



CONDITIONS FOR THE USE OF ECONOMIC REAL ESTATE IN INVESTMENT PROJECTS UNDER THE PROVISIONS OF ALGERIAN LAW, 23/17 OF 15/11/2023

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Abstract:

The study highlighted the importance of exploiting economic real estate and directing it towards investment in accordance with the legal provisions that have set the conditions for entering into this activity, as it is a fundamental pillar for the advancement of the economies of countries to keep pace with global economic developments and integration.

The study concluded that Law 23/17 is an appropriate legal mechanism for the exercise of investment in commercial real estate, whether for the national or foreign investor, as it provides the legal guarantees and the appropriate environment for investment. However, it is necessary to ensure the proper implementation of the law, provide the appropriate economic real estate for investment activities and encourage emerging institutions to invest.

Keywords: *Real estate, business property, investment, one-stop shop, digital platform for the investor.*

INTRODUCTION

Given the close relationship between real estate and economic investment, and the desire to transform the interrelationship between them into a realistic and effective concept for achieving development and economic objectives, most countries in the world, including Algeria, have been interested in organising economic real estate and controlling its components and the supervisory bodies responsible for its proper management, in accordance with legal texts that define the methods of its establishment, organisation, mechanisms of access to it and the conduct of activities related to it, and the determination of the investor's obligations and guarantees of economic investment, according to an appropriate specification of conditions.

For this reason, since the early 1990s, Algeria has adopted a comprehensive real estate policy based on a constitutional principle that guarantees the freedom to make industrial investments and legitimate competition, with the aim of encouraging the private sector to take the economic initiative and to deploy its economic capital in the market, in addition to the public sector, which undertakes vital and strategic investments for the sake of integration and to contribute to the diversification of exports, exploiting national and local wealth and contributing to the creation of employment opportunities to eradicate unemployment, in order to build a strong national economy that will enable the State to join global economic blocs, including the "BRICS" group of countries, of which Algeria aspires to become an effective economic member by virtue of its economic capabilities and its political position among countries¹.

This policy, therefore, led to the practical necessity of moving towards extensive reforms and the development of legal mechanisms aimed at regulating real estate in general and commercial real estate in particular, in an attempt to control its rational and beneficial management for local and national development.

Given the importance of providing real estate in a permanent and stable manner to meet public and private needs, it has also become a cornerstone for supporting economic investment through what is known as economic real estate, which is diverse in itself and beneficial in its dimensions.

In light of these trends, commercial real estate has come to play an important role in driving the economy towards comprehensive development, without which economic progress and social development cannot be achieved.



From this point of view, the concept of economic real estate has been extended in its legal, economic and social dimensions to include several types of real estate, such as: tourist real estate, industrial real estate, such as industrial zones, activity zones, technology parks and tourist activity zones, which, as a result of previous global experience, have imposed their presence in economic and social reality and have become capable of being used and harmonized with the various economic sectors. This has led to the intervention of the law to direct economic real estate towards investment, within the framework of an economic and social policy that encourages the expansion of the private sector and attracts it towards development, taking into account the broad social strata that can be integrated into the emerging development Programs.

With this concept, business property has become the most tangible material tool in the economic reality for attracting multiple investment projects, according to legal conditions that require strict application and sincere commitment.

Accordingly, legislation has defined the conditions for the granting of concessions on land that is privately owned by the State and is intended for the implementation of investment projects².

The application of the 2008 law led to shortcomings and breaches by some stakeholders

The text states that the application of the 2008 law resulted in deficiencies and breaches of contractual obligations by some stakeholders. In particular, it states that some failed to complete investment projects and used the acquisition of land to obtain bank loans without significant effort. This prompted the supervisory authority to review the conditions for entry into commercial real estate investment. As a result, Law No. 23/17 of 15/11/2024 was enacted, which defined the conditions and modalities for granting state-owned commercial real estate for the execution of investment projects³. This was an attempt by the authorities to re-regulate and properly manage investment activity.

