Mechanisms for Providing Real Estate Assets Designated for Investment In accordance with Law No. 23-17 and Its Implementing Decrees

Laloui Mohammed[1]
laloui@cuniv-naama.dz
Laloui Djamila[2]
Fatna_hadil@yahoo.fr

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Abstract
This research paper, entitled "Mechanisms for Providing Real Estate Assets Designated for Investment in Accordance with Law No. 23-17 and Its Implementing Decrees," addresses an important issue, namely the mechanisms for acquiring economic real estate designated for investment and securing its ownership on behalf of the State. It examines the mechanism for constituting and clearing economic real estate originally belonging to the private domain of the State. Secondly, it addresses the acquisition of privately owned real estate assets for the benefit of the State and their integration into the investment portfolio, with the aim of ensuring an adequate supply of real estate, given that real estate assets originally belonging to the State and designated for investment may not always be available. This is a subject worthy of research and study, given the considerable importance of real estate in the investment sector.
Keywords: Economic real estate, real estate portfolio, clearing, investment.

Introduction

The economic openness witnessed globally has compelled the Algerian State to consider creating new strategies enabling it to overcome the dominance of the hydrocarbons sector over the national economy and achieve a genuine economic transformation. In order to meet this challenge, investment has emerged as a fundamental pillar of sustainable development and an economic alternative, prompting the public authorities to mobilize efforts to promote it in various fields, whether industrial, tourism-related, urban, or agricultural. This has necessitated the establishment of new mechanisms for improving the business climate through the enactment of a legal framework capable of keeping pace with current aspirations and challenges.

In this regard, the State launched major initiatives to develop a legislative framework responsive to the aspirations of economic and social development. This began with the 2020 Constitution (1), which established the broad principles of investment freedom. This orientation was reinforced by the enactment of the new Investment Law No. 22-18 (2), which constitutes a qualitative leap toward enhancing economic efficiency and attracting national and foreign capital through the benefits and tax and customs exemptions it provides, in addition to simplifying administrative procedures.

As a culmination of these reforms, Economic Real Estate Law No. 23-17 (3) was enacted to regulate the conditions and procedures for granting economic real estate belonging to the

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private domain of the State and designated for the implementation of investment projects. It was supported by implementing texts, particularly Executive Decree No. 23-486 (4), which determines the components of such real estate, and Executive Decree No. 23-487 (5), which determines the conditions and procedures for granting a concession convertible into a transfer of ownership. This newly established framework has sought to establish the principles of transparency and equality by adopting a mechanism for digitizing procedures for applying for investment-designated real estate through the "Investor's Digital Platform" (6), creating an information bank for available real estate, and confining the authority to grant and monitor such real estate to the Algerian Investment Promotion Agency (7).

With reference to the concept of economic real estate, the Algerian legislator defined it as any real estate asset belonging to the private domain of the State, or any privately owned real estate asset capable of accommodating an investment project (8). The legislator restricted it to real estate assets belonging to the private domain of the State that are capable of accommodating investment projects, and classified them into assets of an industrial nature, such as activity zones and industrial zones; those located within the boundaries of new cities; technological parks; as well as real estate assets located in tourism expansion zones and tourist sites, residual assets and surplus real estate belonging to public economic enterprises, in addition to urban real estate assets. It should be noted that the period preceding the enactment of this law did not witness a unified regulation of this concept. Rather, the matter was limited to scattered designations contained in various legal texts that suggested its existence, while the major categories of real estate ownership remained governed by the general rules established under Land Orientation Law No. 90-25 (9).

The importance of this study is clearly highlighted through the new legislative approach adopted by the legislator in Law No. 23-17, since the effectiveness of any investment policy is directly linked to the availability and clearing of real estate assets. Given that economic real estate constitutes the principal driver of projects, it has been practically established that the main obstacle facing investors in Algeria lies in the issue of providing, constituting, and managing the investment real estate portfolio.

Since economic real estate designated for investment constitutes one of the pivotal factors in the development of the national economy, it has become necessary to address the problem underlying this study, namely how to effectively provide and constitute the investment real estate portfolio. This will be achieved by examining the legal and regulatory mechanisms capable of constituting the real estate portfolio designated for investment under Law No. 23-17 and its implementing texts, particularly since the efforts undertaken to improve the investment climate have demonstrated in practice that the principal obstacle to investment in Algeria is the problem of providing economic real estate designated for investment.

In order to answer this research problem, the descriptive method was adopted to define the concepts and establish the terminology related to the subject of the study, alongside the analytical method through the examination and analysis of the relevant legal and regulatory texts.

Accordingly, the research plan was divided into two main sections to address this subject:

- First Section: The mechanism for constituting and clearing economic real estate originally belonging to the private domain of the State.

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- Second Section: The mechanism for acquiring privately owned real estate assets for the benefit of the State and integrating them into the investment portfolio.

First Section: The Mechanism for Constituting and Clearing Economic Real Estate Originally Belonging to the Private Domain of the State

The Algerian legislator regulated the constitution of economic real estate belonging to the private domain of the State through Executive Decree No. 23-486, particularly through its first chapter, in which it established a number of mechanisms for providing suitable real estate assets for investment. For this purpose, the Algerian Investment Promotion Agency, which has been entrusted with these operations, directs economic real estate belonging to the private domain of the State. It inventories and clears such real estate in order to integrate it into the State's real estate portfolio, with the aim of establishing an adequate supply of real estate.

Accordingly, in this section, we will examine inventorying as a mechanism for providing economic real estate (First), followed by the recovery of real estate assets belonging to public economic enterprises as a second mechanism for providing economic real estate (Second), and the recovery of economic real estate granted to investors as a third mechanism for providing investment real estate assets (Third).

