



THE LEGISLATION ON INVESTMENT IN LIBYA

1. The ongoing political context

Following the fall of Khaddafi's regime, free elections were held for the establishment of a Constitutional Assembly, which would be delegated to write a new Constitution for the country to be approved by popular referendum.

Following these elections, the National Provisional Council set during the 2011 revolutionary phase was dismissed, and the executive power was conferred to a National Temporary Council, which will stay in power up until the appointment of a new Government, based on the forthcoming Constitution.

The task of drafting a new Constitution will be assigned to 60 (sixty) experts (20 members from each of the three macro areas of the country) who should have been elected by the Constitutional Assembly -pursuant to the original legal arrangement-, but have actually been elected through popular elections.

On May 2013 a law entered into force ruling that anyone who has been affiliated with Kahddafy's Regime be incompatible with any public office.

2. Capital Investments and International Law

The general principles of International Law protect foreign investments in the event of changes in the political regime of a country, even when the more radical ones as in Libya. In particular, the protective measures aim at avoiding that changes in national legislation could endanger foreign investments and that the principle of State continuity is complied with.

Thus, Libyan Government and its public agencies are bound to respect both international treaties that have been subscribed by the former Governments, and the agreements concluded with foreign investors.

The following is a list of the Countries that have signed Bilateral Investment Treaties (BIT) with Libya, together with the year:

Italy (2000); Switzerland (2003); Portugal (2003); Germany (2004); France (2004); Belgium-Luxembourg (2004); Malta (1973)

and 2004); South Korea (2006); Spain (2007); India (2007); Turkey (2009); China (2010).

No treaty is actually enforced with either the UK or USA.

3. The relations with Italy

Traditionally, commercial relationships between Libya and Italy have always been very intense, and in 2013 the volumes of trade between the two countries have exceeded the 2010 levels. These commercial exchanges have recently increased due to the abolition of the embargo in 2003, and the subscription of the “Trattato di Amicizia, Partnerariato a Cooperazione” between Italy and Libya in 2008.

In January 2012 a new Treaty has been signed, the “Dichiarazione di Tripoli”, seeking to confirm the provisions of the 2008 Treaty and to adapt them to the new post-revolution political context.

4. The legal system

Libyan legal system is mainly based on civil law tradition, like Egypt, and other modern Islamic Countries. Currently, private relationships are governed by a Civil Code adopted in 1954, and based on the following sources of law: Statutory Law, Shari’a Principles, Natural Law and Equity Principles.

In 2010, a group of statutes entered into force, introducing new legal concepts in the Libyan Legal System, on the one hand, and determining deep changes in commercial law, by means of a significant revision of the Commercial Code (whose reach also encompasses Company Law and Bankruptcy Law), on the other hand.

These are the most important Statutes:

- Law n. 7 of 2010 on Income Taxation
- Law n. 8 of 2010 on Registration Law
- Law n. 10 of 2010 on Customs
- Law n. 12 of 2010 on Labour
- Law n. 23 of 2010 on Commercial Code
- Law n. 9 of 2011 on Capital Investments
- Law n. 11 on Stock Exchange

Aside from that, the Libyan commercial setting is characterized by on-going debate promoted by the Libyan Bar Association, on the prospective reforms of Commercial Law, focusing in particular on the

discipline of foreign investments, with a view to fostering the establishment of foreign companies in Libyan territory.

5. Business set up in Libya

In order to run business in the country, Libyan Law requires that foreign companies set a “local unit”, pursuant to the Commercial Code, as amended by the above mentioned Law n. 23/2010, and Law n. 9/2010, and according to the decisions of the Ministry of Economic Affairs n. 103/2012 of May 25th, 2012, and n. 207/2012 of July 5th 2012, which has modified the former.

According to the above legislation, foreign companies can run business in Libya availing themselves of one of the following options:

Representation Office:

A foreign Company can open a representation office in the country for the purpose of managing the company’s affairs, preparing market studies, gathering data, preparing studies and facilitating procedures to carry out its activities, but without having power of attorney to sign contracts in its name.

The Office can be established for a two-year term (renewable once for an equivalent period), and must be authorized by the Ministry of Economy, with a waive that could be revoked in case of infringement of the prohibition to do business activity on the Country.

In order obtain the authorization to open a representation office, the foreign Company must provide the following documents:

1. The Resolution from the board of directors of the Company containing the decision to open a representation office in Libya;
2. Copy of the company’s Articles of Incorporation and Memorandum of Association;
3. Extract of the company’s registration in the Office of the Registrar of the Home Country or equivalent document;
4. Declaration of appointment of a representation office’s manager, chosen either during the decisional procedures of the board of directors to open a representation office in Libya, or by virtue of a separate decision.
5. Proof of the opening of an account in Libyan dinars or foreign currency in one of the banks incorporated in Libya, and coverage of the amount needed to open the representation office with transfers from the company; in particular, the balance is to be sufficient to cover the minimum expenses for establishment of the office and of its commercial expenses. At any rate, the

account's balance should not be less than 150,000,00 (One hundred fifty thousand) Libyan Dinars.

