the initial cost. The exception being the transfer of the resulting capital from a waiver or liquidation even if it exceeds the initial value of the investment. The regulation of all these financial operations is accorded to the Bank of Algeria, which frames this process and grants a transfer license in accordance with the regulations and financial policy of the countries.<sup>35</sup>

### **Conclusion :**

The conclusion Attracting foreign direct investment is neither easy nor simple, it requires audacious and bold decisions consistent with international political and economic data, and despite the Algerian legislator enacting an arsenal of laws that aim to attract investments, among which is Law 16-09, which affected true change, especially with regards to promoting and unbinding investment, abolishing the certification and authorization system and relying

solely on the registration system promoting freedom, the volume of registered investments does not rise to the aspirations of the state.

**Accordingly, we elected to enclose a set of proposals in this study, the most important of which are listed below:**

- A suitable investment climate must be established, a climate that conveys confidence and security to the investor in dealing with Algeria, given that foreign investments are directed towards countries that have a legal and regulatory framework that clearly defines the rights and duties of investors and this will be achieved by establishing an appropriate economic, political, legal and administrative climate.

- Institute economic stability and gravitate towards opening up to the outside world.

- Avoid imposing any restrictions on the movement of trade or the elements of production.

- Promote political stability of the state and the expansion of its democratic practices.

- Establish security stability. The more the security apparatus in the state controls security and crime, the more attractive it is to invest.

- Provide legal stability, because whenever the legal regulations governing a foreign investor are stable for long periods of time, that foreign investor is more encouraged to invest in the country.

- The necessity of a stable tax system, seeing as a great number of reforms and revision of legislations regulating the imposition of taxation makes understanding them a difficult task on the foreign investor.

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<sup>2</sup> -The 1989 constitution issued by presidential decree number 89-18, dated on 28/02/1989, official Journal No 64 issued on 1989.

<sup>3</sup> -The 1996 constitution issued by presidential decree number 96-438 dated on December 7<sup>th</sup> , 1996, official Journal No 76 issued on 1996.

<sup>4</sup>- Djalel Mesaad, *the principle of free competition in the positive law*; (master's thesis) speciality: business law, university of Mouloud Maameri, Tizi Ouzou, 2002, p29.

<sup>5</sup>- Oubaya Malika, *the principle of the freedom of investment in the Algerian law* (master's thesis) speciality: business law, university of Mouloud Maameri, Tizi Ouzou, 2005, p7.

<sup>6</sup> -See the article 43 of the constitution of 2016, mentioned above.

<sup>7</sup>- The article 58/04 of the order number 09/01, dated on July 22<sup>nd</sup>, 2009, includes the complementary financial law of 2009, Official Journal number 44, dated on July 26<sup>th</sup>, 2009.

<sup>8</sup> -Ibid, Te article 58/05 of the order number 09/01.

<sup>9</sup> - The executive number 102-17, dated on March 5<sup>th</sup>, 2017. It determines how to register for investment, and the related results of the certificate, Official Journal No. 16, issued on March 8<sup>th</sup>, 2017.

<sup>10</sup> -The referral of the legislator to the modalities of registration raised some ambiguity in this new law. Out of 38 articles, the legislator referred 28 articles to the organization, and the matter would open the way for the executive authority to set conditions and controls that might further constrict the investors.

<sup>11</sup> - Nadia Ouali, «**Foreign Investment Policy in Algeria: Motivating or Revoking**», a National Conference on Investment Developments in Algeria in light of Law No. 16-09 related to Investment Promotion, on May 08<sup>th</sup>, 2017, Faculty of Law, University of Mohamed Bougherra Boumerdes.

<sup>12</sup> - Law No. 09-01, dated July 22, 2009, which included the Supplementary Finance Act of 2009, Official Gazette No. 44, issued on July 26, 2009.

<sup>13</sup> - Law No. 13-08, dated on December 30<sup>th</sup>, 2013, containing the Finance Act, 2014, Official Gazette No. 68, dated December 31<sup>st</sup>, 2013.

<sup>14</sup> - Moaifi Aziz, **Legal means to activate investments in Algeria**, (PhD thesis, Science), Law, College of Law and Political Science, Mouloud Mamari University 2015, p 65.

<sup>15</sup> -Nadia Ouali, "The Foreign Investment Policy in Algeria is stimulating or alienating", pre.

<sup>16</sup> -Special advantage are called the public order, this latter means the advantages, the fiscal and custom incentives that are giving to all kind of foreign investments in whatever locations. In other words, it is the minimum promotional measures offered to foreign investors and it is kind of fiscal and custom incentives.