First: Inventorying as a Mechanism for Providing Economic Real Estate

The term inventory derives from the verb "jarda" (جَرَد), which linguistically means counting and recording things, or peeling an object and removing what is on it (10). Terminologically, it refers to the process of listing goods or property after inspecting and recording them in the designated inventory register. Inventorying is used in institutions and companies to determine their contents, identify categories of imported goods or manufactured products, or determine what remains of them in warehouses (11).

The inventory of real estate property in the field of economic real estate is considered one of the first legal and administrative steps in constituting investment real estate assets. It is the technical and administrative process carried out by the competent authorities to document and register real estate property (12). It is also an administrative process involving the descriptive and evaluative registration of the various real estate properties held by the State or local authorities, or those held by various public institutions and allocated to the performance of a specific function (13).

Inventorying thus serves to survey all real estate assets belonging to the private domain of the State or to local authorities. Its purpose is to establish an accurate and reliable real estate database that can be used to implement investment programs. Executive Decree No. 23-486 stipulates that the Algerian Investment Promotion Agency, through its one-stop shops in the various provinces of the country, must establish a database for each province based on the inventory carried out by the Agency and transmitted to it by the Directorate of State Property (14).

The aforementioned Executive Decree stipulates that the final inventory report must include a precise geographical and technical identification and must not remain merely theoretical. Thus, the inventory must indicate the number of available parcels, the area of each parcel, the cadastral survey references where the area has been surveyed, and the legal status of the real estate property with regard to land-use and urban-planning instruments (15). It is transmitted by the three competent agencies (16)—the National Agency for Industrial Real Estate, the

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National Agency for Tourism Real Estate, and the National Agency for Urban Real Estate—each within its respective area of competence, in the form of a final report, to the territorially competent State Property Services (17). The latter prepares a list of the available real estate properties that are economically exploitable and forwards it to the Algerian Investment Promotion Agency after verifying their legal status (18).

Accordingly, inventorying constitutes an essential means of ensuring the availability of investment real estate assets. It is carried out periodically within sectoral strategies or as part of operations for developing economic real estate within development plans, in order to prevent the granting of "fictitious" real estate assets that lack the minimum requirements for economic activity. It also serves as a means of feeding the Investor's Digital Platform established by the Algerian Investment Promotion Agency.

Second: Recovery of Real Estate Assets Belonging to Public Economic Enterprises

The real estate assets belonging to public economic enterprises constitute the most important real estate base on which investment activities can be carried out. Their importance increases when it is established that the real estate assets to be recovered had previously been used for investment activities by these enterprises, which makes them easier to exploit, since they are already developed and equipped with the various networks and roads necessary for receiving investment projects.

Accordingly, under this heading, we will address two issues. The first concerns the clearing of economic real estate belonging to dissolved public economic enterprises, while the second relates to the clearing of surplus economic real estate belonging to public economic enterprises.

1. Recovery of Economic Real Estate Belonging to Dissolved Public Economic Enterprises

Upon referring to the Economic Real Estate Law and its implementing decrees, it becomes clear that the Algerian legislator has made the assets of dissolved public economic enterprises a real estate base forming part of the State's private real estate domain. It has designated them as "remaining real estate assets" (19). These are defined as real estate or movable assets that were allocated to the activity of an enterprise that was legally dissolved and that remained, following the liquidation procedures, without a functional allocation or actual use (20).

The legislator provided for their integration into the private domain of the State after they have been inventoried by the liquidators of the dissolved public enterprises, starting from the publication of Executive Decree No. 23-486 in the Official Gazette, and after the inventory list has been sent to the territorially competent Director of State Property. These assets must be handed over pursuant to a handover report prepared jointly by the liquidator of the enterprise and the relevant Director of State Property (21).

The management of the real estate assets belonging to dissolved public economic enterprises is also entrusted to the Algerian Investment Promotion Agency on behalf of the State (22), while the authority to develop the land and real estate assets is returned to the national agencies established for this purpose, namely the National Agency for Industrial Real Estate, the National Agency for Tourism Real Estate, and the National Agency for Urban Real Estate (23).

2. Recovery of Surplus Economic Real Estate Belonging to Public Economic Enterprises

Surplus economic real estate assets refer to assets exceeding the needs and requirements of public economic enterprises. They also include real estate or movable assets owned by a public economic enterprise that exceed its actual needs for the authorized economic activity, or that

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are no longer used within the framework of that activity, while the enterprise remains legally established and continues to perform its functions (24).

The Algerian legislator provided for them under Law No. 23-17 (25) and regulated their procedures under Executive Decree No. 23-486. The latter defines them as real estate properties that are not necessary for the activity of the public economic enterprise (26). It is noteworthy that their mention is illustrative rather than exhaustive, which implies the possibility of including other forms, since each economic enterprise differs in the nature of its surplus. For some enterprises, the real estate surplus may consist of unused warehouses or premises, while for others it may consist of administrative buildings. Therefore, the legislator adopted a more flexible approach by referring to real estate assets rather than merely to land.

What justifies their illustrative rather than exhaustive character is the expression "in particular" used in the first paragraph of Article 5 of the same Executive Decree, as this expression, in legal interpretation, consistently indicates that the enumeration is illustrative and not exhaustive.

