

Received: 12 April 2024, Accepted: 26 December 2024

DOI: <https://doi.org/10.47059/rr.vx9i2.08>

Development of the Legal System for Tourism Real Estate Investment Updated study according to Law 23/17

Dr. Rima Laib¹

Abstract:

Investment in the tourism sector is one of the main challenges and aspirations of the policy of the Algerian state to revitalise the national economy. The aim is to find alternatives to financial resources and reduce dependence on oil revenues, given Algeria's wealth of tourist sites throughout the country and its unique geographical location. This potential allows Algeria to be a leader in tourism investment if properly exploited. To achieve this, it is necessary to provide the necessary real estate for investment and to ensure an effective regulatory framework that contributes to the achievement of legally defined objectives. In this context, the Algerian legislator updated the investment regulations through Law 22/18 and modified the forms of investment in tourism real estate through Law 23/17, in an attempt to attract both local and foreign investors. In this paper, we clarify the evolution of the forms of its exploitation in the Algerian legislation and highlight the new law 23/17.

Keywords: Tourism real estate, investment, privileges, concession.

• Introduction

Algeria has adopted a number of reforms aimed at economic development. In line with its policy of economic openness, it has sought to encourage investment and has acquired considerable experience in the legal framework governing it. This sector contributes to job creation, strengthens traditional industries and crafts, and achieves regional balance by stimulating the areas in which projects are located².

The use of real estate varies according to the projects carried out; we find agricultural real estate, industrial real estate and tourist real estate, each with its own legal framework for investment. However, this study focuses on tourism real estate due to the fluctuations in

¹- Faculty of Law and Political Science, University 8 Mai 1945 Guelma, (Algeria). E-mail: laib.rima@univ-guelma.dz

²- Mansouri Al-Zain, "The Reality and Prospects of Investment Policy in Algeria,"North African Economies Journal. Hassiba Ben Bouali University of Chlef, Issue 2, 2005, Algeria, pp. 128-129.

oil prices, which are the backbone of the Algerian economy. It has become imperative to find alternatives for financial resources, especially considering the richness of Algeria's tourist areas throughout the country, which, if properly exploited, could position the country as a leader in tourism investment. Despite the legal framework in place, we are still far from achieving this goal. By modernising this framework and adapting it to the forms of investment, we hope that the objectives set by the law will be realised on the ground. The Algerian legislator has established several mechanisms for the exploitation of real estate:

In the context of the previously repealed Law 03/03 on expansion areas and tourist sites, and in the context of the repealed Law 23/17 on sustainable tourism development³, several terms were used, including "resale" and "lease of land"⁴. The term "privilege" was used in Decree 08/04⁵, which defined the conditions and methods for granting privileges on state land designated for investment projects⁶. This term also appeared in the 2013⁷ and 2020⁸ Finance Laws, as well as in the 2020⁹ Finance Supplementary Law. Subsequently, Law 23/17¹⁰ was enacted, establishing the conditions and methods for granting economic property belonging to the state for investment projects, which also used the term "privilege".

By studying the legal texts, we can see that the Algerian legislator has outlined different mechanisms for the exploitation of tourist property, according to the evolution of the legal framework. Sometimes the term "resale" (contract of sale) is used, sometimes "leasing" (contract of lease) and sometimes "privilege" (contract of privilege). This raises the following question:

³- Law 03/03 related to expansion areas and tourist sites, dated February 17, 2003, Official Gazette No. 11, dated February 19, 2003, amended by Order 08/04 under paragraph 2 of Article 5.

⁴- Law 03/01 concerning sustainable tourism development, dated February 17, 2003, Official Gazette No. 11, dated February 19, 2003.

⁵- Rima Laïb, "Mechanisms for Investing in Tourist Real Estate in Algerian Legislation," Studies and Research Journal, Ziane Achour University of Djelfa, Volume 13, Issue 4, July 2021, p. 6.

⁶- Order 08/04, dated September 1, 2008, which establishes the conditions and methods for granting concessions on state private property allocated for investment projects, Official Gazette No. 49, dated September 3, 2008.

⁷- Law No. 12/12, dated December 26, 2012, containing the Finance Law for the year 2013, Official Gazette No. 72, dated September 30, 2012.

⁸- Law No. 19/14, dated December 11, 2019, containing the Finance Law for the year 2020, Official Gazette No. 81, dated December 30, 2019.

⁹- Article 37 of Law No. 20-07 dated June 4, 2020, containing the supplementary Finance Law for the year 2020, Official Gazette No. 33, dated June 4, 2020.

¹⁰- Law No. 23-17 dated November 15, 2023, specifying the conditions and methods for granting economic real estate belonging to state private property allocated for investment projects, Official Gazette No. 73.

How has the regulation of investment in tourist real estate evolved in Algerian legislation?

