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The Provisions of Sports Investment in Algerian Law

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Abstract:
This study aims to highlight the most significant type of investment outside the hydrocarbons and services sector namely, investment in the sports field while moving beyond the traditional approaches to such investment. Rather, the study seeks to identify modern methods of investing in professional sports clubs. Investment in this field constitutes an important source of profit for the investor. The research findings indicate that the Algerian legislator, despite transforming the professional club into a commercial company specifically a joint-stock company did not extend to sports investment, under the provisions of the investment law, the same advantages accorded to investment in other sectors. The matter was partially remedied by permitting sports associations to invest in sports, albeit without those advantages.
Keywords: Investment, Sports, Professionalism, Professional Club.

Introduction

Advanced states regard sport as a source of rapid profit with its considerable earning potential and this has led them to redirect public interest toward sport to the point of substituting traditional means of sports financing, which relied on state grants and donations from businessmen, with newer, more modern economic approaches. The private sector has thus assumed a significant role in investing in the sports field, far removed from state intervention, with the aim of generating profit.

The contemporary trend focuses on managing clubs through financially structured companies such as joint-stock companies that take over the administration of these sports, and whose exploitation can refinance all sports activities and bring them to the international level. This is precisely what the Algerian legislator demanded through Law No. 13-05, which organises sport. Sports investment takes diverse forms: it may consist of a sports investment in the sports institution through financial sponsorship of the club for example, through television broadcasting rights, sponsorship rights and advertising, the right to buy and sell players for individual and team games, the establishment of sports schools for teaching and training, the purchase of shares in companies; or it may constitute a general investment in the sports institution through the establishment of therapeutic centres, the exploitation of sports facilities as tourist complexes accompanied by entertainment and service facilities that attract tourism. Sports investment seeks to achieve profit either by generating profit far removed from loss, or by protecting the investor's capital so as to avoid loss in the project.

There are factors that influence investment in the sports field, including: stability at the legislative, political, or economic level of the state; as well as the existence of basic infrastructure and fundamental structures comprising stadiums, sports facilities and equipment for players and the technical and administrative apparatus of the team, and for the public. Among the factors influencing sports investment is also financing, which has become diverse because sport has become a source of high profits and an economic return for society.

From the foregoing, the following question arises: **How has the legislator organised investment in the sports field?**

In order to answer this question, the analytical method will be followed to identify the key points related to the subject and analyse them. The study is divided as follows:

1. Section One: The conceptual framework of sports investment.
2. Section Two: Investment pursuant to the provisions of the contemporary sports legislation.
3. Section Three: Sports investment under Law 16/09 and the legislator's stance thereon.

Section One: The Conceptual Framework of Sports Investment

First: The Legal and Technical Definition of Sport

1. Linguistic Definition

The word 'sport' is of Latin origin and derives from the word DISPORT
[1], which is its equivalent in French and English as SPORT, meaning transformation and change that is, the conversion and diversion of people, and the shift of their attention from work to recreation and entertainment through the practice of sport.

2. Technical Definition: Sport may be defined as the physical effort performed by a sportsperson during training or competition, with the aim of achieving victory in the competition. It must take place within an organised framework stipulated by or recognised at the level of federations or international bodies.[2]

3. Legal Definition: Sport is defined legally as: "A set of games based on physical skill, which presuppose rules and recognised discipline."

Second: Characteristics of Sport: Sport is distinguished by several characteristics, among which are:[3]

4. Sport relies on mental and psychological concentration (effort) as well as physical effort, and fair competition is respected therein.
5. Respect for the rules of the game, with fair competition being achieved without resorting to fraudulent means to win, such as the use of stimulants.
6. The use of physical activity for the purpose of winning.
7. It has a social character that influences the public.
8. It is characterised by voluntary freedom, in that the individual practises it without coercion or pressure.

Third: Definition and Dimensions of Sports Professionalism

1. Definition of Professionalism

Sports professionalism is defined as a profession practised by a sportsperson in the sports field on a regular and continuous basis for the purpose of achieving a financial return upon which he depends, through a contract concluded between the player and the club, whereby the player is obligated to comply with the terms of the agreed contract for the specified duration.[4]

2. Definition of Sports Professionalism (chantelat pascal)

Chantelat Pascal[5] defines sports professionalism as a sports, economic, legal (legislative), organisational, and institutional process at the same time. From this definition, sports professionalism rests on three principal dimensions:

Second: Dimensions of Sports Professionalism

1. The Sports Dimension of Professionalism: The entry of sports associations and clubs into the world of professionalism gives them the appropriate framework to develop themselves and attain results at national, continental, and global levels.[6]

2. The Organisational and Institutional Dimension of Professionalism

Entry into the world of professionalism requires clubs to adopt the form of commercial companies whether a limited liability company or a joint-stock company which must have a board of directors to manage it, preserve the company's capital, and devise a strategy aimed at achieving profit.