Accordingly, and in order to provide economic real estate from the surplus of public economic enterprises, Law No. 23-17 provides for the establishment of a committee at the level of each province, whose task is to identify surplus assets. This committee meets at the initiative of its chairperson whenever necessary until the completion of its work plan (27). It determines whether an asset constitutes a surplus on the basis of the criteria referred to in Article 5 of Executive Decree No. 23-486 and whether it is unnecessary for the activity of the economic enterprise (28).

The committee may seek the assistance of any person it deems appropriate, particularly practitioners in the economic and real estate fields (29). It also prepares an inventory of the properties held by the enterprise by way of usufruct and/or ownership and submits it to the minister responsible for industry, who, in turn, forwards it to the State Holdings Council for it to make the decision itself (30).

As for the classification of the assets as surplus, this is determined by means of a resolution issued by the State Holdings Council (31). The assets are then incorporated, free of charge, into the private domain of the State, except in exceptional cases decided by the Council, provided that the Algerian Investment Promotion Agency is notified by the Secretariat of the State Holdings Council and provided with a copy of the resolution (32).

Within this framework, the State Holdings Council formalizes the recovery through a handover report between the representative of the enterprise and the territorially competent Director of State Property with regard to real estate properties held by the public economic enterprise by way of usufruct (33). As for real estate assets owned by the public enterprise or by the body responsible for developing the industrial zone, recovery is carried out pursuant to a deed transferring ownership to the State, prepared by the State Property Services (34). Finally, the State Property Service registers the recovered real estate assets in the register of properties belonging to the private domain of the State (35).

Third: Recovery of Economic Real Estate Granted to Investors

The process of withdrawing and clearing economic real estate granted to investors within the framework of a concession convertible into a transfer of ownership, or even within the framework of the provisions applicable prior to the enactment of Law No. 23-17 and its implementing decrees, is, as a general rule, linked to the requirement that every investor refrain

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from changing the purpose of the project or using all or part of the real estate allocated to the project for purposes other than those specified in the specifications, except with authorization from the Algerian Investment Promotion Agency.

The investor must also comply with the completion deadlines, which are set at a maximum of 24 months, and must commence the project within the deadlines specified in the specifications, namely six months from the date of obtaining the building permit, failing which the contract shall be terminated (36). The beneficiary must also comply with the strategic orientations and their impact on economic and social development (37).

Upon referring to the specifications annexed to the implementing decrees regulating economic real estate and the procedures for granting it, it becomes clear that they likewise establish the mandatory requirement that investment projects be implemented in compliance with urban-planning rules and architectural and environmental standards arising from the legislative and regulatory provisions in force and applicable to the area concerned.

Accordingly, the concession contract under which the investment project was granted may be subject to unilateral termination at the initiative of the Algerian Investment Promotion Agency if the investor benefiting from the concession fails to comply with the prescribed legislative and regulatory provisions. This applies in the event of a change in the purpose of the real estate property or any total or partial use thereof for purposes other than those stipulated in the specifications, without the prior approval of the Agency, as well as in the event of introducing any activity that has not been approved or authorized (38).

Accordingly, the economic real estate property is withdrawn from the beneficiary of the investment project whenever the contractual provisions are not respected, and it is reintegrated into the private domain of the State. The Algerian Investment Promotion Agency has been entrusted with the task of clearing and recovering any real estate property whose purpose has been changed or which has been wholly or partially used for a purpose other than that for which it was granted. The Agency then incorporates it into the State's real estate portfolio (39). This constitutes another means by which the State can reacquire economic real estate and provide investment real estate assets from which other investors may benefit.

However, the termination of the concession contract does not take place abruptly. The beneficiary must first be served with two formal notices by the Algerian Investment Promotion Agency through its one-stop shop. If the situation remains unchanged, the concession contract is then unilaterally terminated by the Agency. The decree specifies in detail the procedure and the period between the two formal notices. The notice is served through a judicial officer, and the second notice must be issued two months after the date on which the first notice was served. Following the issuance of the administrative decision terminating the concession, the territorially competent State Property Directorate prepares the deed terminating the concession and restoring the real estate property to the State's inventory of real estate assets (40).

Second Section:

The Mechanism for Acquiring Privately Owned Real Estate Assets for the Benefit of the State

Through Executive Decree No. 23-486, which determines the components of economic real estate belonging to the private domain of the State and designated for the implementation of investment projects and eligible for concession, the Algerian legislator regulated the acquisition and provision of real estate assets designated for investment when such assets are not available

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to the State. This was provided for in Chapter Two, entitled "Conditions and Procedures for the Acquisition by the Algerian Investment Promotion Agency of Privately Owned Economic Real Estate," and Chapter Three, entitled "Conditions and Procedures for the Exercise of the Right of Pre-emption by the Algerian Investment Promotion Agency."

Accordingly, we will first address purchase by mutual consent as a mechanism for acquiring privately owned real estate assets for the benefit of the State (First), and then examine administrative pre-emption as another mechanism for providing privately owned real estate assets for the benefit of the State (Second).

First: Purchase by Mutual Consent as a Mechanism for Acquiring Privately Owned Real Estate Assets for the Benefit of the State

Through Executive Decree No. 23-486, which determines the components of economic real estate belonging to the private domain of the State, designated for the implementation of investment projects and eligible for concession, the Algerian legislator regulated purchase by mutual consent as a means of acquiring and providing real estate assets designated for investment. This is addressed in Chapter Two, entitled "Conditions and Procedures for the Acquisition by the Algerian Investment Promotion Agency of Privately Owned Economic Real Estate."

Accordingly, under this heading, we will address the legal basis of purchase by mutual consent as a mechanism for providing investment real estate assets, and then examine the procedures for such acquisition.

