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Dispute resolution methods as a guarantee for foreign aid in Algerian law according to international standards

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ABSTRACT:

The Algerian legislator has granted, in addition to certain rights already granted to local or foreign economic agents, judicial guarantees to facilitate the resolution of any disputes that may arise. The state has thus established a middle ground between these two categories, despite objections from foreign economic agents regarding the national judicial system. These objections stem from several reasons, including lengthy procedures, high costs, and perceived infringement on sovereignty. The legislator has emphasized the referral of most disputes arising within the national territory to the local judiciary, despite the considerable difficulties faced by local courts in resolving such disputes due to the differing legal positions of the disputing parties. The effectiveness of the national judiciary in settling disputes brought before it is considered a fundamental guarantee for reassuring foreign investors in particular. This has paved the way for the establishment of specialized judicial centers, whose role is to adjudicate international trade disputes, as stipulated in Article 32 of the Code of Civil and Commercial Procedure, which also provides for the subjection of agency decisions to judicial appeal.

The legislator also stipulated that in the case of unilateral actions of the economic aid, his liability is negated if the damage is not proven from him. As for the cause external to his will, the occurrence of the error or the severing of the causal relationship between the error and the damage is negated, and therefore there is no compensation. However, Algerian legislation, on the other hand, approved the right of the two parties to the dispute to resort to alternative methods before raising it to the judiciary in order to reduce the

pressure on the local judiciary. Among these methods is arbitration, due to its effectiveness and adherence to it by the foreign aid and finding solutions, in addition to the modest cost compared to the local judiciary.
***Keywords*:** Legal guarantees, economic assistance, methods of litigation,

Introduction:

To reassure economic investors and ensure the success of the investment process in Algeria, the host country has offered general incentives and advantages. The current Algerian domestic legislative system has become one of the most important motivating and encouraging factors for gaining the trust of both local and foreign economic investors. This system is also the most important guarantee that the state has sought to improve through amending and updating a large body of laws. However, there is no doubt that the objective guarantees proposed by the host country are insufficient on their own to entice and encourage foreign economic investors to invest their funds in the Algerian economic market, especially if all these guarantees are in exchange for a complex judicial system for resolving these disputes, which prioritizes state sovereignty above all else and does not recognize international investment dispute resolution mechanisms. This has further discouraged foreign economic investors from investing in Algeria. This later forced the Algerian state to establish an internal procedural system as a guarantee, which helps and facilitates the resolution of investment disputes, based on the development of internal legislation that is unified and consistent with bilateral and multilateral international agreements.

Section One: Guaranteeing the National Judiciary as an Alternative Solution for Resolving Existing Disputes

Algeria has introduced various reforms and amendments to its legislation and administrative systems related to investment, issuing laws that guarantee many incentives and encouragements.(Ahmed Samir Abu Al-Futuh, p. 31).

The national judiciary is considered the primary recourse and the original competent authority for adjudicating disputes arising between the host state and foreign economic agents, according to Algerian domestic legislation. This is based on the premise that investments have been made within Algeria, thus necessitating the application of Algerian law in resolving such disputes.

Such settlements are generally a source of concern and dissatisfaction for foreign economic agents, who often refuse to resort to the local judiciary, believing it lacks the necessary jurisdiction, integrity, and objectivity to resolve investment disputes.

First Requirement: National Judicial Settlement in Cases of Unilateral Actions by Contracting Parties

To dispel the confusion that has arisen among foreign economic agents, the Algerian state, in its efforts to encourage investment and attract foreign investment to Algeria, has sought to provide the maximum protection for the rights of both foreign and domestic economic agents. Due to the inadequacy of the objective means of protection, the Algerian legislator amended some of the powers, especially in the case of unilateral actions of the state, in line with the desire of foreign economic agents to resolve their disputes with the Algerian state.

Section One: Settlement in Cases Where the Contract is Subject to the Law of the Host State

The scope of principles relating to the settlement of investment disputes between the host state and the investor is a crucial issue in defining investor protection, which host states are tasked with upholding. Algeria is among the member states of these agreements, which require respect for internal affairs and non-interference in national sovereignty. Furthermore, the scope is extended to include obligations signed outside the state's territory, as stipulated in Article 42 of the Code of Civil and Administrative Procedure. Despite an agreement between the host state and the foreign investor to respect the host state's domestic laws and refer disputes arising between them to its national courts, in accordance with Article 41 of the Code of Civil and Administrative Procedure, the foreign investor has the right to benefit from arbitration rulings, as stipulated in the agreement concluded between its country and the host state, particularly the recent arbitration jurisprudence of the International Centre for Settlement of Investment Disputes (ICSID). This has consequently led to a decline in the role of national courts in settlement. Investment disputes are in favor of international commercial arbitration, which has become a trusted source of economic assistance for investors to recover their rights. This reflects the methods adopted by Algeria in an attempt to keep pace with developments in this field, after it had previously insisted on referring investment disputes to its national judiciary for reasons related to the sovereign aspect of the state.4

In the event of disputes between a foreign investor and the host country, the national courts of the host country are the primary authority competent to adjudicate these disputes arising from unequal legal standing between the two parties.<sup>5</sup<

Second Section: Explicit Choice of Host Country Law

The application of the principle of explicit choice in investment contracts obligates these contracts to strictly adhere to the law of the host country. This reflects the parties' explicit intention to apply this law to govern the contract or resolve any disputes. Consequently, the arbitrator or judge is obligated to uphold the parties' agreement and adhere to the principle that a contract is the law between the contracting parties.<sup>6</sup<