In order to answer this question, we have used a descriptive and analytical methodology. The study is divided into two main sections, preceded by an introduction and followed by a conclusion, as follows:

- Concept of Tourist Property
- Legal Basis for Investment in Tourist Property

1. The concept of tourist property

The Algerian legislator has shown concern for the tourism sector, as evidenced by its commitment to the legal organisation of investment in this field, starting with Decree 66/62 of 26 March 1966 on tourist areas and sites¹¹, Law 90/29 of 1 December 1990 on planning and development¹², Law 01/20 of 12 December 2001 on regional planning and sustainable development of tourism¹³, and Law 03/01 on sustainable development of tourism. The State has worked to create essential conditions for the promotion of tourism investment¹⁴, in addition to Law 03/03 on expansion areas and tourist sites, amended by Decree 08/04 and subsequent financial laws, which refer to forms of investment for expansion and tourist sites. Later, Law 23/17 was enacted, which established the conditions and methods for granting economic property belonging to the State for investment projects and repealed the aforementioned legal texts.

Before analysing the legislation in force, it is necessary to define tourist property and determine its nature.

1.1 Definition of tourist assets

Algeria aims to give the tourism sector an economic dimension, taking into account its capacities and characteristics. This involves developing national tourism as a key driver of sustainable development and economic growth. This objective is enshrined in the general policy on spatial planning, which is translated into a reference strategy and a vision for 2030, through the establishment of a national spatial planning system aimed at achieving a

¹¹- Order 66/62 dated March 26, 1966, concerning tourist areas and sites, Official Gazette No. 28, Year 3, dated April 8, 1966.

¹²- Law 90/29 dated December 1, 1990, concerning urban planning and development, Official Gazette No. 52, dated December 2, 1990.

¹³- Law 01/20 dated December 12, 2001, concerning land planning and sustainable development, Official Gazette No. 77, dated December 15, 2001.

¹⁴- Article 7 of Law 03/01, concerning sustainable tourism development, as previously mentioned.

balance in the location of populations and activities throughout the country, as well as enhancing the attractiveness of the regions¹⁵.

Given this importance, it is also necessary to define the terms central to this study, as follows:

1.1.1 Linguistic Definition of Tourist Property

The term “tourist property” is composed of two words: “property” and “tourism”. In order to define it, we need to clarify the meaning of these two words:

- Property: Any fixed asset with a source, such as land or buildings.
- Tourism: A country with natural and historical resources.
- Tourism (in general): The movement of individuals or groups from one place to another for recreation, education, or treatment, involving travel from one country to another for relaxation, sightseeing, and exploration¹⁶.

1.1.2 Legal Definition of Tourist Property

The creation of tourist property is defined in Article 2 of Law 03/03 on Development Areas and Tourist Sites, in the first section entitled “Definitions”, which clarifies the following terms

- Tourism development areas:

Defined in paragraph 1 of Article 2 of Law 03/03 as: “Any area or part of an area characterised by natural, cultural, human and creative features that are suitable for tourism, that are suitable for the establishment or development of a tourist facility and that can be used for the development of one or more profitable forms of tourism”. This definition is repeated in paragraph 2 of article 3 of Law 03/01 on the sustainable development of tourism. The Tourism and Handicrafts Sector has identified a real estate pool consisting of 225 tourism development areas, covering a total area of 56,472.06 hectares in 34

¹⁵- <http://www.andi.dz/index.php/ar/secteur-du-tourisme>

¹⁶- <https://www.almaany.com/ar/dict/ar>-Access date: 05/01/2021 at 4:21.

provinces¹⁷. One example is the archaeological site of Timgad, 33 km from the city of Batna, which was declared a World Heritage Site by UNESCO in 1982¹⁸.

- **Tourist sites**

Defined in paragraph 1 of Article 3 of Law 03/03 as: “Any view or place of special tourist attraction due to its scenic appearance or the wonders or natural properties it contains, recognised for its historical, artistic, mythical or cultural significance, which must be valued for its authenticity and preserved from deterioration or extinction by nature or human activity”. This definition is also included in the third paragraph of Article 3 of Law 03/01 on Sustainable Development.

- **Protected areas**

Defined in paragraph 3 of Article 3 of Law 03/03 as: “A part of an expansion area or a tourist site which is not subject to construction and which requires special protection in order to preserve its natural, archaeological or cultural characteristics”. Protected areas are divided into seven categories according to their ecological reality: national parks, natural parks, complete natural reserves, etc¹⁹.

From the above analysis, we can conclude that the Algerian legislator has established a legal conceptual framework for the definition of tourist property, with the aim of regulating and delimiting the area of tourist property eligible for investment.

1.2 Creation of Tourist Property

Article 4 of Law 23/17 defines several terms, including economic property, which is: “Any real estate belonging to the private property of the State and/or any other private property acquired by the Algerian Investment Promotion Agency for the benefit of the State and capable of hosting an investment project within the meaning of the Investment Code”. The pool of economic property that is the subject of the privilege contract includes industrial, urban and tourist property, which is the focus of our study.