1. Legal Basis of Purchase by Mutual Consent as a Mechanism for Providing Investment Real Estate Assets

According to the Algerian legislator, economic real estate designated for investment comprises all land allocated for this purpose. It therefore includes privately owned real estate capable of accommodating development-oriented investment projects, regardless of their classification, whether industrial, tourism-related, or even urban projects, except for those excluded under Article 3 of Law No. 23-17.

In this context, the legislator provided under Article 8 of Law No. 23-17 that: "The Algerian Investment Promotion Agency, through its one-stop shop and by delegation from the State, shall be responsible for the following: acquiring, on behalf of the State, any privately owned real estate capable of accommodating an investment project."

Article 13 of Executive Decree No. 23-486 likewise provides that: "In the event that economic real estate belonging to the private domain of the State is unavailable, the Algerian Investment Promotion Agency may, pursuant to the provisions of Article 8 of Law No. 23-17 of 1 Jumada al-Awwal 1445 AH, corresponding to November 15, 2023, referred to above, acquire privately owned economic real estate for the benefit of the State."

Based on the two aforementioned provisions, it is clear that privately owned property may be relied upon to constitute an economic real estate portfolio, provided that the State, local authorities, or public economic enterprises do not have economic real estate available. This is understood from the legislator's wording, "in the event that economic real estate belonging to the private domain of the State is unavailable" (41).

2. Procedures for the Purchase by Mutual Consent of Real Estate Assets Designated for Investment

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An examination of the provisions of Law No. 23-17 relating to economic real estate and its implementing decrees does not reveal any explicit provision by the Algerian legislator establishing the procedures for the amicable acquisition of real estate assets designated for investment. However, these procedures can be inferred through an in-depth examination of Executive Decree No. 23-486.

Accordingly, pursuant to the aforementioned Executive Decree, acquisition may take place through purchase, whereby a sale contract (42) is concluded between the Algerian Investment Promotion Agency, on the one hand, and the owner of the real estate, on the other, in exchange for a price equivalent to the market value of the real estate as determined by the territorially competent State Property Service (43). The real estate is then incorporated into the private domain of the State (44). The legislator has required that the necessary appropriations for implementing the acquisition operation be available. This condition places the State on an equal footing with private parties in terms of equal opportunities and equality in obtaining economic real estate, since the State deals with them as an ordinary legal person rather than as a sovereign authority.

After the administrative sale contract has been drawn up by the territorially competent State Property Directorate (45), the registration procedures are immediately carried out in accordance with the provisions of the Registration Code (46), before the Registration and Stamp Service of the territorially competent Provincial Directorate of Taxes, with payment of the real estate registration fees.

Following registration with the tax authorities, the stage of land registration publicity takes place in accordance with the provisions of Law No. 74-75, as amended and supplemented, relating to land registration, and its implementing decrees (47). Article 16 of Law No. 74-75 provides that all voluntary acts and judicial decisions capable of creating, transferring, modifying, or terminating a real right in real estate must be subject to registration publicity in order to produce their effects between the parties and against third parties. The Algerian Civil Code likewise provides that: “Ownership and other real rights in real estate, whether between the contracting parties or with respect to third parties, shall not be transferred unless the procedures prescribed by law are complied with, particularly the laws governing the land registration service” (48).

Second: Administrative Pre-emption as a Mechanism for Providing Privately Owned Real Estate Assets for the Benefit of the State

Through Executive Decree No. 23-486, which determines the components of economic real estate belonging to the private domain of the State, designated for the implementation of investment projects and eligible for concession, the Algerian legislator established administrative pre-emption as a mechanism for acquiring and providing real estate assets designated for investment. This is addressed in Chapter Three, entitled “Conditions and Procedures for the Exercise of the Right of Pre-emption by the Algerian Investment Promotion Agency.”

Accordingly, under this heading, we will explain the meaning of administrative pre-emption, its legal basis as a mechanism for providing investment real estate assets, the legal recognition of the Algerian Investment Promotion Agency’s authority to exercise the right of pre-emption, and finally the procedures for exercising this right.

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1. Meaning of Administrative Pre-emption

Linguistically, the term pre-emption (shufʿa) derives from *al-shafʿ*, meaning joining and increasing after making a request. Thus, *shafaʿa al-shay' shafʿan* means to join something similar to it. Pre-emption is the neighbor's right to acquire real estate compulsorily from its purchaser under the conditions established by law. Hence, the *pre-emptor* is the person who possesses the right of pre-emption and takes the property (49).

Pre-emption means joining one thing to its equivalent. It is the right of a person to acquire a share of real estate from his co-owner, with ownership transferred to him compulsorily for consideration. It has also been stated: "Pre-emption applies to property that has not been divided; once the boundaries have been established and the roads have been allocated, there is no pre-emption." In this regard, pre-emption is said to apply "among the heads of the parties," meaning that when a house is jointly owned by a group of persons with different shares and one of them sells his share, the purchaser's right vis-à-vis the co-owners is considered according to the persons themselves rather than according to their respective shares (50).

Terminologically, pre-emption is defined as: "the entitlement of a co-owner to take the property sold by his co-owner for its price, or the acquisition by a co-owner of a share by compulsory purchase." This concerns taking possession of the property rather than the nature of the right itself, because the property is offered to him and to its opposite, namely relinquishing it; and something offered for two contradictory alternatives cannot itself be identical to either one, otherwise the two contradictions would be combined (51).

The Algerian legislator defined pre-emption through the Algerian Civil Code as follows: "Pre-emption is a license permitting the substitution of the pre-emptor for the purchaser in the sale of real estate under the circumstances and conditions provided for by law" (52).