The parties to a dispute have the right to choose the legal system governing their contracts as the law of their will, based on the principle of freedom of contract. This principle requires the arbitrator or judge to respect it.⁷ The function of a contract is to establish its legal framework, not to impose it. When the parties choose a specific law, their choice is based on the substantive content of that law.⁸ Therefore, dispute resolution is primarily a domestic matter. However, foreign investors are apprehensive about national dispute resolution mechanisms, particularly the national judiciary, given the nature of the dispute, where one party is a sovereign state and the other a private foreign party. This could potentially affect the credibility and impartiality of the judiciary when any investment dispute is brought before it.9

This has led foreign investors to seek more neutral and robust means and guarantees, namely international mechanisms or guarantees for resolving investment disputes. The Algerian legislator has ensured this for foreign investors by allowing recourse to international dispute resolution mechanisms, for which multilateral and bilateral international agreements have been concluded. These agreements focus particularly on international commercial arbitration, which is of paramount importance in international investment disputes, in addition to other available mechanisms.

Third Branch: The Jurisdiction of National Courts in Settling Investment Disputes

For many years, the national legislator has defined the jurisdiction for settling investment disputes. Article 41 of Law No. 93/1210 concerning Investment Promotion regulates national jurisdiction over disputes involving foreign investors. Article 24 of Law 16/0911 concerning Investment Promotion also addresses this. Furthermore, Article 32 of the Code of Civil and Administrative Procedure stipulates that "the court is the judicial body with general jurisdiction..." Article 41 of the same law further states that "any foreigner, even if not residing in Algeria, may be summoned to appear before Algerian courts to fulfill obligations contracted in Algeria with an Algerian. They may also be summoned to appear before Algerian courts regarding obligations contracted in a foreign country with Algerians." In this case, the Algerian legislator emphasized that the jurisdiction of Algerian courts to consider claims of obligations of a foreigner with an Algerian party is based on the principle of the personality of the law, which considers the nationality of the litigants as a connecting factor to extend the jurisdiction of the Algerian judiciary. Therefore, jurisdiction is established for the Algerian judiciary as soon as the Algerian nationality of the plaintiff is proven, provided that this jurisdiction can be exceeded.

Furthermore, disputes are not always within the jurisdiction of private international law and ordinary national courts. Sometimes, they fall under the purview of administrative courts, such as tax disputes or those concerning the administrative confiscation of real estate and property belonging to foreign investors. These disputes fall exclusively under the jurisdiction of national courts due to the surrounding concepts of sovereignty and public order.12 This underscores the legislator's obligation to subject all disputes between foreign investors and the Algerian state, whether caused by the foreign investor or resulting from an action taken against them by the Algerian state, to the territorially competent Algerian judicial authorities, in principle, except in cases of bilateral or multilateral agreements. Here, we note that the Algerian legislator has adopted the territorial jurisdiction of the courts in accordance with the procedures stipulated in the Algerian Code of Civil and Administrative Procedure.

The second requirement: Guarantee of judicial settlement in cases of unilateral actions by the economic agent.

The legislator seeks to achieve a degree of balance between the economic agent and the harmed consumer by mitigating the economic agent's liability in cases of unilateral actions. The responsible party can only be held accountable for the harm caused by their own wrongful conduct. However, if it is proven that the harm did not arise from their fault but rather from a cause beyond their control, then their liability is negated.<sup>14</sup<

First Branch: In the case of a cause beyond the control of the economic aid worker

The economic aid worker's relationship to unilateral actions based on a cause beyond his control, or what is called an external cause, which is based on fault, whether presumed or required to be proven, such that the economic aid worker cannot prove this except by denying his own fault, or by severing the causal relationship between the fault and the harm, and in response to the implications of justice and equity, it is legally necessary to define all the cases in which the latter has the right to defend against a cause beyond his control, or what is called an external cause.15 The texts included in the legislation under comparison, pertaining to the subject of causes beyond the control of the economic aid party, fall under the umbrella of supplementary texts. This allows them to agree on compensation, even in cases where a form of cause beyond the control of the economic aid party exists.16 Legally, a cause beyond the

control of the economic aid party, or an external cause, is defined as any act or event external to the thing itself, which cannot be foreseen or prevented by the responsible party and which arises from the harm.17 That is, it is what happens by fate or destiny, or any rebellion, disobedience, terrorism, riot, war (international or civil), strike and other labor disturbances, fires, floods, earthquakes, or any other cause not resulting from fault or negligence on the part of the contracting parties. It is also defined as any act or event not attributable to the defendant and which renders preventing the occurrence of the harmful act impossible.18 The second branch: In the case of the injured party causing the harm. The harm may occur due to the injured party's own actions. The injured party is the one who caused the harm himself, whether the act that created the harm was due to his own fault or not. This means there must be a causal relationship between the injured party's act and the resulting harm. In other words, there must be an act committed by a third party alongside the injured party's act, such that both acts contribute to producing the harm. If the act causing the harm is committed solely by the injured party, there is no basis for holding anyone else accountable. For example, someone who drives his car at high speed, violating traffic rules, and then crashes into a tree on the side of the road and dies, cannot claim compensation from anyone, because his death was caused by him.<sup>19</sup<
] The following appears to be a separate, unrelated statement:] ... Therefore, in this case, since the injured party's action is the sole cause of the damage, the guarantee is then lifted from the defendant, and the injured party alone bears the consequences of the damage he caused himself. The Algerian legislator stipulated in Article 125 of the Algerian Civil Code that if a person lacking discernment causes damage through his action, omission, negligence, or lack of caution, he is not liable for compensating for this damage.20