¹⁷- <https://www.mtatf.gov.dz> Access date: 06/01/2021.

¹⁸- Saïb El Jamaï, Abd El Rahman Hebawi, "The Reality of Tourism Investment in the Aurès Region - A Model from Batna", *Journal of Legal and Economic Studies*, Volume 20, Issue 20, University of Tamanghasset, Algeria, 2019, p. 281.

¹⁹- Article 4 of Law 11/02 of 21 February 2011 on protected areas in the context of sustainable development, *Official Journal* No. 13 of 28 February 2011. For more information, see the article by Rima Laïbon the mechanisms of investment in tourist real estate in Algerian legislation, published in the *Journal of Studies and Research*, Volume 13, Issue 4, July 2021.

The Algerian legislator has specified that the tourist real estate eligible for construction consists of the lands designated for this purpose in the tourism planning scheme, regardless of the legal nature of the lands within the expansion or tourist sites defined in the tourism planning scheme²⁰. This includes public and private land owned by the state, as well as land owned by private individuals²¹.

1.2.1 Land belonging to the National Property

Article 2 of Law 90/30 on National Property (as amended and supplemented) states:

“National property includes all movable and immovable property owned by the State and its local communities, either as public or private property. These national properties consist of: public and private properties belonging to the State, public and private properties belonging to the Province and public and private properties belonging to the Municipality”.

- Land belonging to the national public domain

According to paragraph 1 of Article 3 of Law 90/30 on Public Property (as amended and supplemented):²²

“Public national properties are those referred to in article 2 above, which, by virtue of their nature or purpose, cannot be subject to private ownership”.

Public national properties, as defined by this law, include both natural and artificial public properties. Natural public property includes, in particular: coastal beaches, the seabed and its subsoil²³, surface and underground water resources, etc²⁴. Artificial public property includes in particular “areas artificially isolated from the effects of waves, railways, civil and military harbours”, etc²⁵.

- Land belonging to private national estates

²⁰- Article 19 of Law 03/03, relating to development areas and tourist sites.

²¹- Article 20 of Law 03/03 on expansion zones and tourist sites.

²²- Law 90/30 of 1 December 1990 on National Property, Official Gazette No. 52 of 2 December 1990, as amended by Law 08/04, Official Gazette No. 44 of 3 August 2008.

²³- Article 14 of Law 90/30, as amended, on National Property.

²⁴- Article 15 of Law 90/30, as amended, concerning state property.

²⁵- Article 16 of Law 90/30, as amended, concerning state property.

Private national properties are those that are not classified as public national properties and that serve property and financial functions²⁶. Private national property belonging to the State, the Province and the Municipality includes: various types of real estate and movable property not classified as public national property, as specified in Article 17 of Law 90/30 (as amended and supplemented) on State Property.

1.2.2 The second branch: private property

Private land in the tourism sector is land that belongs to individuals but has a touristic character, i.e. it is located in expansion areas or tourist sites and can be developed according to the tourism planning scheme. Owners are prohibited from using or exploiting these lands outside their designated purpose²⁷.

From the above, it can be concluded that regardless of the legal nature of the land within the expansion areas and tourist sites, whether it belongs to the public national property or to private individuals, its use and exploitation is governed by Law 98/04 on the Protection of Cultural Heritage²⁸.

With reference to certain articles of this law, in particular articles 55 (paragraphs 2 and 3) and 51 (paragraph 3), we note that private owners of tourist property are obliged not to change the tourist purpose of the land. Furthermore, Article 7 of the repealed Law 03/03 on expansion areas and tourist sites prohibited any use or exploitation of these areas that would distort their tourist character.

Articles 13 and following of Executive Decree No. 23-486, which defines the components of economic property belonging to the State's private assets intended for investment projects and eligible for the granting of concessions²⁹, outline the conditions and methods for the Algerian Agency for Investment Promotion to acquire private economic property.

²⁶- Article 3, Paragraph 2 of Law 90/30, as amended, concerning state property.

²⁷- LakhdhariAbdelhak, ZghlamiHasiba, "The Legal Framework for Tourism Property in Algerian Legislation," *Journal of Law and Political Science*, University of Abbas Laghrour, Khenchela, Issue 11, Algeria, 2019, p. 256.

²⁸- Article 19 of Law 03/03 concerning expansion areas and tourist sites. Law 98/04, dated June 15, 1998, concerning the protection of cultural heritage, *Official Gazette* No. 44, dated June 17, 1998.

²⁹- Executive Decree No. 23-486, dated December 28, 2023, which defines the components of economic property belonging to the state's private assets intended for investment projects and eligible for granting concessions, *Official Gazette* No. 85, dated December 30, 2023.