3. The Economic Dimension of Professionalism

This relates primarily to the revenues of the professional club and their sources, which provide it with a budget enabling it to manage the competition and pay the wages of players, coaches, and administrators. The clubs must therefore devise a strategy to create a form of balance in the budget and to record profits.[7]

Third: The Concept of Sports Investment

1. Linguistic Definition: The word 'investment' linguistically derives from the verb meaning exploitation and transition one says: 'the person invested a thing' in the sense that he exploited it and caused it to bear fruit, meaning he made it productive and thereby obtained its yield.[8]

2. Technical Definition: Investment is technically defined as the principal instrument of economic and social development planning, aimed at achieving its objectives, namely: increasing production, satisfying the desires and needs of individuals, increasing the capacity of the economy, and meeting global challenges.[9]

3. Legal Definition: Law No. 16-09 relating to investment defines investment in its second article as follows: "For the purposes of this law, investment means the acquisition of assets falling within the framework of establishing new activities, or the expansion or diversification of production capacities, and/or the rehabilitation, or participation in the capital of a company."

4. Definition of Sports Investment: Sports investment is an attempt to increase capital through its use in a type of activity that generates sports income. In another sense, investment in the sports field consists of taking advantage of all available material capacities and developing human resources in order to increase the economic return of the sports institution.[10]

To define the concept of sports investment, the following key elements must be combined:

- **Contribution:** wherein the investor provides a contribution whether in cash, in kind, or in a non-material form.

- **Intention to make a profit**: The objective of the investment process is to obtain profits.
- **Risk:** The investor may achieve profits or may bear a degree of loss.
- **The time factor (duration):** The investor must invest his funds over a given period short, medium, or long and must commit to that period for the assessment of his profits. (This is what distinguishes investments from purchases and sales.)[11]

Investment in sports companies or sports clubs aims to increase their capital through the employment of capital in the field of different sports activities, which allows for a mutual exchange of benefits between investors and the various sports companies. The investor invests his funds while the sports institutions invest all the material and human capacities needed for sports activities (player, administrator, public).[12]

Section Two: Investment Pursuant to the Provisions of Sports Law No. 13-05

Investment in the sports field has gained considerable attention in contemporary sports legislation including that of Algeria whether in the laws or contracts relating to this field, and this is attributable to the significant development it has achieved in the fields of economics and economic development.

First: Sports Investment Pursuant to Law 13-05

Law No. (05/13) of 23 July 2013 relating to the organisation of physical and sports activities aims to define the principles, objectives, and general rules that govern, organise, and develop physical and sports activities in their comprehensive form, as well as the means of their promotion in Algeria[13]. This is because sport currently contributes significantly to building the national economy through revenues from television broadcasting, advertising, and so forth. As a first step toward the success of investment, it lies in human resources, which are considered the driving force of the economy; and through investment in sports facilities and structures.

Upon reviewing Law 13-05, it is found that the legislator established several means for investment in sports and permitted the private sector to participate in accordance with the objectives and strategy set by the state for the development and promotion of sport in Algeria. Among these fields are the following:

1. Investment in Human Resources

This law permits investment in human resources through:

a) The Field of Training

Pursuant to the provisions of Article 7 of the aforementioned Law 13-05, the legislator permitted the private sector whether a natural or legal person to invest in the field of training athletes and young sports talents in order to develop their qualifications and physical and psychological capacities, and to raise their performance level within sports training institutions, which are subject to a conditions charter in their accreditation.

b) Elite and High-Level Sport

Pursuant to the text of Article 43 of Law 13-05, the legislator permitted the natural or legal person, subject to public or private law, to participate in and contribute to elite and high-level sport.

c) The World of Work

Pursuant to the provisions of Article 54, it is found that the legislator permitted persons both natural and legal subject to public or private law to establish sports clubs within the framework of social services, which are responsible for organising physical and sports activities within the framework of sport and work, and their financing and development.

d) Sports Clubs

Pursuant to the provisions of Article 81 of Law 13-05, any natural or legal person whether a sports club or not may establish a professional sports club or become a partner or shareholder therein, considering it a commercial company with a sports objective. The legislator also granted the foreign partner the right of participation or partnership in the professional sports club in accordance with the legislation in force.

2. Investment in Sports Facilities

Investment in sports facilities may be made from the public or private sector. Pursuant to Article 149 of Law 13-05, it falls upon the state and local communities, in relation with the relevant national sports federations, to build and equip diverse and appropriate sports facilities compatible with the various forms of physical and sports activities, within the framework of the sports guidance plan and the major sports equipment.

As for investment from the private sector, Article 150 of Law 13-05 indicated that natural and legal persons may, within the framework of the legislation in force, build, develop, or exploit sports or recreational facilities for the purpose of intensifying the various forms of sports practices and developing the national network of sports facilities.