Third Branch: In the Case of the Statute of Liability Claim for Economic Assistance

The economic aid provider can invoke the statute of limitations to escape liability in cases of causes beyond their control, and the resulting consequences, particularly regarding their obligation to provide compensation. Dr. Nabil Ibrahim Saad defined the statute of limitations as "the lapse of a certain period after the debt becomes due without the creditors claiming it, resulting in the forfeiture of their right to claim if the party with an interest in it invokes the statute of limitations."21 Algerian legislation, however, did not define the statute of limitations for liability but addressed it in Articles 308 to 322 of the Algerian Civil Code, specifying its types, statute of limitations periods, reasons for interruption, and its effects, leaving the task of definition to legal scholars. Article 133 of the Algerian Civil Code stipulates that "the claim for compensation lapses after 15 years from the date of the harmful act," and Article 308 of the Algerian Civil Code also stipulates that " The obligation is subject to a 15-year statute of limitations, except in cases where a specific provision is made in the law. It is noteworthy that, in accordance with the general rules for contractual and tortious liability, the Algerian legislator has set the statute of limitations for both at 15 years. Consequently, the claim for compensation, according to these general rules, is extinguished after 15 years.

The continuation of the civil claim after the expiration of the criminal case is considered acceptable, as compensation is less severe than criminal punishment. This scenario arises if the victim does not become aware of the perpetrator until ten years have passed. In this case, the criminal case is extinguished, while the civil claim remains valid, as it is only extinguished after three years from the date of becoming aware of the harm and the person responsible, or after fifteen years from the date of the unlawful act. Statute of Limitations for Claims Regarding

Latent Defects

The Algerian legislator addressed this in Articles 379 to 385, but these provisions are mostly contractual in nature. Article 383 of the Civil Code stipulates that a claim for the validity of a sale expires one year from the date of notification or delivery of the goods. The purpose of this is to establish the existence of the defect, to distinguish between an original defect in the product and a defect resulting from misuse or wear and tear, and to ensure that the injured party receives compensation within a short period. However, Article 383 of the Civil Code provides an exception: the economic agent cannot invoke the one-year statute of limitations if the injured consumer proves that the agent deliberately concealed the defect fraudulently. Consequently, the consumer is exempt from the requirement to file the claim within one year.

Statute of Limitations for Civil Liability Claims for Environmental Damage

Civil liability claims for uncommon environmental damage, like any claim in general, are not absolute claims that a neighbor can file at any time. Rather, they have a time limit or period within which they must be filed; otherwise, the neighbor's right to file them expires due to the statute of limitations. The responsible neighbor may then defend the claim on the grounds of the statute of limitations. To argue otherwise would lead to the loss of rights and destabilize transactions.27

Many foreign legislations have specified the statute of limitations for civil liability claims for environmental damage in specific provisions. For example, the British Nuclear Reactors Act of 1965 set a period of (30) years for filing a civil claim to claim compensation for environmental damage resulting from nuclear accidents, starting from the date of the accident giving rise to the claim.28

International agreements related to this, such as the International Convention on Civil Liability for Bunker Oil Pollution Damage of 2012, have also specified, in Article 8 thereof, a statute of limitations for environmental claims. In general, such a claim shall not be accepted under any circumstances after (30) years from the date of the act that created the damage. It also specified a period of three years during which the civil claim may be exercised, after which the claim shall not be accepted. This period shall be calculated from the date on which the injured party becomes aware, or is presumed to have become aware, of the existence of the damage, as well as of the person responsible for the damage.

Section Two: Resorting to Arbitration to Resolve Disputes as a Guarantee for Foreign Economic Aid

Arbitration is a relatively recent development and a means of resolving disputes within the realm of international trade. It is one of the most important guarantees upheld by economic aid and investment in host countries, as it is a self-regulating process undertaken by the parties themselves or their representatives. They resolve their differences and settle their disputes by waiving some or all of their claims before the other party.30 Furthermore, it is an exceptional method, deviating from ordinary litigation.31 This approach prioritizes greater confidentiality and less publicity, in addition to saving time and streamlining procedures. It also avoids the problem of international conflict of laws, given the speed and accuracy required by arbitration, free from the complexities of specialized courts.32 Commercial arbitration is not based on a single legal act, but rather on a set of interconnected legal acts, each distinct from the others.33

The first requirement: Stages of commercial arbitration proceedings

Arbitration proceedings go through several stages, including the stage of agreeing to arbitration, the stage of determining the law applicable to the dispute, and then the stage of the arbitration proceedings themselves.

Section 1: The stage of agreeing to arbitration

Arbitration is based on the principle of consent, which is one of the most important legal principles. An arbitration agreement is "an agreement between the parties to resort to arbitration to settle all or some of the disputes that have arisen or may arise between them in connection with a specific legal relationship, whether contractual or non-contractual."34 In simple terms, commercial arbitration is based on an agreement between the parties to a legal relationship, within the framework of private law, to settle their financial dispute through one or more specific persons appointed directly or indirectly, or through a third party.35

Article 7 of the UNCITRAL Model Law on International Commercial Arbitration36 also stipulates that an arbitration agreement is an expression of the will of two parties who have agreed that the means of settling disputes that have arisen or may arise between them is arbitration.