Given the instability of the legal texts governing the conditions for investment in general and investment in commercial real estate in particular, and given that real estate is a fundamental vehicle for real estate investment, the key question is:

What are the conditions for entering into the practice of economic investment activity under the new legal mechanisms represented by Law 23/17?

In order to answer this question, the text is divided into three main parts:

1. Determination of the general provisions for commercial real estate
2. Establishing the conditions for entering and carrying out economic investments
3. Defining the obligations of the economic investor and the consequences of their violation

First: General provisions on commercial property

In order to establish the basis of this study, we will first look at the definition of real estate in terms of language, jurisprudence and terminology. We will then provide a legal definition, after which we will determine the meaning of economic property, both in terminology and in law.

Definition of real estate, in language, jurisprudence and terminology

In language, real estate is any fixed property with a stable foundation, such as land and buildings⁴, and it is a collective term: real estate. In the legal dictionary, real estate is defined as consisting of: land, estates and palm trees. It is said: "There is good real estate in the house," meaning furnishings and equipment. In Hanafi Islamic jurisprudence, real estate is that which has a stable foundation, such as land and buildings. Palm trees and trees are considered real estate. According to the Shafi'i, it is the land and what is attached to it. For the Zaidi doctrine, it is any fixed and stable property, such as a house and palm trees⁵.

In terminology, we can deduce a definition of real estate as: everything that is fixed and stable in the ground, in such a way that it is impossible to move it from its place or transform it without damage.

Legal definition of real estate

Referring to the Algerian Civil Code, we find that it defines real estate as: {everything that is stable and fixed in its place and cannot be removed from it without damage is real estate}⁶. It seems to us that this definition has been adopted by most Arab and international legislations.



3: Commercial property in the law

The law on commercial real estate defines it as: “any real estate belonging to the private domain of the state or any other private property acquired by the Algerian Agency for the Promotion of Investment on behalf of the state, capable of hosting an investment project within the meaning of the investment law⁷.”

The legislator has taken the approach of defining in the legal text some real estate terms that are close to the concept of economic real estate, which in our opinion is not appropriate to limit these real estate terms by a legal text, and it would have been better to refer to them in the general rules. However, since the law has defined them, we mention the following:

Prepared real estate:

According to the legal text, this refers to any real estate that is ancillary to the private property of the State and is characterized by the possibility of use due to the existence of a road network and a prepared ground.

The prepared real estate is supervised in its preparation by specialized public agencies according to the nature of the economic real estate, in application of Article 7 of Law 23/17. Such as: the National Agency for Industrial Real Estate or the National Agency for Tourist Real Estate and the National Agency for Urban Real Estate.

Other real estate assets:

These are, according to the text of the law, those available properties that were affiliated to the local public institutions.

It should be noted here that the remaining real estate assets were originally affiliated to local public economic institutions, as indicated in the text, and in this case they would have been reintegrated into the private property of the State according to the procedures for cancellation of the allocation, if they were allocated, or they are returned directly after the decision to dissolve the institution, in which case the State can automatically redirect them for investment as economic real estate. Consequently, there is no point in including them in the legal text.

Surplus property:

These are the properties that public economic institutions no longer need and that do not benefit their activity.

It should also be noted that when surplus real estate assets are no longer needed by the institution and do not benefit its economic activity, the administrative procedure in place is to return them to the State’s ownership to be reintegrated and redirected towards investment.

Based on the above definitions, it can be said that economic real estate has a specific legal nature, given its components that can be the basis for various projects, as well as its purely economic objectives.

As a result of this specificity, business property has been characterized by a certain ambiguity, particularly in terms of the concept, since its components have become intertwined with various activities of an economic, industrial, tourist and technological nature (technological parks). This has made it difficult to find an appropriate definition.

Second: Conditions of access to investment in business property

With reference to the provisions of Law 23/17 mentioned above, it has defined the expected objectives, which are to determine the conditions and modalities for the granting of economic real estate belonging to the private property of the State and intended for the implementation of investment projects.