The legislator further provided that: "The State and local authorities shall acquire the right of pre-emption in order to meet requirements of public interest and public utility, irrespective of any potential recourse to expropriation. The aforementioned right of pre-emption shall be exercised by specified public services and bodies determined by regulation, and this right shall be exercised in the order preceding that established in Article 795 of Ordinance No. 75/58 of September 26, 1975, referred to above" (53).

2. Legal Basis of Pre-emption as a Mechanism for Providing Privately Owned Real Estate Assets for the Benefit of the State

Upon examining Executive Decree No. 23-486, it becomes clear that the Algerian legislator adopted a second mechanism, namely pre-emption, for the purpose of acquiring real estate assets designated for investment when such assets are unavailable to the State. In this manner, privately owned real estate has been made a supporting mechanism for development-oriented investment projects.

In this context, Article 17 of Executive Decree No. 23-486 provides that the Algerian Investment Promotion Agency may exercise, in the name of the State, the right of pre-emption in accordance with the legislation in force governing real estate property, whether concerning real estate relinquished by the beneficiary of the economic real estate or any other real estate property owned by a natural or legal person subject to private law, provided that such property is capable of accommodating an investment project located within developed areas and zones.

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With reference to Law No. 23-17, it provides for the acquisition of economic real estate by the Algerian Investment Promotion Agency, but it does not specify the legal mechanism to be used for this purpose. It provides that: "The Algerian Investment Promotion Agency, through its one-stop shop and by delegation from the State, shall be responsible for the following: acquiring, on behalf of the State, any privately owned real estate capable of accommodating an investment project" (54).

However, when read in conjunction with Article 17 of Executive Decree No. 23-486, it can be understood that the legislator established pre-emption as one of the means of such acquisition, unlike amicable acquisition, which is expressly indicated through the term "acquisition," implying acquisition for consideration, and which cannot take place without consideration, as in the case of a gift, for example, or through leasing. This interpretation is further supported by the provision stating that "the necessary appropriations for implementing the operation must be available" (55).

Accordingly, the Algerian Investment Promotion Agency legally exercises the right of pre-emption, but it does not exercise this right for itself. It therefore does not incorporate the real estate into its own financial assets. Rather, it is considered to have been delegated by the State to exercise the right of pre-emption, with ownership of the property subject to pre-emption ultimately being included in the list of properties belonging to the private domain of the State.

3. Legal Recognition of the Algerian Investment Promotion Agency's Authority to Exercise the Right of Pre-emption

It is clear that Executive Decree No. 23-486 authorizes the Algerian Investment Promotion Agency to exercise the right of pre-emption on behalf of the State, providing that: "The Algerian Investment Promotion Agency may exercise, in the name of the State, the right of pre-emption" (56). We consider that this regulatory provision clarifies a general concept established by the legislator in Article 8, fifth indent, of Law No. 23-17.

Upon carefully examining the aforementioned decree, particularly Articles 17 to 21, and in conjunction with the provisions of the Civil Code concerning the order of persons entitled to exercise the right of pre-emption (57), as well as the Land Orientation Law (58), it becomes clear that, although the legislator has made the Agency the sole and exclusive body responsible for acquiring economic real estate on behalf of the State, it has not, on the other hand, specified its rank as the representative of the State in exercising pre-emption.

It would therefore have been preferable for the legislator to expressly establish its priority so that the Agency would not have to compete with another pre-emptor in the ranking of entitlement to exercise the right of pre-emption. This is particularly important given that real estate has always constituted a source of security and stability in individuals' lives. Furthermore, establishing the Algerian Investment Promotion Agency's rank and granting it priority would provide legal security for the Agency, particularly since the legislator seeks to ensure the success of investment operations. From another perspective, this would constitute an important safeguard for protecting and providing investment real estate assets.

4. Procedures for the Exercise of the Right of Pre-emption by the Algerian Investment Promotion Agency

Upon referring to Executive Decree No. 23-486, which determines the components of economic real estate belonging to the private domain of the State, designated for the implementation of

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investment projects and eligible for concession, it becomes clear that the decree sets out certain procedures concerning the exercise of the right of pre-emption by the Agency, despite the absence of any referral to this matter in Law No. 23-17. Furthermore, Article 17 of the aforementioned decree refers to the application of the provisions of the legislation in force governing the exercise of the right of pre-emption. This is understood from its wording: "The Algerian Investment Promotion Agency may exercise, in the name of the State, the right of pre-emption in accordance with the legislation in force..."

Accordingly, the legislation in force may include the Civil Code, particularly Articles 794 to 806. However, these provisions concern the exercise of civil pre-emption, whereas the matter here concerns administrative pre-emption, which constitutes one of the prerogatives of public authority exercised by the State, the province, or the municipality for the purpose of establishing a public interest. It may also include the provisions of Article 38 bis 3 of the Tax Procedures Code, which aims to eliminate fraudulent operations relating to the collection of real estate duties arising from transfers of ownership for consideration (59). It may also be understood within the framework of the provisions of the Land Orientation Law, which provides that the State, the province, and the municipality have the right to exercise pre-emption for the purpose of meeting requirements of public interest and public utility (60).

Accordingly, by linking the aforementioned legal provisions with Executive Decree No. 23-486, it becomes clear that the right of administrative pre-emption is exercised by the Algerian Investment Promotion Agency in its capacity as representative of the State and in accordance with the procedures established under these laws. However, the exercise of this right must take precedence over the order established in Article 795 of the Civil Code, as previously explained in the preceding section.