The Algerian legislator defined the arbitration agreement in Article 1011 of the Algerian Code of Civil Procedure (37) as "an agreement by which the parties agree to submit a pre-existing dispute to arbitration." The legislator thus implied that the arbitration agreement is an agreement concluded by the parties to a contract after the occurrence of a dispute related to that contract, by which they refer their dispute to arbitration.

Similarly, the Egyptian Arbitration Law, in Article 10, stipulated that an arbitration agreement is "an agreement by the parties to resort to arbitration to settle all or some of the disputes that have arisen or may arise between them in connection with a specific legal relationship, whether contractual or non-contractual."38 Article 5 of the Palestinian Arbitration Law also stipulates that an arbitration agreement is of this nature.39 The French legislator defined arbitration in Article 1447 of the Code of Civil Procedure as "an agreement by which the parties to a specific existing dispute between them undertake to submit it to arbitration for resolution by one or more persons of their choice".

An arbitration agreement entails the parties' waiving of their right to resort to the courts, i.e., the court originally competent to hear the dispute. When the parties voluntarily waive their right to resort to the courts, the case loses one of the conditions for its admissibility, thus preventing the court from accepting it.

Commercial arbitration agreements take two forms: either an agreement made after the dispute arises, or an agreement where the parties do not wait for a dispute to arise but rather stipulate in the contract or in a subsequent agreement that arbitration will be the means of settling disputes between them. The second branch: The arbitration clause: This is an agreement between two parties that any future disputes arising between them concerning a specific legal relationship will be resolved through arbitration. In other words, the occurrence of a dispute is a potential future issue.<sup>40</sup<

The Algerian legislator defined it in Article 1007 of the Code of Civil Procedure as "the agreement by which the parties to a contract related to rights available within the meaning of Article 1006 above undertake to submit any disputes that may arise concerning this contract to arbitration".

The French legislator addressed it in Article 1442 of the French Code of Civil Procedure,

defining it as "an agreement by which the parties to a contract undertake to submit any dispute that may arise in the future from that contract to arbitration".

1- It is noteworthy from the above that the arbitration clause is agreed upon before the dispute arises and is often included as a clause in the contract. However, there is no objection to concluding a future contract without any arbitration clause, or one that includes a clause for dispute resolution between them. The basis is the moment of agreement to arbitration.⁴¹ But at a later stage, one party may offer the other the option of arbitrating any future disputes arising from or related to the contract, and the other party may agree. In this case, we have two contracts: the original contract without the arbitration clause, and another contract specifically for dispute resolution through arbitration.
2- The legislator also stipulated certain conditions, including those outlined in Article 1008, paragraph 1, section 42 of the Code of Civil Procedure, which requires parties who have opted for an arbitration clause to adhere to a set of conditions, under penalty of invalidity. This article states, "The arbitration clause, under penalty of invalidity, is valid if it is in writing within the original agreement or the document upon which it is based..." Paragraph 2 of the same article further stipulates, "...the arbitration clause must, under penalty of invalidity, include the appointment of the arbitrator or arbitrators, or specify the procedures for their appointment." Therefore, the requirement of a written arbitration clause is a condition for validity, not proof.

Section Three: Arbitration Agreements

The second form of an arbitration agreement is a future agreement between disputing parties, made after the dispute has arisen, without explicitly stipulating arbitration, by referring the dispute to arbitration. It is clear that the arbitration agreement is a special agreement concluded by the disputing parties after the dispute has arisen. It defines the subject matter of the dispute, appoints the arbitrators or the arbitral tribunal, and specifies the place and procedures of the arbitration, the powers granted to the arbitrators and their limits, and other matters related to the requirements of arbitration.43

Unlike an arbitration clause, the arbitration agreement does not merely establish the parties' intention to resort to arbitration. Rather, it includes a comprehensive framework for all the detailed matters related to arbitration, from the formation of the arbitration panel to the selection of the applicable procedural and substantive rules, culminating in the issuance of the arbitral award.45

It is noteworthy that some countries do not differentiate between an arbitration clause and an arbitration agreement, including the New York Convention, which justified this by stating that they are both arbitration agreements of a single legal nature. This is stipulated in Article 2, which requires the contracting state to adopt the arbitration agreement, whether it be an arbitration clause or an arbitration agreement.<sup>46</sup<

Second Requirement: The Arbitration Proceedings

The arbitration proceedings begin with one party submitting a written request to the other, specifying the subject matter of the dispute they wish to submit to arbitration and inviting the other party to appoint an arbitrator. Each party appoints their arbitrator within a specified period. The two arbitrators then agree on the appointment of a third arbitrator. If they fail to do so, the rules stipulated in the contract that address this issue apply.

Section One: Formation of the Court

The formation of the arbitration panel is primarily subject to the will and agreement of the parties, as well as to the rules followed by the arbitration institutions, which will address this matter according to their internal regulations, including lists of specialized arbitrators.47 The formation of the panel depends on the importance and nature of the dispute. Laws have attempted to regulate this matter by stipulating it in national legislation, as stated in Article 1015 of the Code of Civil and Commercial Procedure: "The formation of the arbitration panel is not valid unless the arbitrator or arbitrators accept the task assigned to them..."48