Article 17³⁰ specifies the conditions and methods for the exercise of the right of pre-emption by the Algerian Investment Promotion Agency

2. Mechanisms for Investment in Tourist Property

The existing economic trend has been reinforced by a series of laws. Algeria has adopted a mixed economic and social approach, not relying solely on either pure capitalism or socialism. At a cabinet meeting, the emphasis was placed on caring for the most vulnerable sections of society, while at the same time seeking to develop investment and revive the economy, in order to promote the national economy in line with the social policy long pursued by the state³¹. This was reaffirmed in the preamble to the new constitution, which states: “The Algerian people are committed to their choices to reduce social disparities and eliminate regional inequalities, striving to build a productive and competitive economy within the framework of sustainable development”.

In this context, mechanisms for investment in tourism real estate have been developed. This chapter is divided into two subsections:

- Preparation of Tourist Property
- Forms of Investment in Tourist Property

2.1 Preparation of Tourist Property

Article 4 of Law 23/17 defines several terms, including “prepared property”:

“Any real estate belonging to the private property of the State, equipped with roads and various networks necessary for its use”. The economic property belonging to the private property of the State, intended for investment projects, is prepared by public agencies specialised in industrial, tourism and urban property³². These agencies are responsible for

³⁰- Article 17 of Executive Decree No. 23-486, which specifies the components of economic property belonging to the state’s private assets intended for investment projects and eligible for granting concessions: "The Algerian Agency for Investment Promotion may exercise the right of preemption on behalf of the state in accordance with the applicable laws regarding real estate disposed of by the beneficiary of the economic property, as well as on any other property owned by a natural person or a legal entity subject to private law, eligible for hosting an investment project located within the prepared areas."

³¹- LahacIssa, Dah Abdelmalek, "Legislative Incentives for Investment in Tourism Property According to Algerian Law," *Journal of Urbanism and Construction*, Volume 3, Issue 1, IbnKhaldun University in Tiaret, Algeria, p. 130.

³²- Article 7 of Law 23/17.

preparing land belonging to the State's private property that is suitable for investment projects³³.

In this context, the National Agency for Tourism Property is in charge of preparing land located in expansion areas and tourist sites. This agency carries out an inventory of these plots and sends it to the relevant state property services at regional level³⁴, which then send a list of legally available plots to the Algerian Investment Promotion Agency.

According to the repealed Law 03/03, land constituting tourist property - whether it belongs to the public or private national estate or to private individuals - cannot be subject to privileges or resale, unless it benefits investments provided for in the tourism planning scheme³⁵.

Tourist property is considered a crucial link and the most suitable vessel for all economic investment initiatives³⁶. Some of the legal texts that have regulated real estate investments in the past include:

- Decree 01/03 on the development of investments, repealed by Law 16/09 on the promotion of investments and subsequently repealed by Law 22/18³⁷.
- Laws that have a direct impact on tourism investment include the repealed Law 03/01 on Sustainable Tourism Development, which emphasises the achievement of development while protecting the environment and preserving its components under Law 03/10³⁸. This requires the respect of tourist areas in accordance with sustainable development programmes and regional planning.

³³- Article 10 of Executive Decree 23-386, dated December 28, 2023, which defines the components of economic property belonging to the state's private assets intended for investment projects and eligible for granting concessions, Official Gazette No. 85.

³⁴- Article 11 of the same executive decree.

³⁵- Article 25 of Law 03/03 concerning expansion areas and tourist sites.

³⁶- KhawadjiyaSamihahHanan, "The Legal Framework for Industrial Property in Algeria," PhD Thesis, Constantine 1 University, Algeria, 2014/2015, p. 1.

³⁷- Law 22/18, dated July 24, 2022, concerning investment, Official Gazette No. 50, dated July 28, 2022.

³⁸- Law 03/10, dated July 19, 2003, concerning environmental protection within the framework of sustainable development, Official Gazette No. 43, dated July 20, 2003. Sustainable development is defined under Article 3, Paragraph 4 of Law 03/01 concerning sustainable tourism development: "A development model that ensures options and opportunities for development while preserving the environment, natural resources, and cultural heritage for future generations."

- Article 5 of Law 03/03 concerning expansion areas and tourist sites states: "The development and preparation of expansion areas and tourist sites must comply with the legislation related to environmental protection, coastal protection, and the protection of cultural heritage, especially when these areas contain classified cultural heritage."

- The repealed Law 03/03 on expansion areas and tourist sites and Law 03/02, which establishes general rules for the use and exploitation of beaches for tourism³⁹.

Tourist facilities have been designed and built in accordance with the guidelines for tourism planning set out in Articles 22 and 38 of Law 01/20 on Regional Planning⁴⁰.

Any work related to the preparation or exploitation of expansion areas and tourist sites that contravenes the Tourism Planning Scheme, as well as the rules established in Law 03/03 on Expansion Areas and Tourist Sites, is prohibited⁴¹. The development of tourism activities must comply with the principles and methods established in the Tourism Planning Guidelines, in accordance with Articles 22 and 38 of Law 01/20 on Territorial Planning⁴².