Thus, in order for the Algerian Investment Promotion Agency to exercise its right of pre-emption and contribute to providing economic real estate, the legislator required notaries throughout the country to notify the Agency of every transaction concerning the aforementioned real estate. The Agency must therefore be notified of every sale contract involving economic real estate previously granted to an investor who wishes to relinquish it, as well as of any other real estate property owned by a natural person or a legal person subject to private law that is the subject of a sale contract, provided that it is capable of accommodating an investment project located within developed areas and zones (61).

The importance of notification lies in the fact that it is impossible for the Agency to monitor all transactions, which could result in the loss of economic real estate and the failure to acquire it at the appropriate time. Moreover, the legislator did not require the unavailability of economic real estate belonging to the private domain of the State as a condition for exercising the right of pre-emption. Rather, it enabled the Agency to exercise this right even when the State possesses a surplus of real estate, unlike amicable acquisition, for which the unavailability of economic real estate is a prerequisite.

After the Algerian Investment Promotion Agency is notified of the potential real estate transaction, the Agency examines the economic real estate concerned by the notification and verifies its conformity with development requirements or the needs of the real estate database for the project. It then declares its intention to exercise the right of pre-emption in accordance with the provisions of the Civil Code by sending a formal notice to the seller, the purchaser,

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and the notary indicating its intention to exercise the right of pre-emption (62). It should be noted that the notification must include all the financial and legal conditions agreed upon with the purchaser.

As a final stage, the sale price determined by the territorially competent State Property Directorate is paid, and the sale contract is drawn up between the pre-emptor (the State, represented by the Algerian Investment Promotion Agency) and the party against whom pre-emption is exercised (the purchaser). It should be noted that the exercise of the right of pre-emption is formalized through an administrative contract, which confirms its distinction from the right provided for under the Civil Code. Furthermore, this contract establishes the Agency's administrative pre-emption by operation of law, without requiring it to bring judicial proceedings, that is, without requiring the judicial ruling provided for under the provisions of the Civil Code (63).

As for the effects of exercising the right of pre-emption, the Algerian Investment Promotion Agency becomes, in effect, the creditor of the seller, who is required to deliver the property subject to pre-emption to it, while the Agency becomes the debtor of the seller with regard to payment of the agreed price. It is vested with the same rights granted to the original purchaser concerning the warranty against disturbance and eviction, as well as hidden defects (64).

As for the effects arising from the relationship between the Algerian Investment Promotion Agency and the purchaser, the Agency replaces the original purchaser in all matters relating to his rights and obligations. Thus, if, for example, the purchaser made additions to the property before receiving the formal notice relating to the exercise of pre-emption, such as constructing a building on it or planting it, the person exercising pre-emption must compensate the purchaser, either by paying the amount spent or by assessing the increase resulting from such additions in the value of the property. However, if the additions were made by the purchaser after the pre-emptor had declared the exercise of the right of pre-emption, the purchaser must remove the additions upon the request of the pre-emptor or compensate him only for the value of the construction materials and the cost of labor.

Conclusion

This study addressed the issue of mechanisms for constituting economic real estate through two principal axes. The first axis concerned the mechanism for constituting and clearing economic real estate originally belonging to the private domain of the State, consisting of the land and real estate assets provided for in Article 2 of Law No. 23-17 and Article 2 of Decree No. 23-486. The second axis concerned the mechanism for acquiring privately owned real estate assets for the benefit of the State and incorporating them into the investment real estate portfolio. This is carried out through acquisition or purchase pursuant to Article 13 of Executive Decree No. 23-486, in return for a price equivalent to the commercial value of the property as determined by the territorially competent State Property Directorate, or through the exercise of the right of pre-emption over the property relinquished by the beneficiary or over any privately owned real property, with all such property being incorporated into the private domain of the State. Expropriation for public utility may also be envisaged as one of the mechanisms for acquisition, even though it is not expressly provided for within the specific legal framework governing investment.

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Through the aforementioned Law No. 23-17, the Algerian legislator stipulated that economic real estate designated for investment must belong to the private domain of the State in order to be used for investment activities by investors, whether industrial, tourism-related, or urban. Consequently, under the new law, real estate assets belonging to local authorities, whether municipalities or wilayas, cannot constitute economic real estate. Following the enactment of the aforementioned law, these territorial authorities can no longer grant economic real estate directly to investors from their private property through their respective committees.

Accordingly, this study allows us to draw a number of conclusions and recommendations, which are presented as follows:

· **Results:**

- Economic real estate designated for investment is property belonging to the private domain of the State.
- Under no circumstances may economic real estate belong to the private domain of local authorities; rather, it must be cleared and reintegrated into the private domain of the State.
- The investor acquires economic real estate through a concession by mutual consent that may be converted into a transfer.
- The Algerian Investment Promotion Agency has exclusive authority to acquire economic real estate for the benefit of the State.
- Expropriation for public utility remains a means of constituting the real estate portfolio, even though it is not provided for in the Economic Real Estate Law and its implementing texts; therefore, the general legal provisions governing this matter must be applied.

· **Recommendations:**

- Greater attention should be given to the Algerian Investment Promotion Agency by precisely defining its powers, given that it has exclusive authority to acquire economic real estate for the benefit of the State.
- The institutional affiliation of the Algerian Investment Promotion Agency should be separated from the Ministry of Industry, and the Agency should be placed directly under the Presidency of the Republic or, at least, under the Prime Ministry or the Government Presidency, as applicable, in order to grant it greater freedom of action.
- New alternatives should be established to increase the acquisition of economic real estate.