Appointment of Arbitrators

In principle and as a general rule in many legal systems, disputing parties have complete freedom in appointing arbitrators, whether during the conclusion of the collective agreement, where a pre-established list of arbitrators who can be resorted to in the event of any labor dispute is specified, or appointment is made as needed. This is known as the consensual or contractual procedure, which is adopted by French law.49 It is well-known that the appointment of arbitrators by agreement in the aforementioned laws is not mandatory but rather permissible, contrary to the apparent and literal meaning of the texts.50 In this regard, the Algerian legislator stipulated in Article 1017 of the Code of Civil and Commercial Procedure that "The arbitration tribunal shall be composed of one or more arbitrators in an odd number." This article demonstrates that the Algerian legislator addressed this aspect of arbitrator appointment by emphasizing individual appointment.51 Furthermore, Article 1041, paragraph 2 of the Code of Civil and Commercial Procedure52 stipulates the possibility of appointing arbitrators. It also addresses cases of urgency, difficulty in appointment, or in cases of removal or replacement, where the same article, paragraph 2, states that "...in the absence of appointment...whoever is concerned with the urgency shall do the following:

If the arbitration is taking place in Algeria, the matter should be referred to the president of the court within whose jurisdiction the arbitration is taking place;

The matter shall be referred to the President of the Court if the arbitration is taking place abroad and the parties choose to apply the rules of procedure in force in Algeria. Here, the Algerian legislator stipulated that in the event of difficulty in appointing the arbitration tribunal, the arbitrator or arbitrators shall be appointed by the President of the court within whose jurisdiction the contract was concluded or its performance is located.

Recusal or Removal of the Arbitrator

In Algerian legislation, arbitrators may not be removed during the arbitration period except by agreement of the parties. Article 1018, paragraph 1 of the Code of Civil and Commercial Procedure (C.O.C.) states: "The arbitration agreement shall be valid even if it does not specify a term for its termination. In this case, the arbitrators are obligated to complete their task within four (4) months, commencing from the date of their appointment or from the date the arbitration tribunal is notified..." In addition to this rule, the Algerian legislator also stipulated in Article 1015, paragraph 2 of the Code of Civil and Commercial Procedure: "...if the arbitrator knows that he is subject to removal, he shall inform the parties of this and may not carry out the task except with their consent." (C.O.C.)

Article 1016 also stipulates Paragraph 1 of the Algerian Code of Civil and Commercial Procedure (55) addresses the grounds for challenging an arbitrator. These grounds, as stipulated,

include the arbitrator's failure to possess certain qualifications agreed upon by the parties, the existence of a ground for challenge specified in the agreed arbitration rules, and the emergence of legitimate doubts regarding the arbitrator's independence. However, an arbitrator may not be challenged by the party who appointed them, or participated in their appointment, except for reasons discovered after the appointment.

Place of Arbitration: The importance of the place of arbitration is evident in relation to the applicable law governing the arbitration proceedings, and particularly in relation to the arbitral award or decision, specifically regarding its enforceability in another country. Based on the principle of consent inherent in arbitration, the parties have complete freedom to choose the venue of the arbitral tribunal. This choice is unrelated to specific legal texts or rules governing arbitration. This choice has significant consequences for the arbitration process, most importantly, as the place of arbitration determines the procedural law governing the dispute in the absence of an agreement between the parties regarding the organization of these proceedings, subject to the permission and consent of the state hosting the proceedings. The arbitration sessions shall be held within its territory, and the arbitral award shall be registered according to the laws of that state.

Article 16 of the same Model Law, in its four paragraphs, stipulates, in addition to the text of the first paragraph, the parties' freedom to agree on the place of arbitration.

In international arbitration, the parties usually choose a third country other than that of one of the parties to the dispute, although this does not preclude them from agreeing to choose the country of one of the parties to the dispute for the arbitration. Furthermore, the arbitration may not take place in one location if the subject matter of the dispute necessitates the arbitrators' travel to several locations.<sup>58</sup<

Section Two: Procedures before the Court

After the appointment of the arbitrator or the arbitral tribunal, all documents, information, and records pertaining to the various stages of the dispute, its different aspects, background, and issues shall be submitted to it, in accordance with the provisions of Article 446 of the Code of Civil Procedure.<sup>59</sup<

Each party to the dispute shall appear before it, either in person or through a representative, after being summoned by the arbitral tribunal. If a party fails to appear or submit the necessary documents and information, the arbitration panel may impose all penalties stipulated in the applicable laws and regulations. It may also issue its decision based on the documents submitted within the specified timeframe for filing petitions and supporting evidence, as outlined in Articles 1020 to 1024 of the new Code of Civil and Administrative Procedure.60

As for deadlines and other aspects of arbitration, these are subject to the same deadlines and procedures governing court proceedings, unless the parties agree otherwise. Furthermore, the investigation, research, and drafting of minutes and reports are generally prepared jointly by all members of the arbitration panel, unless they agree that one member will undertake this task on their behalf, or unless the arbitration agreement specifies that one member will perform it.61

- Regarding the issuance of arbitral awards, the arbitral tribunal, or arbitrator, after gathering all the relevant information, issues its decision within a maximum period of thirty (30) days from the date of its appointment, in accordance with Article 13 of Law 90/02 concerning the settlement of collective disputes, as previously mentioned. This decision is not enforceable except by order of the head of the judicial body with subject-matter and territorial jurisdiction

over the dispute. The original decision is kept in the court registry, and certified copies are provided to the parties to complete the enforcement process. It should be noted that arbitral awards, like court judgments, must be reasoned and justified, but they differ in that they cannot be invoked against third parties.

However, this general rule in the Code of Civil Procedure is contradicted by the rules and provisions of private law. The aforementioned collective dispute settlement law, specifically paragraph 2 of Article 13, stipulates that "the arbitration award is binding on both parties, who are obligated to implement it."65 This implies that arbitration awards in collective labor disputes are enforceable immediately upon pronouncement, without requiring an order or ruling from the competent court. This is the system currently in place in this area.