However, the achievement of these objectives will not be easy, since it will be necessary to define the nature of the real estate allocated for economic investment and the conditions for its acquisition, as well as the exceptions applicable to it:

1.Objective conditions

The law has established a series of objective conditions that allow any natural or legal person, whether Algerian or foreign, resident or non-resident, to legally engage in the practice of investment activity in economic real estate⁸.

Algerian law has adopted basic principles for the application of these conditions, which are:



- The principle of the appropriate selection of the property intended for economic investment
- The principle of the subordination of property to the private domain of the State.
- The principle of non-allocation of economic property.

1-1: The Principle of Selecting Suitable Land for Investment in Economic Property

This principle is based on the physical property suitable for the investment, in order to ensure its success through the appropriate selection of the land, and on the principle of the subordination of the property to the private domain of the State, in order to facilitate its existence, its selection and to ensure its purification.

Law 23/17 has defined the areas eligible for economic investment and excluded other areas from investment⁹.

1-1-1: Areas eligible for economic investment

Article 2 of Law 23/17 has defined the components of the economic property in which investments can be made, according to specific sectors and appropriate to the investment climate, including:

- Developed land belonging to industrial and economic activity areas
- Developed land belonging to tourism development areas and tourist sites
- Developed land belonging to technology parks
- Developed land in the vicinity of new cities
- Residual land owned by local public institutions
- Surplus real estate owned by public economic institutions
- Land intended for the promotion of commercial real estate
- Other developed land belonging to the private domain of the State.

These categories of real estate are considered by law to be suitable for use and economic investment, which, according to the last paragraph, are by way of example and not exhaustive, and which are lands determined by the competent administrative authorities in the property.

1-1-2: Land not suitable for economic investment

Article 3 of the aforementioned Law establishes the exception to the granting of economic property and its orientation towards investment. To this end, it has identified categories of land that it considers to be outside the scope of the law on economic property, and whose legal nature does not allow them to be used other than for the legal purpose to which they are subject. The law limited these to the following

- Agricultural land or land with an agricultural purpose, which is part of the private state property.
- Areas of a mining nature governed by the Mining Code
- Land constituting areas for the exploration of hydrocarbons and areas for the protection of electricity and gas installations
- State-owned land allocated for the establishment of aquaculture activity zones
- Land belonging to the periphery of archaeological sites and historical monuments.
- Land with a real estate promotion character, characterized by state aid
- State lands allocated for the implementation of public investment projects.

We note that the purpose of excluding certain areas from the economic investment process is to emphasise their protection and respect for their specificity and legal nature, such as the peripheries of archaeological sites, agricultural areas and tourist areas, among others.

1-2: The principle that economic property is the private property of the State

This means that the legal nature of the economic property requested for investment must be the private property of the State and not part of the public property of the State, which is considered inalienable, non-transferable and non-attachable. Considering that the private property of the State is subject to disposal and transfer in accordance with the provisions of the National Property Law. It should also not be associated with private property. This is to ensure that the legal nature and origin of ownership are clear and that the real estate asset is not the subject of disputes before the judicial authorities, in order to guarantee the stability of investment projects.

1-3: The principle of non-allocation of economic property or in the process of allocation



Allocation is a decision made by the state through its representative in the disposition, concerning the placement of a property belonging to it under the disposition of an administrative unit assigned to it, to be returned to the state when it is no longer useful to it, by revoking the allocation.

According to the nature of the private property of the State when it is allocated to an administrative entity or a public economic institution, this property cannot be granted or directed for economic investment as long as it has the character of an allocation, unless its allocation is revoked. The purpose of this is to provide legal protection for national assets and to support their stability.

2: Formal and electronic conditions for access to investments

Law 23/17 has defined formal and electronic conditions that must be met, in addition to the previous objective conditions, which are mainly as follows

2-1: Electronic registration through the investor's digital platform

This procedure consists of mandatory digital registration, which involves submitting the investment application through the investor's digital platform, which is supervised and managed by the Algerian Investment Promotion Agency and is the only means of deposit¹⁰. Therefore, the candidate for investment entry must comply with the access to the digital platform, as any application that does not pass through the justified digital registration will not be considered.