· **Footnotes**

(1) The Algerian Constitution of 2020, dated 15 Jumada al-Awwal 1442 AH, corresponding to 30 December 2020 (Official Gazette No. 82, dated, p.).

(2) Law No. 22-18, dated 25 Dhu al-Hijjah 1443 AH, corresponding to 24 July 2022, relating to investment (Official Gazette No. 50, dated 28/07/2022, p. 5).

(3) Law No. 23-17, dated 1 Jumada al-Awwal 1445 AH, corresponding to 15 November 2023, establishing the conditions and procedures for granting economic real estate belonging to the private domain of the State and designated for the implementation of investment projects (Official Gazette No. 73, dated 16/11/2023, p. 5).

(4) Executive Decree No. 23-486, dated 15 Jumada al-Thani 1445 AH, corresponding to 28 December 2023, establishing the components of economic real estate belonging to the private

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domain of the State, designated for the implementation of investment projects and eligible for the granting of concessions (Official Gazette No. 85, dated 30/12/2023, p. 5).
(5) Executive Decree No. 23-487, dated 15 Jumada al-Thani 1445 AH, corresponding to 28 December 2023, establishing the conditions and procedures for granting a concession convertible into a transfer of economic real estate belonging to the private domain of the State and designated for the implementation of investment projects (Official Gazette No. 85, dated 30/12/2023, p. 9).
(6) Article 8 of Law No. 23-17, dated 15 November 2023, previously cited.
(7) Article 14 of the same source.
(8) Article 4 of the same source.
(9) Articles 3 and 23 of Law No. 90-25, dated 1 Jumada al-Awwal 1411 AH, corresponding to 18/11/1990, relating to land orientation, as amended and supplemented (Official Gazette No. 49, dated 18/11/1990, p. 2).
(10) Ibn Manzur, Muhammad ibn Mukarram, *Lisan al-Arab*, Vol. 7, Dar Sader, Beirut, Lebanon, 1998, p. 1145.
(11) Jirjis, Jirjis, *Dictionary of Jurisprudential and Legal Terms*, reviewed by Antoine Al-Nashef, International Book Company, 1st ed., without volume designation, 1991, Beirut, Lebanon, p. 125.
(12) Mahdi, Chaoua, "Administrative Means for the Protection of Public Real Estate," *Journal of Human Sciences*, Vol. 29, No. 2, December 2018, University of the Brothers Mentouri, Constantine, Algeria, 2018, pp. 427–442.
(13) Article 2 of Executive Decree No. 91-455, dated 16 Jumada al-Awwal 1412 AH, corresponding to 23 November 1991, relating to the inventory of national property (Official Gazette No. 60, dated 24/11/1991, p. 2345).
(14) Article 3(1) of Executive Decree No. 23-486, dated 28 December 2023, previously cited.
(15) Article 11(3) of the same source.
(16) See:

- Executive Decree No. 23-488, dated 15 Jumada al-Thani 1445 AH, corresponding to 28 December 2023, establishing the National Agency for Industrial Real Estate and determining its organization and operation (Official Gazette No. 85, dated 30/12/2023, p. 24).
- Executive Decree No. 23-489, dated 15 Jumada al-Thani 1445 AH, corresponding to 28 December 2023, establishing the National Agency for Tourism Real Estate and determining its organization and operation (Official Gazette No. 85, dated 30/12/2023, p. 30).
- Executive Decree No. 23-490, dated 15 Jumada al-Thani 1445 AH, corresponding to 28 December 2023, establishing the National Agency for Urban Real Estate and determining its organization and operation (Official Gazette No. 85, dated 30/12/2023, p. 35).

(17) Article 11(4) of Executive Decree No. 23-486, dated 28 December 2023, previously cited.
(18) Article 11(5) of the same source.
(19) Article 4 of Law No. 23-17, previously cited.

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(20) Ilham Bekhouch, "The Extent of the Contribution of the Algerian Investment Promotion Agency to the Provision of Economic Real Estate," *Mediterranean Journal of Law and Economics*, Vol. 11, No. 1, 2026, pp. 12–28.
(21) Article 4 of Executive Decree No. 23-486, dated 28 December 2023, previously cited.
(22) Article 23 of the same source.
(23) Article 10 of the same source.
(24) Ilham Bekhouch, previously cited reference, p. 17.
(25) Article 4, paragraph 4, of Law No. 23-17, dated 15 November 2023, previously cited.
(26) Article 5 of Executive Decree No. 23-486, dated 28 December 2023, previously cited.
(27) Article 7, first paragraph, of the same source.
(28) Article 7, second paragraph, of the same source.
(29) Article 6, second paragraph, of the same source.
(30) Article 7, third and fourth paragraphs, of the same source.
(31) The State Contributions Council (*Commission des contributions de l'État*) is a governmental body established pursuant to Article 8 of Ordinance No. 01-04, dated 1 Jumada al-Thani 1422 AH, corresponding to 20 August 2001, relating to the organization, management, and privatization of public economic enterprises (Official Gazette No. 47, dated 22 August 2001, p. 9), as amended and supplemented by Ordinance No. 08-01, dated 21 Safar 1429 AH, corresponding to 28 February 2008 (Official Gazette No. 11, dated 2 March 2008, p. 15). Article 8 thereof provides for the establishment of a State Contributions Council placed under the authority of the Prime Minister, who chairs it, and referred to in the text as "the Council." Among its principal powers are the organization, management, and privatization of public economic enterprises.
(32) Article 8 of Law No. 23-17, dated 15 November 2023, previously cited.
(33) Article 9, first indent, of Executive Decree No. 23-486, dated 28 December 2023, previously cited.
(34) Memorandum No. 2052, dated 07/12/2024, concerning the conditions and procedures for granting economic real estate belonging to the private domain of the State and designated for the implementation of investment projects, issued by the Directorate General of National Property, 2024, p. 3.
(35) Article 9, second paragraph, of Executive Decree No. 23-486, dated 28 December 2023, previously cited.
(36) See:

- Article 12, second paragraph, of Executive Decree No. 23-487, dated 28 December 2023, previously cited.
- Article 21 of the Model Specifications establishing the clauses and conditions applicable to the granting of a concession convertible into a transfer of economic real estate belonging to the private domain of the State and designated for the implementation of investment projects, Annex IV (Official Gazette No. 85, dated 30/12/2023, p. 22).