Contrary to the previous law, which excluded the possibility of appealing arbitration awards,66 the new Code of Civil and Administrative Procedure permits challenging these awards through third-party objection before the competent court prior to submitting the dispute to arbitration.67 It also allows for appealing the awards within one month of their pronouncement before the territorially competent judicial council, unless the parties have already... They waived their right of appeal in the arbitration agreement.

Conclusion:

The Algerian legislator, in addition to granting certain rights to local or foreign economic agents, has provided judicial guarantees to facilitate the resolution of any disputes that may arise. The legislator has not neglected the position of state sovereignty, placing it in a balanced position between these two aspects. The national legislator has emphasized referring most disputes arising within the national territory to the local judiciary, despite the difficulties faced by the local judiciary in resolving these disputes due to the differing legal positions of the disputing parties. This is because some disputes originate from the host country itself due to legislative instability resulting from amendments to laws that may be applicable to economic agents.

Here, the effectiveness of the national judiciary in settling disputes brought before it is considered a fundamental guarantee for reassuring foreign investors in particular. This has paved the way for the establishment of specialized judicial centers, whose role is to adjudicate international trade disputes, as stipulated in Article 32 of the Code of Civil and Commercial Procedure, which also stipulates that agency decisions are subject to judicial appeal. Article 9 of Law 93/12 stipulates that, in cases of unilateral actions by economic agents, their liability is negated if no damage is proven. Furthermore, in cases of external causes beyond their control, the occurrence of fault or the causal link between the fault and the damage is negated, and therefore, no compensation is due.

However, Algerian legislation also recognizes the right of disputing parties to resort to amicable and alternative dispute resolution methods before litigation, in order to alleviate pressure on the local courts. These methods include conciliation, mediation, and arbitration. The effectiveness of these methods, and their preference among foreign agents, stem from their speed, confidentiality, and the involvement of all parties in finding solutions, in addition to their relatively low cost compared to local courts.

Therefore, we offer the following recommendations:

1- The legislator is urged to intervene to simplify consumer litigation procedures, reduce their court costs, and treat them as the less equitable and vulnerable party, often lacking experience and expertise. It would be beneficial for the legislator to establish a specialized consumer court, alongside stricter legal rules, particularly regarding the application of criminal judgments.
2- The national legislator should regulate arbitration within the framework of regional and international institutions to make it a procedural tool for investors and a comprehensive factor for investment in Algeria.
3- Arbitration must be regulated before resorting to it, with rules, provisions, and foundations that ensure its existence as an exception to the general principle of national courts resolving disputes. This type of alternative dispute resolution method should not be allowed to become a parallel and competing private court system.

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8) Hafida El-Sayed El-Haddad, Contracts Concluded Between the State and Foreign Persons, op. cit., p. 51.
9) Qasouri Rafika, The Legal System of Foreign Investment in Developing Countries, Thesis submitted for the degree of Doctor of Law in Business Law, Faculty of Law and Political Science, University of Hadj Lakhdar Batna, 2010/2011, p. 216.
10) The foreign investor may insist on the lack of expertise in the courts of the host country to resolve foreign investment disputes, which usually require highly qualified experts in this field, which is not found in most host countries, especially developing ones, which poses a difficulty for judges due to their lack of competence and experience in resolving foreign investment disputes.
11) Article 41 stipulates that "Any dispute arising between a foreign investor and the Algerian State, whether caused by the foreign investor or as a result of action taken against him/her by the Algerian State, shall be submitted to the competent courts, unless there are bilateral or multilateral agreements concluded by the Algerian State relating to conciliation or arbitration, or a special agreement stipulating an arbitration clause or

allowing the parties to agree to conciliation through private arbitration".