It is also worth noting that the private investor in this field benefits from the incentive measures under the investment law in force, in addition to the state's encouragement and stimulation through tax facilities and access to real estate and bank loans.

3. Mechanisms of Sports Investment

Law 13-05 contains a set of legal provisions that set out the mechanisms followed in sports investment, as follows:

a) Financing

Pursuant to Article 165 of Law 13-05, the economic partner of the state may finance several sports projects and events for example, Mobilis Company as the official sponsor of the Algerian football league, and Ooredoo Company for the national team as Article 165 stipulates that: "public or private operators may intervene in the field of financing the support, promotion, and sponsorship of athletes, sports clubs, sports leagues, and national sports federations."

b) Marketing and Advertising

Article 164 stipulates that this is assigned, according to the nature of the competitions, to the National Olympic Committee and the National Para-Olympic Committee, the national sports federations, sports leagues, and sports clubs. This includes the marketing of advertising displayed on athletes' clothing, and all other rights arising from sports competitions and shows, particularly those broadcast by audio-visual means or electronically on national territory or televised, as well as all international competitions in which Algerian athletes participate.

c) Support and Sponsorship

Public or private operators may intervene in the field of financing the support, promotion, and sponsorship activities for the benefit of athletes, sports clubs, sports leagues, national sports federations, and the National Olympic Committee and the National Para-Olympic Committee.

Second: Sports Investment Through Contracts

There are a set of contracts related to the field of sports investment that are still at a formative stage because of their novelty. These contracts include:

a) Privatisation Contracts

Privatisation[14] refers to the transfer of ownership of sports clubs from the state or clubs to individuals, resulting in a private sector owned by individuals whose investment activity lies in the sports field. This privatisation appeared in the sports sector through management, operation, and leasing contracts, or the partial or total sale of the assets of sports clubs to the private sector, and the state's exemption from financing sports clubs.[15]

b) Professional Sports Contracts

The contract is the bond that brings together the player and the club; it is subject to labour law in its rulings and organisation, and this contract must comply with the international regulations governing sport.

c) Sports Sponsorship Contracts

Sponsorship is considered an indirect method of advertising, aimed at linking the name of the sponsor to a specific activity; thus the sponsor provides care for the sites and activities that attract a large number of fans. Accordingly, the sponsorship of sports clubs by economic institutions such as the official sponsorship by Mobilis Company for the professional league constitutes a form of such sponsorship.

d) Build, Operate, Own, and Transfer (B.O.O.T)[16] Contracts

These are defined as construction, operation, and management contracts for a utility, with its operation for a specified period of time, and its subsequent transfer of ownership to the state. B.O.O.T contracts are among the most important investment contracts to which the state resorts in order to draw the private sector into the investment field. However, in the sports field, this type of contract has not been applied.

Section Three: Sports Investment under Investment Law 09/16 and the Legislator's Stance

The Algerian legislator's position on investment in the sports field is manifested through two important matters: the first consists in the inclusion of sports investment in the negative list stipulated in the new Investment Law 16/09, from which it is excluded from benefiting from the advantages prescribed therein; the second lies in the issuance of an executive decree relating to sports investment for sports associations possessing public interest, which contains as a basic condition the requirement of obtaining a licence.

First: Issuance of Executive Decree No. 17-101 (Inclusion of Sports Investment in the Negative List)

The negative list comprising sectors, fields, and activities not entitled to the investment advantages was established through Executive Decree No. 17-101, which determines the minimum amounts for benefiting from the advantages, the negative lists, and the modalities for applying the advantages to the various types of investments. The negative list refers to the list in which the names of activities excluded from benefiting from the advantages stipulated in Law 16/09 are entered namely, all movable and immovable material and non-material assets directly entering the framework of the realisation of the investment for the purposes of applying the decree, and referring to goods and services by which is meant the acquisition or creation of goods directed to continuous use of the same form for the purpose of training, development, or rehabilitation of activities mentioned in the decree.

The legislator excluded through the decree all goods subject to the accounting system other than those entered in the accounts of fixed assets with the exception of the exceptions stipulated in the decree. The decree thus determined approximately 152 types of services and 12 productive activities that do not benefit from the advantages. Among these falling within the sports sector and included in the negative list are:

1. Construction, equipping, and installation of swimming pools.
2. Training of animals for competitions.
3. Rental of sports halls.
4. All rental activities regardless of their subject matter.
5. Institutions of betting and lotteries belonging to the state exclusively.
6. A sports facility.
7. An aquatic sports institution (for profit).
8. A games hall.