(37) Article 15 of Law No. 23-17, dated 15 November 2023, previously cited.
(38) The Model Specifications establishing the clauses and conditions applicable to the granting of a concession convertible into a transfer of economic real estate belonging to the private

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domain of the State and designated for the implementation of investment projects, Annex IV (Official Gazette No. 85, dated 30/12/2023, p. 22).
(39) Article 11, second paragraph, of Law No. 23-17, dated 15 November 2023, previously cited.
(40) Article 13 of Executive Decree No. 23-486, dated 28 December 2023, previously cited.
(41) Article 13 of the same source.
(42) Article 14 of the same source.
(43) Article 14, second paragraph, of the same source.
(44) Article 15 of the same source.
(45) Article 15, second paragraph, of the same source.
(46) Ordinance No. 76-105, dated 17 Dhu al-Hijjah 1396 AH, corresponding to 9 December 1976, containing the Registration Code, as amended and supplemented (Official Gazette No. 81, dated 18/12/1976, p.).
(47) See:

- Ordinance No. 75-74, dated 8 Dhu al-Qi'dah 1395 AH, corresponding to 12 November 1975, relating to the preparation of the general land survey and establishment of the land registry, as amended and supplemented (Official Gazette No. 92, dated 18/11/1975, p. 1206).
- Decree No. 76-62, dated 24 Rabi' al-Awwal 1396 AH, corresponding to 25 March 1976, relating to the preparation of the general land survey, as amended and supplemented (Official Gazette No. 30, dated 30/04/1976, p. 496).
- Decree No. 76-63, dated 24 Rabi' al-Awwal 1396 AH, corresponding to 25 March 1976, relating to the establishment of the land registry, as amended and supplemented (Official Gazette No. 30, dated 30/04/1976, p. 498).

(48) Article 793 of Ordinance No. 75-58, dated 20 Ramadan 1395 AH, corresponding to 26 September 1975, containing the Civil Code, as amended and supplemented (Official Gazette No. 78, dated 30/09/1975, p. 990).
(49) Academy of the Arabic Language, *Al-Mu'jam al-Wasit*, 4th ed., Al-Shorouk International Library, Egypt, p. 37.
(50) Muhammad Murtada al-Husayni al-Zabidi, *Taj al-Arus min Jawahir al-Qamus*, edited by Abd al-Alim al-Tahawi, reviewed by Mustafa Hijazi, 2nd ed., Arab Heritage Series, National Council for Culture, Arts and Letters, Kuwait, 1984, p. 383.
(51) Muhammad Ibn Arafa al-Warghi al-Tunisi, *Al-Mukhtasar al-Fiqhi*, edited by Dr. Hafiz Abd al-Rahman Muhammad Khair, 1st ed., Khalaf Ahmad Al-Habtour Charitable Foundation, 2014, p. 325.
(52) Article 794 of Ordinance No. 75-58, dated 26 September 1975, previously cited.
(53) Article 71 of Law No. 90-25, dated 18 February 1990, previously cited.
(54) Article 8 of Law No. 23-17, dated 15 November 2023, previously cited.
(55) Article 20 of Executive Decree No. 23-486, dated 28 December 2023, previously cited.
(56) Article 17 of the same source.
(57) Article 795 of Ordinance No. 75-58, dated 26 September 1975, previously cited.
(58) Article 71 of Law No. 90-25, dated 18 February 1990, previously cited.

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(59) Law No. 01-02, dated 7 Shawwal 1422 AH, corresponding to 22 December 2001, containing the Finance Law for 2002 and establishing the Tax Procedures Code, as amended and supplemented (Official Gazette No. 79, dated 23/12/2001, p. 3).
(60) Article 71 of Law No. 90-25, dated 18 February 1990, previously cited.
(61) Article 18 of Executive Decree No. 23-486, dated 28 December 2023, previously cited.
(62) Article 799 of Ordinance No. 75-58, dated 26 September 1975, previously cited.
(63) Articles 802 and 803 of the same source.
(64) Hafedh Allah Abdelali and Fawaz Ladjalt, "Administrative Pre-emption in Algerian Legislation: Between Its Consequences and the Disputes Arising Therefrom," *Al-Bahith Journal of Academic Studies*, Vol. 9, No. 1, University of Batna 1, Algeria, pp. 45–60.

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2- Ordinance No. 75-74, dated 8 Dhu al-Qi'dah 1395 AH, corresponding to 12 November 1975, relating to the preparation of the general land survey and establishment of the land registry, as amended and supplemented (Official Gazette No. 92, dated 18/11/1975, p. 1206).
3- Ordinance No. 76-105, dated 17 Dhu al-Hijjah 1396 AH, corresponding to 9 December 1976, containing the Registration Code, as amended and supplemented (Official Gazette No. 81, dated 18/12/1976, p.).
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