In addition, Ordinance 08/04 established the conditions and methods for granting privileges on land belonging to the State's private property and designated for investment projects. This regulation has been amended and supplemented by the Finance Acts of 2013, 2020 and the Supplementary Finance Act of 2020. However, Decree 08/04 was repealed by the current Law 23/17⁴³.

By analysing this legal framework, it can be concluded that the Algerian legislator is seeking an optimal organisation of the forms of exploitation of tourist property in order to promote the national economy and move away from dependence on hydrocarbon revenues. The organisation of the exploitation of tourist property cannot be achieved without preparing it to attract investment projects.

2.2 Forms of Investment in Tourist Property:

The amendment to the Algerian Constitution in 2020⁴⁴ guarantees freedom of investment under Article 61, which states:

“Freedom of trade, investment and entrepreneurship shall be guaranteed and practised within the framework of the law”. Economic development depends on the stability and

³⁹- Law 03/02, which defines the general rules for the use and exploitation of beaches for tourism, dated February 17, 2003, Official Gazette No. 11, dated February 19, 2003.

⁴⁰- Article 12 of Law 03/01 concerning sustainable tourism development.

⁴¹- Article 6 of Law 03/03 concerning expansion areas and tourist sites, which has been repealed.

⁴²- Article 6 of Law 03/01 concerning sustainable tourism development.

⁴³- Law No. 23-17, dated November 15, 2023, defines the conditions and methods for granting economic property belonging to the state's private assets intended for investment projects. Official Gazette No. 73.

⁴⁴- Presidential Decree No. 20/442, dated December 30, 2020, concerning the issuance of the constitutional amendment approved in the referendum on November 1, 2020, Official Gazette No. 82, dated December 31, 2020.

attractiveness of local and, in particular, foreign investment, as well as the obligation to provide real estate opportunities for these projects⁴⁵.

In this context, the Algerian legislator has defined mechanisms for the exploitation or investment of tourist property. An examination of the legal texts according to their historical development shows that the Algerian legislator has varied the mechanisms for exploiting tourist property. Sometimes it used the term “privilege” (privilege contract), sometimes “resale” (sale contract) and sometimes “leasing” (lease contract). Finally, under Law 23/17, it settled on the granting of privileges by mutual agreement, which can be converted into a transfer.

From our study of the legal texts that describe the evolution of the use of tourist property, we can deduce the following forms:

2.2.1 Contract of transfer (formerly sale)

Ordinance 06/11 of 30 August 2006 previously established the conditions and methods for granting privileges and transferring land belonging to the State’s private property intended for investment projects. This regulation was repealed following the issuance of Executive Decree 07/23 of 28 January 2007, which established the methods for reselling or granting privileges over land located in expansion zones and tourist areas⁴⁶. This decree referred us to the document of standard terms and conditions for the sale of land located in tourist development areas and tourist sites, which is attached to this decree.

From the examination of this model, we conclude that the parties to the sale contract are: the National Agency for Tourism Development and the buyer.

2.2.2 lease contract

According to Article 18 of the repealed Law 03/03 on Expansion Areas and Tourist Sites:⁴⁷

“The task of acquiring, preparing, promoting and reselling or leasing land to investors within expansion areas and tourist sites designated for the establishment of tourism

⁴⁵- Tichouch Fatima Zahra, Saada Fatima Zahra, "The Role of Property in Enhancing and Promoting Investment," Journal of Legal and Political Thought, Faculty of Law and Political Science, Amar Telidji University, Laghouat, Volume 1, Issue 1, Algeria, 2017, p. 121.

⁴⁶- Executive Decree 07/23, dated January 28, 2007, which defines the procedures for reselling land located within expansion areas and tourist sites or granting concessions on it, Official Gazette No. 08, dated January 31, 2007.

⁴⁷- Law 03/03 concerning expansion areas and tourist sites, dated February 17, 2003, Official Gazette No. 11, dated February 19, 2003.

facilities is assigned to the National Agency for Tourism Development”. Furthermore, Article 25 states:

“...the lands constituting the tourist property referred to in Article 20 of this Law may not be subject to privileges or resale, except for investments established in the tourism planning scheme...”.

In addition, Article 26 of the same law states:

“Land acquired under this law may not be resold or leased before its preparation has been completed”. The Algerian legislator used the same terminology in Article 20(2) of the repealed Law 03/01 on the sustainable development of tourism, which states:

“In this context, the Agency is responsible for the acquisition, preparation, promotion and resale or lease of land to investors within the expansion areas and tourist sites designated for the establishment of facilities”.

As mentioned above, Article 18 of the repealed Law 03/03 defined the lease contract, in which the National Agency for Tourism Development is the lessor and the “lessee” (the investor) is the lessee, in accordance with the provisions of the Civil Code regarding lease contracts⁴⁸.

The provisions of Ordinance 06-11, dated August 30, 2006, which set the conditions and methods for granting privileges and transferring lands belonging to the private properties of the state intended for investment projects, have been repealed by Executive Decree 07-23, dated January 28, 2007. This decree specifies the methods for reselling lands located within expansion areas and tourist sites or granting the right of privilege over them. It refers to the standard conditions document regarding the sale of lands within tourist expansion areas and tourist sites included in the annex of this decree⁴⁹.