Second: Issuance of Executive Decree No. 16-261 (Sports Investment for Public Sports Associations)

Executive Decree No. 16-261 was issued following the promulgation of Investment Law No. 16-09, which determines the conditions and modalities for the realisation of investments by national sports associations recognised as serving the public interest and public benefit. Thereafter, Executive Decree No. 17-101 was issued, which determines the minimum amounts for benefiting from the advantages, the negative lists, and the modalities for applying the advantages to the various types of investments. This last decree determined four chapters containing the following:

Chapter One: General Provisions the text covered the field of application and licensing.

1. Field of Application of the Decree

Article 02 of this decree stipulates the field of application of its provisions to sports associations, especially sports federations.

2. Sports associations may not undertake investments except through a licence[17] obtained from the minister responsible for sport, in the following fields of investment:

- Services and activities of sports events.

- Establishment of centres for the training of young sports talents.
- Construction and operation of sports facilities and recreational amenities.
- Hotel activities.
- Marketing of sports equipment and gear.
- Ensuring services for sports facilities.
- Maintenance of natural and artificial turf.
- The minister responsible for sport may determine the list specific to the fields of investment in sport.

Chapter Two: Conditions of Investment Sports associations must meet the following conditions in order to invest in the aforementioned fields:

1. To be recognised as serving the public interest and public benefit in accordance with the laws and regulations in force.
2. To be accredited and to have its founding statutes accredited and ratified in accordance with the laws and regulations in force.
3. To hold the approval of the general assembly of the national sports association that includes approval for carrying out the investment project.
4. To present and prove to the minister responsible for sport the financial resources owned by the national sports association for financing the investment project, and to allocate its profits exclusively to financing the tasks stipulated in its founding statute.

Sports associations may, in order to carry out their investments, take all necessary measures to this end, including establishing a commercial company in accordance with the legislation in force commercial law.

Chapter three: Modalities of Investment National sports associations wishing to invest in one of the fields stipulated in the decree must deposit a file accompanied by the following documents at the competent departments of the ministry responsible for sport:

1. A copy of the decision recognising the sports association as serving the public interest and public benefit.
2. A copy of the founding statute and accreditation of the national sports association recognised as serving the public interest.
3. A copy of the accounts inspector's report for the last financial year.
4. A copy of the investment project with timelines for realisation.
5. A copy of the minutes of the general assembly containing the approval granted by the national sports association for the realisation of the project.
6. Documents proving the financial resources owned by the national sports association for financing the investment project.

After submitting these documents, the competent departments of the ministry responsible for sport verify them and submit them to the minister responsible for sport. Thereafter, the minister responsible for sport decides on the file within 30 days from the date of its deposit; during this period he may also request complementary information relating to the file. After this, the decision of the minister containing the investment licence is communicated to the applicant within 8 days. Associations may submit an appeal to the minister within 15 consecutive days to notify him of the rejection decision.

Chapter four: Obligations of National Sports Associations

1. National sports associations are obligated to carry out the investment project from their owned financial resources and to allocate their profits exclusively to financing the tasks stipulated in their founding statute.
2. National associations must give priority to qualified investments that create employment positions, especially those related to the activities of the sports sector.
3. National sports associations are obligated to begin the realisation of the investment project within one year from the date of delivery of the investment licence; in the event of failure to commence the realisation of the investment project within this period, the minister responsible for sport cancels the investment licence after giving notice to the association concerned.
4. National sports associations are obligated to submit periodic reports on the progress of the investment project to the relevant ministry.

Conclusion

From what has been set forth in this research paper, it becomes apparent that investment in the sports field remains somewhat ambiguous due to the weakness of the investment concept in this field among private parties. Moreover, following the promulgation of the investment law, the legislator continued to exclude sports investment from the investment advantages granted to the investor in other sectors, and awaited the issuance of the two Executive Decrees No. 17-101 and No. 16-261. It becomes clear, through the last decree, that the Algerian legislator proceeded to include the activities related to sports investment in the negative list excluded from benefiting from the advantages stipulated in Law 16/09, and to issue an executive decree determining the modalities of investment by public associations.

It is also found that the Algerian legislator has not provided incentives or encouragement for the private sector to invest in the sports field which does not serve the development of sports investment in Algeria.

Furthermore, this amendment came after Algeria's direct orientation toward a policy of promoting the private sector and opening up the field before it to participate in achieving the sought national development, after the public sector proved incapable of achieving it alone through the issuance of a set of laws, legislation, and organisational procedures and restored credibility to the private sector, especially the foreign partner, the consideration of which during the socialist orientation was often regarded as a threat to national sovereignty, a means of domination and hegemony, and a tool of control over economic goods. Foreign private investment is now regarded as a necessary tool for development and a vital contributor in providing capital, the missing technology, and creating employment opportunities, enabling the economy to develop its sectors and diversify its exports.

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[17] A licence is an administrative authorisation granted by an administrative authority for the purpose of permitting the practice of a specific activity, such as regulated or classified activities, including construction permits and others.