<sup>17</sup> - Ouchen Ahmed, **the rule of taxation in encouraging private investment through the incentive policy** (master's thesis ), faculty of economics and management, university of Algeria, 2003-2004 p 71-78.

<sup>18</sup> -Nadia Ouali, "The Foreign Investment Policy in Algeria is stimulating or alienating", *ibid*.

<sup>19</sup> -The legislative decree 93-12 has stipulated the offering of advantages according to the public order in two phases: the phase of establishing the investment and the phase of exploitation. However, this advantage offering division in the public order no longer exist in the order 01-03, this latter is dedicated to public order benefits in the first part from the second chapter in one article which is article number 9, that offers the foreign investments benefits through only the phase of establishment and not the phase of exploitation. Then, in the last amendment, he has offered these advantages to the two phases like the legislative decree 93-12 but he has made some changes in the content of these advantages.

<sup>20</sup> - Charik el-Said, Mokrani Khoulood, « **investments' benefit** », a paper in national seminar on investment updates in Algeria under the law number 16-09 related to investment promotion; Amhamed Bouguera university, Boumerdes, May 8<sup>th</sup>, 2017.

<sup>21</sup> - Abdemoumen Ben Seghir, **Two-pronged approach to protect and encourage Foreign investment**, (Master's thesis) in law, Faculty of law and political science, University of Dr. Moulay Ettahar, Saida, 2008-2009, p68.

<sup>22</sup> - Aibot Mohand Ouali, **Foreign investments in Algerian Law**, 2nd ed. , Dar Houma, Algeria, 2014,p 62.

<sup>23</sup> - Aliouche kerboua Kamel, **law of investment in Algeria**, The Office of University Publications, Algeria, 1998,p 63.

<sup>24</sup> - Ali Karimi, **Legal System of Capital Movement between Arab States** , The Center for Arab Unity Studies, 1990,p56.

<sup>25</sup> -Aissaoui Mohammed, "The limits of the principle of confidentiality's resilience in the investment arbitration facing transparency demands ", *Maarif Journal*, Year 9, Legal Science Department, University of El Bouira, N. 18, 2015, p. 108.

<sup>26</sup> - Iskander Ahmed, "Arbitration as a mean of international conflict resolution via peaceful ways", *Algerian Journal of Legal, Economic and Political Sciences*, Vol. 37, IV, 1999, p 164.

<sup>27</sup>-Mohammed Youssefi, *'The new provisions' content and objectives in the legislative decree Number 93-12, related to investments' promotion* ",The Journal of the National School of Administration, Vol. 9, N. 2, 1999, p. 71.

<sup>28</sup>- Ordonnance 66-154 dated 08 June 1966 pertaining to the Law of Civil Procedures, The Official Journal, N. 47, dated 09 June 1966

<sup>29</sup>-Legislative Decree No. 93-09, dated 25 April 1993, amending and supplementing Decree No. 66-154 of June 08, 1966 containing the Civil Procedure Code, Official Journal No. 27, issued on April 27, 1993.

<sup>30</sup>-Law No. 08-09, dated February 25, 2008, which includes the Civil and Administrative Procedures Law, Official Journal No. 21, issued on April 23, 2008.

<sup>31</sup>-This article was the subject of harsh criticism due to the way it was drafted, it reads: "Any dispute between a foreign investor and the Algerian state shall be brought before the competent courts ..." And here the question arises, what is a competent court? Thus, the poor writing has stripped the article of its meaning and purpose, as Professor Mabrouk states in his article entitled: *"Mixed economy companies and foreign investments in Algeria"*, Algerian Journal of International Relations, N° 25, 1994, p55.

<sup>32</sup>- Mustafa Trari – tani *"The rules of international arbitration in Algeria"*, Algerian Journal of Legal, Political and Economic Sciences, Number 1, 1997 p55.

<sup>33</sup>- Professor Akroun considers it to be on par with the Model Law of the CNUDCI of 1985 which rests on the same principle of the will of the parties as well as the new arbitration system of the International Chamber of Commerce (CCI) in force since 1998.

For further details cf. Yakout Akroune, *"international commercial arbitration in Algeria"*, Algerian Journal of Legal, Political and Economic Sciences, V 37, Number 4, 2000, p. 284.

<sup>34</sup>-Zerouk Youssef, Rekab Abdelkader, *'foreign investments' guarantees and incentives in algeria according to the law 16-09* " , The Journal of legal and Social Sciences, University of Ziane Achour, Eljelfa, II, N. 4, p. 104.

<sup>35</sup>Ibid, P. 105