Joint Venture

A joint venture is a company composed of both Libyan and foreign shareholders (natural and/or legal persons).

By virtue of the Decision of the Ministry of Economic Affairs n. 103/2012 of May 13th 2012, important changes were introduced to the joint venture regime. In particular, the Decision recognized the possibility to constitute Limited Liability Companies with capital of 50.000,00 (fifty thousand) LYD, on the one hand, and the increase of the limit of foreign participation to 65% of the venture capital, on the other hand. However, these innovations were soon and implicitly repealed by means of the Decision n. 207/2012 of July 5th 2012.

Therefore, the constitution of a joint venture can only be vested in the form of a corporation with a registered capital of not lesser than One Million LYD, or three-tenth of the registered capital if the latter is higher than 1,000,000,00 (one million) LYD.

This provision is far from being clear, also in light of the former discipline requiring the deposit, at the time of the subscription, of 3/10th of the subscribed capital at any rate not lesser than 1 Million LYD. Thus, a joint venture could be constituted with the deposit of capital not lesser than 300,000,00 (three Hundred Thousand) LYD. The current contour of the rule, which also requires a registered capital not lesser than 1 Million LYD, is therefore interpreted by Libyan Notaries and Public Authorities in a restrictive way, requiring at least the latter sum.

The regulation requires that CEO of the Joint Venture be a Libyan National and that the stake held by foreigners be not higher than 49%.

The Ministry of Economic Affairs can grant a waiver for a higher foreign stake, up to 60% of the foreign participation, on the basis of the peculiarities of the core business, or of its localization, or of special technological or technical requirements.

In order to obtain the Ministerial waiver for a joint venture with a local partner a foreign company must provide the following documents:

a. With regard to a legal person:

1. The resolution of the board of directors of the Libyan Company and of the foreign Company approving the participation to a joint venture and establishing the amount of the Stakes;

2. Copy of the company's Articles of Incorporation and Memorandum of Association;
3. Extract of company's registration in the trade register of the Home Country for the foreign company and extract its registration in the Libyan Register for the Lybian Company;
4. Certification from one of the Banks enabled to operate in Libya, proving the actual deposit of the capital established by law, and that the foreign partner has conferred its share of capital due by law;
5. Documentary evidence proving the conferment of the share in kind according to article 104 of law No. 23 of 2010, regardless of whether this share is provided by the Libyan or by the foreign partner.

b. With regard to a natural person:

1. Proof of identity according to valid passport;
2. Proof of necessary legal age to venture in a commercial activity, according to the applicable Libyan regulations;
3. Certificate of good conduct, proving that the individual not has been sentenced for a crime or felony involving moral turpitude;
4. Certificate proving that the individual has not been declared bankrupt;
5. Certificate from one of the banks operating in Libya confirming the provision of the whole of the share capital in cash;
6. Documentary evidence of the forming of the share in kind, according to article 104 of law No. 23 of 2010, regardless of whether this share is provided by the Libyan or by the foreign partner.

With regard to both legal and natural persons, all the documents referred to above are to be translated in Arabic and duly apostilled.

In order for a joint venture to start up, it must comply with the following requirements:

1. Transferring know-hows and technology;
2. Employing Libyan national workers, in line with the specific percentages enshrined in Libyan Laws;
3. Setting annual plans for training and employment of national workers for those position occupied by foreign workers;
4. Setting annual plans for the replacement of foreign workers with national ones;

5. Using equipments, machineries, raw materials and production requirements that are available on the local market;

Furthermore, the Decision n. 207/2012 has set some limits for the business activities run by foreign joint ventures, establishing that the following business are reserved to Libyan nationals:

1. Wholesale and retail trade;
2. Import;
3. Supplying services;
4. All types and fields of commercial agencies;
5. Land transport service;
6. Inspection activities of all imported and exported commodities and goods;
7. Activities of stowage, loading and discharging in airports;
8. Accountancy and auditing activities as well as financial, legal and economical counselling;
9. Stone crushing activities (Crushers);
10. Employment of common and trained labourers, as well as of line and staff managers;
11. Housing and Civil construction activities, limited to contracts amount up to 30 million Libyan dinars;
12. Any other fields which are restricted to Libyans according the laws in force.