2.2.3 Privilege Contract

We differentiate between two legal texts organizing the investment in tourist property: the previously effective Ordinance 08/04, which established a form of granting privileges by mutual agreement that was non-transferable, and the currently effective Law 23/17**,

⁴⁸- Article 1, Paragraph 2 of Executive Decree 98/70, which establishes the National Tourism Development Agency and defines its basic law, Official Gazette No. 11, dated March 1, 1998.

⁴⁹- Article 15 of the aforementioned Order 08/04.

which stipulates a form of granting tourist property in the form of privileges by mutual agreement that is transferable.

- Granting Privileges by Mutual Agreement Under Ordinance 08/04

Under Ordinance 08/04, the privilege was defined along with the conditions and procedures for granting privileges on lands belonging to the private properties of the state intended for investment projects. In the Finance Law of 2013⁵⁰, Article 34 amended the provisions of Article 5 of Ordinance 08/04, which was previously amended by Article 15 of Law 11-11, concerning the supplementary finance law of 2011, to read as follows:

“Privileges by mutual agreement are authorized by a decision of the governor based on the proposal of the committee tasked with determining the site, promoting investments, and regulating property on lands belonging to the private properties of the state, as well as the remaining real estate assets of public institutions and surplus assets of economic public institutions, as well as lands belonging to industrial and activity areas.”

This process also requires a proposal from the authority responsible for managing the new city regarding lands located within the boundaries of the new city, following the approval of the minister responsible for regional planning. Approval from the National Agency for Tourism Development is also necessary for lands within the tourist expansion area.

Based on our examination of these legal provisions, we conclude that the form of granting privileges under Ordinance 08/04, as amended, is a non-transferable privilege by mutual agreement through a decision from the governor.

It is worth noting that ****Ordinance 08/04****, which set the conditions and methods for granting privileges on lands belonging to the private properties of the state designated for investment projects, specified in Article 3 two methods for granting privileges: either through an open or restricted public auction or by mutual agreement. However, the Algerian legislator later abandoned the auction mechanism, adopting the term “privilege” in the Finance Law of 2020⁵¹. Article 118 of this law amended Article 5 of Ordinance 08/04, which established the conditions and methods for granting privileges on lands belonging to the private properties of the state designated for investment projects, as follows:

⁵⁰- Law No. 12/12, dated December 26, 2012, which includes the finance law for the year 2013, Official Gazette No. 72, dated December 30, 2012.

⁵¹- Law No. 19/14, dated December 11, 2019, which includes the finance law for the year 2020, Official Gazette No. 81, dated December 30, 2019.

“The privilege by mutual agreement is authorized by a decision from the governor, based on a proposal from the committee assisting in site determination, promoting investments, and regulating property on lands belonging to the private properties of the state, the remaining real estate assets of dissolved public institutions, surplus assets of economic public institutions, as well as lands belonging to industrial and activity areas.”

Furthermore, Article 37 of the Supplementary Finance Law of 2020⁵² (Law No. 20-07) also amended Article 5 of Ordinance 08/04, confirming the procedures for granting privileges.

-From our analysis of the aforementioned texts, we deduce the following conclusions:

1. The exploitation of tourist property, consisting of public or private national properties, was previously based on a single model: the privilege, as established by the aforementioned legal texts.
2. The Algerian legislator has abandoned the old forms of exploiting tourist property, which have faded with the repeal of Ordinance 06/11, which outlined the conditions for granting privileges and transferring lands belonging to the private properties of the state for investment projects. Under Article 15 of Ordinance 08/04, the only form of exploiting tourist property was the non-transferable privilege by mutual agreement. However, this was revised under Law 23/17, which repealed Ordinance 08/04. The form of granting tourist property is now a transferable privilege by mutual agreement, and tourist property has become part of the economic property under Law 23/17.

-Granting Transferable Privileges by Mutual Agreement Under Law 23/17:

Tourist property is now included as part of the economic property subject to a transferable privilege agreement under Law 23/17, which specifies the conditions and methods for granting economic property belonging to the private properties of the state designated for investment projects. Article 2 of Law 32/17 states:

“This law applies to economic property belonging to the private properties of the state, which consists of:

- Prepared lands within industrial and activity areas.
- Prepared lands located within the boundaries of new cities.

⁵²- Law No. 20-07, dated June 4, 2020, which includes the supplementary finance law for the year 2020, Official Gazette No. 33, dated June 4, 2020.

- Prepared lands belonging to tourist expansion areas and tourist sites.
- Prepared lands belonging to technological parks.
- Remaining real estate assets of dissolved public institutions.
- Surplus real estate assets of economic public institutions.
- Lands designated for commercial real estate promotion.
- Other prepared lands belonging to the private properties of the state.”