The digital platform contains all the information related to the available real estate assets eligible for the granting of concessions, defining precisely the location of the property in accordance with the reality on the ground, its area and its status in relation to urban planning regulations. The Investment Agency is also responsible for updating the digital information¹¹.

The digital platform has been designed and provided with all real estate information available within the framework of the investment, and the investor only needs to register according to the existing data.

Processing of investment requests:

The Agency examines the investment requests registered on the digital platform, checks whether they comply with the conditions for entry into the economic real estate investment and processes them with a positive or negative response within a period not exceeding fifteen (15) days from the date of the expiry of the publication period on the platform and its closure.

The study of the applications is based on an evaluation grid, legally defined in a specific annex¹², according to criteria and, for each criterion, a coefficient, a reference point and an indicator to which a final mark is assigned.

The Annex defines the criteria to be taken into account in the examination of the application, which are exclusively:¹²

- Type of economic activity: with a coefficient of five points
- Contribution to export diversification: with a coefficient of one point
- Contribution to the development of local resources: with a coefficient of one point
- Local content (integration rate): with a coefficient of one point
- Employment: with a coefficient of five points
- Amount of investment: with a coefficient of five points
- Amount of own contribution: with a coefficient of three points.

In the event of a change in the orientation of the economic property due to urban planning regulations or other reasons, the agency is obliged to return it to the competent regional state property services.

Article 12 of Law 23/17 has defined the persons concerned by the platform and the registration, which are any natural or legal person, national or foreign, resident or non-resident, wishing to benefit from an economic property under the provisions of this law.

The Algerian Investment Promotion Agency, as the only body authorised to do so, is responsible for examining applications for investment in industrial property. The law has defined the powers vested in the Agency, including:

- Preparing and directing real estate for investment in consultation with the relevant sectors.
- The management and promotion of economic property in order to grant it by concession



- Maintaining and updating the register of investment property
- Commitment to provide investors with all information on the property through the digital platform
- Monitoring and assisting investors at all stages until the completion of projects
- Preparation of quarterly and annual reports on the results of activities.

2-2: Establishment of the one-stop shop

Article 14 of the law on industrial property stipulates that the Algerian Investment Promotion Agency is responsible for granting industrial property through the one-stop shop to investors in the form of a transferable concession. This transfer is made by decision of the Agency for a period of 33 years, renewable. According to the Standard Specification Book, which contains the administrative conditions related to the investment and supervises its orientation to serve economic development. One-stop shop means the consolidation of a number of administrative bodies dealing primarily with business property and investment, so that there is a single entity with which the economic investor deals, with the aim of reducing administrative procedures and overcoming difficulties, instead of knocking on the doors of several administrative services.

2-3: Issuance of the concession decision

Once the investment application has been approved, the Algerian Investment Promotion Agency issues a decision authorising the granting of the concession to the investor, who must agree to the terms of reference, which define the contractual obligations and the duration of the concession, which may be renewed for up to 33 years.

The effects of obtaining the concession decision are as follows:

- The investor obtains a building permit and can start the activity without waiting for the transfer contract.
- The right to obtain a mortgage on the property.
- Subscription to the book of specifications for the grant of the transferable concession.
- Transfer of the concession to the heirs in the event of the death of the concessionaire.

2-4: Preparation of the Deed of Conveyance

Once the objective and formal conditions have been met, and the investor has agreed to commence the investment and acquire the appropriate property for his project, he can submit a request, in accordance with the required legal procedures, for the drafting of the contract, which will be handled by the regionally competent State Property Authority. The contract is then subject to registration and publication procedures at the Land Registry Office to transfer ownership.

The application will only be accepted if the following conditions are met

- The actual completion of the project, evidenced by a certificate of compliance and an inspection by the competent administrative body.
- The release of the mortgage resulting from the granting of the concession on the real estate that is the subject of the investment¹³.

Third: Obligations of the economic investor and consequences of non-compliance

Once the investor has obtained the appropriate economic property to commence the investment, he is subject to legal obligations that must be observed and fulfilled.