12) Article 24 of Law 16/09, concerning the promotion of investment, cited above.
13) Elikouhen, "Do States Still Enjoy Sovereignty in the Economic System?", Economic Bulletin, No. 2415, March 1995.
14) The absence of liability for the economic agent lies in the fact that he/she is not directly responsible for causing harm to the consumer. He/she proves that his/her fault is unrelated to the harm caused, or that he/she did not commit any fault at all. Consequently, he/she is not liable for the harm or for compensation therefor.
15) The willingness to provide economic assistance is evidence of his responsibility for the existing harm. Therefore, he must refute his liability for the error that caused the harm or for severing the causal link between the error and the harm, and prove that he has no connection to the external cause of the harm.
16) Hassan Ali Al-Danoun, Al-Mabsout fi Al-Mas'ouliya Al-Madaniyya (The Comprehensive Treatise on Civil Liability), n.d., Jordan, Dar Wael Publishing, 2008, p. 49.
17) Ali Fellali, Obligations, Work Entitled to Compensation, Moufem Publishing, Algeria, 2000, p. 28.
18) This is the meaning confirmed by the judiciary through its various decisions, including Decision No. 73657 No. 04 dated 02/06/1991 in the Judicial Journal, p. 147, which stated that it is up to the Judicial Council, in order to retain force majeure as a reason for exempting the shipowner from the presumption of liability stipulated in Article 282 of the Maritime Code, to examine not only whether the force majeure was unforeseeable, but also whether its consequences could not have been overcome.
19) Fadhli Idris, Liability for Inanimate Objects in Algerian Civil Law, op. cit., p. 156.
20) Sulayman Marqas, Al-Wafi fi Sharh al-Qanun al-Madani fi al-Iltizamat (The Comprehensive Explanation of Civil Law Regarding Obligations), 5th ed., Heliopolis, 1998, p. 477. The French jurist Dufour Mantel defined it as "any event that arises independently of the debtor's will, and which the debtor could not have foreseen or prevented." Here, we note that Mantel, through his definition, addressed the elements and pillars of this cause, such as the element of unforeseeability and the element of impossibility of prevention, provided that this impossibility is absolute and the adopted standard is the objective standard, not the standard of the average person. Habib Adel Jabri, op. cit., p. 374.
21) Muhammad Abd al-Ghafur al-Amawi, article entitled, "The Extent of the Injured Person's Contribution to Causing the Harm and Its Impact on Estimating Compensation," Dirasat, Sharia and Law Sciences, Vol. 40, No. 2, p. 556; Al-Madani Boussaq, Compensation for Harm in Islamic Jurisprudence, 2nd ed., n.d., p. 52.
22) Article 125 of the Algerian Civil Code stipulated that "the person who causes damage through their act, omission, negligence, or lack of caution shall not be held liable unless they are of sound mind." This was after the 2005 amendment. Before the amendment, paragraph 2 of Article 125 of the Algerian Civil Code, which was deleted after the 05/10 amendment, stipulated that "if damage is caused by a person lacking sound mind and there is no one responsible for them, or it is impossible to obtain compensation from the responsible party, the judge may order the person who caused the damage to pay fair compensation, taking into account the circumstances of the parties".
23) Nabil Ibrahim Saad, General Theory of Obligation, Provisions of Obligation, Dar Al-Jami'a Al-Jadeeda, Alexandria, 2005, p. 419.
24) Article 133 of the Algerian Civil Code, op. cit.
25) Article 308 of the Algerian Civil Code, op. cit.
26) Article 383 of the Civil Code stipulates that "the warranty claim is extinguished by prescription after one year from the date of delivery of the sold item, even if the buyer

does not discover the defect until after this period, unless the seller undertakes the warranty for a longer period. However, the seller may not invoke the one-year prescription period if it is proven that he fraudulently concealed the defect".

27) Article 18/03 of Executive Decree No. 90/266 dated 09/15/1990, concerning the warranty of products and services, Official Gazette No. 40, 1990, stipulates that "if the seller does not respond, he may file a warranty claim against him with the competent court within a maximum period of one year from the date of notification".
28) Karim Ben Sakhriya, Civil Liability of the Producer and Mechanisms for Compensating the Injured Party, Dar Al-Jami'a Al-Jadeeda, Alexandria, 2013, p. 18.
29) Abdul Rahman Hamza, Unusual Neighborhood Nuisances and Liability Therefor: A Comparative Study Between Islamic Jurisprudence and Civil Law, Dar Al-Nahda Al-Arabiya, Cairo, 2006, p. 268.
30) Ahmed Bahgat, Civil Liability for Acts Harmful to the Environment: A Comparative Study Between Egyptian and French Law, 1st ed., Dar Al-Nahda Al-Arabiya, Cairo, 2008, p. 220. 56- Article 8 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, stipulates that "rights to compensation under this Convention shall lapse if no action is brought under this Convention within three years from the date of the damage. However, in no case may an action be brought after six years from the date of the incident that caused the damage. If the incident consists of a series of events, the six-year period shall be calculated from the date of the first incident."
31) Mahmoud El-Sayed Omar El-Tahawy, Types of Arbitration, Agency, Expertise, Modern Arab Office, Alexandria, 2009, p. 233
32) Qadri Abdel Aziz, International Investments, International Commercial Arbitration, Investment Guarantees, Dar Houma, Algeria, 2004, p. 221.
33) Jaafar Mshemesh, Arbitration in Administrative, Civil, and Commercial Contracts: A Comparative Study, Zain Legal Publications, 1st ed., Morocco, 2009, p. 33. 60- Munir Abdel-Magid, The Legal Regulation of International and Domestic Arbitration, Al-Maaref Establishment, Alexandria, Egypt, 1997, p. 14.
34) Munir Abdel-Magid, General Principles of International and Domestic Arbitration, Police Press, 2005, p. 87.
35) Hamza Ahmed Haddad, op. cit., p. 45.
36) Article 7 of the UNCITRAL Model Law on International Commercial Arbitration states that "an arbitration agreement is an agreement between the parties to refer to arbitration all or some of the specific disputes that have arisen or may arise between them concerning a specific legal relationship, whether contractual or non-contractual. The arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement."
37) Article 7 of the UNCITRAL Model Law on International Commercial Arbitration, 726, cited above.
38) Article 1011 of the Egyptian Civil Procedure Code, cited above. The legislator also stipulated in Article 1013 of the Egyptian Civil Procedure Code that "the parties may agree to arbitration even while the proceedings are in progress before the courts." Here, the legislator emphasizes that the disputing parties may agree to arbitration while the proceedings are in progress before the courts. In this case, the parties may request a postponement of the court's decision until the arbitration period expires.
39) Article 10 of the Egyptian Arbitration Law No. 27 of 1994 67- Article 5 of the Palestinian Arbitration Law, No. 3 of 2000, stipulates that "an agreement between two or more parties to refer all or some of the disputes that have arisen or may arise concerning a specific legal relationship, whether contractual or non-contractual, to arbitration. The arbitration agreement may be in the form of an arbitration clause

included in a contract or a separate agreement."