The following types of land are excluded from the application of this law:

- Agricultural land or land designated for agricultural use belonging to the private properties of the state.
- Lands located within mining areas.
- Lands within areas for hydrocarbon exploration and exploitation, as well as areas protecting electrical and gas facilities.
- Lands belonging to the private properties of the state designated for aquaculture activity zones.
- Lands located within the vicinity of archaeological sites and historical monuments.
- Lands designated for real estate promotion benefiting from state assistance.
- Lands belonging to the private properties of the state designated for public investment projects.

From our analysis of these legal texts, we conclude that the Algerian legislator has established that the economic property, which serves as the subject of the privilege contract, includes industrial, urban, and tourist properties, which is the focus of our study. Prepared lands belonging to tourist expansion areas and tourist sites are now included within the portfolio of economic property and its components, serving as the basis for a transferable privilege agreement⁵³.

⁵³- Article 3 of Law 23/17.

We conclude that the form of granting under the legal framework of Law 23/17, which repeals Ordinance 08/04, is a transferable privilege by mutual agreement.

Article 14 of Law 23/17 clarifies the mechanism for granting economic property in the form of a transferable privilege by mutual agreement, stating:

“Economic property is granted by the Algerian Agency for Investment Promotion, delegated by the state, through a one-stop shop for the benefit of investors in the form of a transferable privilege by mutual agreement, in accordance with a standard conditions document determined by regulation, which includes general administrative provisions and specific provisions that take into account strategic orientations and their impact on economic and social development.”

The Algerian Agency for Investment Promotion is considered the granting authority, as specified in paragraph 2 of the same article:

“The transferable privilege is granted by a decision issued by the Algerian Agency for Investment Promotion after the expiration of the appeal period provided for in the investment law.”

The transferable privilege is granted for a period of thirty-three (33) years, renewable for investment projects, except for lands designated for commercial real estate promotion, which have their own conditions and methods for granting privileges as determined by legislation. Reference is made to the Finance Law of 2024 based on the provisions of Article 82 and subsequent articles.

The timelines for the execution of the investment project for which the transferable privilege has been granted must comply with those specified in the investment legislation.

• **Conclusion**

The methods for exploiting tourist property have varied according to the state’s investment policy at each historical legal juncture, aiming to enhance this vital sector since the adoption of an open economic approach. In this article, we sought to highlight the evolution of the legal system for investing in tourist property under the latest legal framework, Law 23/17, and clarify the issues surrounding the fate of beneficiaries of privilege contracts prior to the enactment of this law.

Based on our analysis, the following key results can be noted:

- We appreciate the inclusion of tourist property within the components of economic property.
- We conclude that the Algerian legislator aspires to regulate the methods of exploiting tourist property to boost the national economy and move away from the dependency on hydrocarbon revenues. This organization cannot be achieved without preparing the property to attract investment projects, a task assigned to the National Agency for Tourism Property.
- We deduce that the Algerian legislator has abandoned old forms of exploiting tourist property by repealing Ordinance 08/04 which defined the conditions and methods for granting privileges on lands belonging to the private properties of the state intended for investment projects.
- The method of granting investment in tourist property under the amended Ordinance 08/04 prior to the enactment of Law 23/17 was a non-transferable privilege by mutual agreement, with the granting authority being the governor.
- The repeal of Ordinance 08/04 under Law 23/17 established that the sole method for exploiting tourist property is now a transferable privilege by mutual agreement.
- The granting authority under the new legal framework of law 23/17 is the Algerian Agency for Investment Promotion.
- The repeal of Law 03/01 concerning sustainable tourism development is confirmed under Article 26 of law 23/17
- The repeal of Law 03/03 related to expansion areas and tourist sites is also confirmed under Article 26 of law 23/17
- There is an emphasis on digitization in managing requests for granting economic property to mitigate corruption risks.
- The digital platform for investors will be utilized to process requests for granting privileges.
- Beneficiaries under privilege contracts prior to the enactment of Law 23/17 will have the opportunity to convert their contracts into transferable privileges, provided they complete the investment project, obtain a compliance certificate, and lift any encumbrances.

Recommendations:

After reviewing the key findings of our research, we present several recommendations that we hope will contribute to enriching this important topic:

- We hope that the regulations governing investment in Algeria will stabilize to achieve legal security, thereby encouraging the attraction of investors and promoting economic development.
- We appreciate the steps taken by the Algerian legislator towards digitizing the investment sector, which helps to overcome traditional bureaucratic obstacles.
- We hope that our tourism sector will align with the experiences of sister countries in the field of investing in tourist property from a practical standpoint, especially following the modernization of the legal framework governing tourist property. Algeria, with its strategic location and rich natural and cultural heritage, has the potential to achieve the legally established goals.

- **Bibliography:**

- **Legal Texts:**

- Constitution
- Presidential Decree No. 20/442, dated December 30, 2020, regarding the issuance of the constitutional amendment approved in the referendum of November 1, 2020, Official Gazette No. 82, dated December 31, 2020.