1: Obligations of the investor

The economic investor is subject to obligations that can be defined as follows

1-1: Respect for the terms of the Standard Specification Booklet

In particular, the obligation not to change the purpose of the economic property granted to the investor or to use a part of it for a purpose other than the one required. In the event of non-compliance with the clauses, and after having sent two notices to the party concerned without a response or with an unconvincing response, the Agency requests the Directorate of State Property to initiate the procedures for the termination of the concession contract¹⁴. This is done by preparing a decision to terminate the concession.



1-2: Obligation to obtain a licence for project modifications

If the need arises to make certain changes to the investment project, the investor must inform the Algerian Investment Promotion Agency and these changes can only be made with a licence issued by the competent regional investment supervisory committee.

1-3: Completion of the economic project within the specified time limits

One of the obligations of the investor benefiting from the concession right is to complete the investment project within six (6) months from the date of obtaining the construction permit.

1-4: Payment of annual rent

This is the fee to be paid by the investor as of the implementation of the investment project, as established in Article 10 of Decree 23/487 of 28.12.2002.

1-5: Obligation to notify cultural and archaeological properties

The investor must report any cultural and archaeological properties that he may discover on the investment site, such as buildings, mosaics, engravings, statues, treasures, ancient coins and weapons¹⁵.

2: Penalties for non-compliance and supervision of economic activity

Article 21 of the Code of Economic Property states that if the investor does not comply with the terms of the specifications and this leads to a breach, the Algerian Investment Promotion Agency is legally obliged to inform the investor by means of two ineffective formal notices, then unilaterally terminate the concession contract and request the State Property authorities to issue a termination decision. Article 17 of Decree 23/486 specifies the cases in which a concession may be terminated.

The law also empowers the Agency to exercise the right of first refusal on behalf of the State on the real estate transferred to the beneficiary. In this case, the Investment Supervision Committee, chaired by the local governor, is responsible for supervising and approving investment projects, as well as issuing warnings to the investor to remedy any violations and breaches of specifications. In this case, the Investment Supervision Committee, chaired by the local governor, is responsible for supervising and approving investment projects, as well as for issuing warnings to the investor to remedy any violations and breaches of specifications¹. In this case, the Investment Supervision Committee, chaired by the local governor, is responsible for supervising and approving investment projects, as well as for issuing warnings to the investor to remedy any violations and breaches of specifications¹⁶.

Conclusion:

At the end of this research study, we conclude that Law 23/17 has addressed the difficulties and ambiguities that prevailed in the previous legal mechanisms, especially with the adoption of the mandatory requirement of electronic registration on the investor's digital platform, which represents equality and transparency in the dealings between investors.

We hope that these legal mechanisms will contribute to encouraging domestic and foreign investors to make economic investments of all kinds, to use economic real estate in order to accelerate the pace of economic development, and to stimulate the national economy to achieve a qualitative leap in a short period of time and to keep pace with global economic developments and integration.

Accordingly, we submit the following proposals:

- The need to comply with the provisions of Law 23/17 and ensure its clear and transparent implementation.
- The need to ensure the updating of the State Real Estate Database in accordance with the cadastral system.
- The need to identify and inventory unused real estate areas to be used for investment.
- Investors must strictly comply with the terms of the specification book, while ensuring that the economic orientation of the granted property is not diverted.
- Encouragement of emerging "start-up" institutions to invest in commercial real estate, according to the nature of each institution and its activity.



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Footnotes:

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- ¹- Mohamed Mustafa Zerbani: An Introduction to the Study of Political Economy, Scientific Imprint Publishing House, 2024 edition, Algeria, p. 87.
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 - ⁶- Article 683 of Decree No. 75/58 of 26/09/1975 containing the Algerian Civil Code.
 - ⁷- Law No. 23/17, in the first paragraph of Article Four.
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¹⁵- Article 6 of the Standard Terms and Conditions establishing the conditions for the granting of concessions, Official Gazette No. 85/2023.

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