40) Fathi Wali, op. cit., p. 91; also Mahmoud El-Sayed Omar El-Tahawi: The Concept of Voluntary Arbitration..., op. cit., p. 81.
41) Makhlouf Ahmed, The Arbitration Agreement as a Method for Settling Disputes in International Trade Contracts, Dar Al-Nahda Al-Arabiya, Cairo, 2001, p. 33.
42) Article 1008, paragraphs 1 and 2 of the Palestinian Civil Procedure Code, op. cit., p. 113.
43) Nasser Othman Muhammad Othman, The Plea of Judicial Immunity in Arbitration, Dar Al-Nahda Al-Arabiya. Cairo, 2006, p. 111.
44) REDFERN Alain, HUNTER Martin : Droit et pratique de l'arbitrage commercial international,Traduction de E. ROBINE, 2e Ed, LGDJ, Paris 1991, P. 138/ 140.
45) Ashraf Abdel-Alim Al-Rifai, The Law Applicable to Arbitration and Public Order in International Private Relations, 1st ed., Dar Al-Fikr Al-Jami'i, Alexandria, 2008, p. 140.
46) Ibrahim Radwan Al-Jaghbir, The Invalidity of the Arbitrator's Award, Dar Al-Thaqafa for Publishing and Distribution, Jordan, 2009, p. 198.
47) Article 1015 of the Algerian Code of Civil Procedure, op. cit., states that an international arbitration tribunal may consist of a single arbitrator or several arbitrators. However, given the importance of the disputed matters, the parties usually prefer a collective panel that allows each party to appoint an arbitrator.
48) Ahmeima Suleiman, article presented at the International Conference on Alternative Dispute Resolution Methods, May 6-7, 2014, University of Algiers 1, p. 176.
49) Articles L525-1 and L525-2 of the French Labor Code, pp. 355-356. 89- Hamza Ahmed Haddad, previous reference, p. 222.
50) (The permissibility of appointing arbitrators by agreement is established in all legal systems, with the exception of Saudi law, which mandates the filing of the arbitration agreement with the competent authority. This agreement must contain the names of all arbitrators. If the agreement does not include the names of the arbitrators, it will not be considered valid. In Saudi law, the term "agreement" refers to the arbitration agreement itself, without including the arbitration clause, which remains valid and enforceable even if not filed)
51) Article 1017 of the Civil and Administrative Procedures Law, previous reference.
52) Article 1014 of the Civil and Administrative Procedures Law, previous reference.
53) Article 1018, paragraph 1 of the Civil and Administrative Procedures Law, previous reference.
54) Article 1015, paragraph 2 of the Civil and Administrative Procedures Law, previous reference. 94- Article 1016 of the Code of Civil and Commercial Procedure stipulates the grounds for challenging arbitrators as follows: "An arbitrator may be challenged in the following cases:
55) A party who appointed or participated in the appointment may not request the challenge of an arbitrator except for a reason that became known after the appointment. The arbitration tribunal and the other party must be notified without delay of the reason for the challenge"...
56) Fawzi Muhammad Sami, op. cit., p. 155.
57) The venue must also meet considerations of impartiality and suitability, allowing for the easy summoning of witnesses and experts, and providing meeting spaces, accommodation for the parties, and various communication facilities that facilitate the arbitration process.
58) Fawzi Muhammad Sami, ibid., p. 156. 98- Article 446 of the Code of Civil and Administrative Procedure, op. cit.
59) Arbitration proceedings begin with a request submitted by the claimant to the other party and to the Secretariat of the Permanent Court of Arbitration. Each party appoints

its arbitrator within 30 days of the commencement of proceedings. In some contracts, arbitration proceedings begin with a notification from one party to the other expressing its desire to refer the dispute to arbitration and naming its arbitrator. The other party then names its arbitrator and notifies the first party within 15 days of receiving the notification. This is stipulated in Article 46 of the Protocol annexed to the 1965 Algerian-French Treaty.

60) Arbitration proceedings begin on the day the respondent receives the request for arbitration from the claimant. Accordingly, the parties to the dispute may agree that the arbitration proceedings begin from the date of their appearance before the arbitral tribunal, or from the date one party notifies the other of the request for arbitration, or from the effective date of a specific date, or from the court's acceptance of the arbitration mandate, or from any other procedure agreed upon by the parties to the dispute, or from the date the request for arbitration is submitted to the Secretariat of the competent body. (Khaled Mohamed Al-Qadi, Encyclopedia of International Commercial Arbitration, previous reference, pp. 214-215.(
61) Article 13 of the Law 90/02, concerning the settlement of collective disputes, op. cit.
62) Articles 1036 and 1037 of the Code of Civil Procedure, op. cit., p. 116.
63) Articles 1035 to 1038 of the same Code.
64) Article 1031 of the Code of Civil Procedure, which stipulates that "Arbitration awards acquire the force of res judicata upon their issuance with respect to the dispute decided".
65) This is achieved by excluding the application of the provisions of the Code of Civil Procedure concerning appeals against arbitration awards, as contained in Article 454 et seq., from the scope of application to collective disputes, on the one hand, and also by explicitly stating that the arbitration award is binding on the parties, who are obligated to implement it, on the other hand.
66) Article 1032, paragraph 2, of the Code of Civil and Commercial Procedure, p. 115.
67) Article 1033 of the new Code of Civil and Commercial Procedure stipulates that: "Appeals against arbitration awards shall be filed within one (1) month from the date of their pronouncement before the judicial council within whose jurisdiction the arbitration award was issued, unless the parties waive their right of appeal in the arbitration agreement".