- **Laws:**

- Ordinance No. 66/62, dated March 26, 1966, concerning tourist areas and sites, Official Gazette No. 28, 3rd year, dated April 8, 1966.
- Law No. 90/29, dated December 1, 1990, on urban planning and development, Official Gazette No. 52, dated December 2, 1990.
- Law No. 90/30, dated December 1, 1990, concerning national property, Official Gazette No. 52, dated December 2, 1990, amended by Law No. 08/04, Official Gazette No. 44, dated August 3, 2008.
- Law No. 98/04, dated June 15, 1998, on the protection of cultural heritage, Official Gazette No. 44, dated June 17, 1998.
- Law No. 01/20, dated December 12, 2001, on regional planning and sustainable development, Official Gazette No. 77, dated December 15, 2001.
- Law No. 03/02, establishing general rules for the use and exploitation of beaches, dated February 17, 2003, Official Gazette No. 11, dated February 19, 2003.
- Law No. 03/10, dated July 19, 2003, on environmental protection within the framework of sustainable development, Official Gazette No. 43, dated July 20, 2003.

- Law No. 03/03, concerning expansion areas and tourist sites, dated February 17, 2003, Official Gazette No. 11, dated February 19, 2003.
- Law No. 03/01, concerning sustainable tourism development, dated February 17, 2003, Official Gazette No. 11, dated February 19, 2003.
- Ordinance No. 08/04, dated September 1, 2008, establishing conditions and methods for granting privileges on lands belonging to the private properties of the state intended for investment projects, Official Gazette No. 49, dated September 3, 2008.
- Law No. 11/02, dated February 21, 2011, concerning protected areas within the framework of sustainable development, Official Gazette No. 13, dated February 28, 2011.
- Law No. 12/12, dated December 26, 2012, concerning the Finance Law for 2013, Official Gazette No. 72, dated September 30, 2012.
- Law No. 19/14, dated December 11, 2019, concerning the Finance Law for 2020, Official Gazette No. 81, dated December 30, 2019.
- Law No. 20-07, dated June 4, 2020, concerning the supplementary Finance Law for 2020, Official Gazette No. 33, dated June 4, 2020.
- Law No. 22/18, dated July 24, 2022, concerning investment, Official Gazette No. 50, dated July 28, 2022.
- Law No. 23-17, dated November 15, 2023, establishing the conditions and methods for granting economic property belonging to the private properties of the state intended for investment projects, Official Gazette No. 73.

Executive Decrees

- Executive Decree No. 07/23, dated January 28, 2007, specifying the procedures for the resale of lands located within expansion areas and tourist sites or granting the right of privilege over them, Official Gazette No. 08, dated January 31, 2007.
- Executive Decree No. 98/70, establishing the National Tourism Development Agency and defining its basic law, Official Gazette No. 11, dated March 1, 1998.
- Executive Decree No. 23-486, dated December 28, 2023, defining the components of economic property belonging to the private properties of the state intended for investment projects and eligible for granting privileges, Official Gazette No. 85, dated December 30, 2023.

Articles:

- SaibJamai, Heibaoui Abdel Rahman, "The Reality of Tourism Investment in the Aurès Region – A Model of Batna," Journal of Legal and Economic Studies, Vol. 20, No. 20, University of Tamanghasset, Algeria, 2019.

- Lakhzari Abdel Haq, ZghlamiHasiba, “The Legal Framework of Tourist Property in Algerian Legislation,” Journal of Rights and Political Sciences, University of Abbas Laghrour, Khenchela, No. 11, Algeria, 2019.
- LahakIssa, Dah Abdel Malik, “Legislative Incentives for Investment in Tourist Property According to Algerian Law,” Journal of Urban Planning and Construction, Vol. 3, No. 1, IbnKhalidun University, Tiaret, Algeria.
- MansouriAzine, “The Reality and Prospects of Investment Policy in Algeria,” Journal of North African Economies, University of Hassiba Ben Bouali, Chlef, No. 2, 2005, Algeria.
- Tichouch Fatima Zahra, Saada Fatima Zahra, “The Role of Property in the Development and Promotion of Investment,” Journal of Legal and Political Thought, Faculty of Law and Political Science, Amar Telidji University, Laghouat, Vol. 1, No. 1, Algeria, 2017.
- Rima Laib, “Mechanisms for Investing in Tourist Property in Algerian Legislation,” Studies and Research Journal, University of ZianeAhour, Djelfa, Vol. 13, No. 4, July 2021.

Doctoral Thesis:

- KhawadjiaSamiaHanan, “The Legal System of Industrial Property in Algeria,” Doctoral Thesis, Constantine 1 University, Algeria, 2014/2015.

Educational Publications:

- Rima Laib, “The Legal System of Investment Property,” Lectures delivered to Master’s students in Business Law, Faculty of Law and Political Science, 8 Mai 1945 University, Guelma, Algeria, Academic Year 2020/2021.