Branch

In order to establish a Libyan Branch, a foreign company does not require a local partner. However, the Ministry of Economic Affairs must authorize such local branch, provided that the company is not already operating in the country in the same field of activity by means of a joint venture with a local partner.

The said branch can established for a time-limit up to 5 years and can operate exclusively in one of the following areas of business:

a) Housing and civil Constructions (for contracts of value starting from 50 Million LYD)

- 1) Housing;
- 2) Construction of Roads, Bridges and Dams;
- 3) Marine constructions such as quays, breakwater, dry docks and deepening ports;
- 4) Construction of airports and tarmacs;
- 5) Railways and Construction of Railway stations;

- 6) Construction of pipelines for the transport and distribution of gas, using types and sizes of carbon steel and polyethylene pipes;
- 7) Construction and maintenance of domestic gas pipelines

b) Electricity

- 1) Construction and maintenance of electricity power plants, including those based on renewable energies, and stations for the lowering and raising of the voltage;
- 2) Installation and maintenance of cables for the transfer of electrical power;
- 3) Construction and maintenance of desalination plants, employing thermal methods and renewable energies;

c) Oil sector

- 1) Soil exploration for oil search;
- 2) Data processing and presentation of geological studies;
- 3) Drilling and maintenance of oil wells, supply of services for the set up and maintenance of oil wells and submerged oil pumps;
- 4) Supply of services for the treatment of mud and drilling liquids;
- 5) Construction of tanks, placement and maintenance of pipes and pipe lines for pumping oil and gas;
- 6) Construction of floating marine terminals for oil and gas exploration;
- 7) Placement and maintenance of oil refineries and petrochemical plants;
- 8) Supply of marine transport services for materials, equipments and devices concerning drilling operations in marine areas;
- 9) Removal of landmines from oil fields and other locations.

d) Telecommunications

- 1) Placement and maintenance of communication systems and of telecommunication stations;
- 2) Construction and maintenance of plants, towers, antennas for communications and air navigation stations.

e) Industry

- 1) Electrical, mechanical and electro-mechanical activities, as well as the supply of the necessary technological know-how for the installation and maintenance of factories' machineries;

- 2) Management, exploration of mines and related extraction activities, with the exception of oil and gas deposits;
- 3) Construction and maintenance of the thermal furnaces related to the plants;
- 4) Placement and maintenance of industrial safety systems.

f) Engineering, surveys and maps

- 1) Surveying and Mapping with various means and for various purposes;
- 2) Supply of the necessary engineering services for mapping towns, urban and cultural areas;
- 3) Preparing studies and designs for engineering projects.

g) Environmental protection

- 1) Construction of environment monitoring stations;
- 2) Treatment of waste;
- 3) Treatment of environmental pollution, installation and maintenance of the machineries;
- 4) Treatment of the interference between seawater with groundwater, maintenance of water drainage network and pumping stations.

h) Computer Industry

- 1) Implementation of control systems and elaboration of softwares.

i) Technical studies, training and supervision

- 1) Studies in the area of information technology, telecommunications, control instruments, consultancy and supervision;
- 2) Training of personnel in accordance with the market demand, pursuant to law No. 18 for 2010 on education;
- 3) Technical studies and engineering projects for accomplishing major industrial and constructional projects;
- 4) Supervision and implementation of engineering projects;

j) Health care

- 1) Construction, placement, maintenance and calibration of medical machineries and medical equipment;
- 2) Management of hospital and medical units;

k) Air transport

This sector is managed and subject to controls in accordance with the relating Libyan Law of transport.

Opening a branch operating in areas different from the above-mentioned ones is not permitted, except for those circumstances in which the pertinent Ministry grants a special waiver.

Libyan Law prevents Libyan nationals from doing business with companies operating in Libya without a proper authorization.

In order to obtain an authorization to open a branch in Libya, a foreign company must provide the following documents, translated into Arabic and duly apostilled:

1. The deliberation of the board of Directors regarding the opening of a Libyan Branch, containing:
 - The area of business among the ones above listed;
 - The dedicated budget to the opening and the management of the branch, which must be not lesser than 250.000,00 LYD;
 - The appointment of both a director of the company in charge of the branch, and of a vice-director, of whom at least one is to be a Libyan national;
2. Copy of the Company's Articles of Incorporation and of the Memorandum of Association;
3. Documental evidence proving the experience and the course of activity of the Company;
4. Extract of company's registration at Office of the Registrar of Companies of the Home Country;
5. Declaration of intent to form a company budget on an annual basis, subject to the control of a Libyan auditor;
6. Certification from one of the banks enabled to operate in Libya proving the deposit of a capital for the establishment and the management of the branch (not lesser than 250.000,00 LYD).

Investment Company

Under Law n. 9 of 2010, foreign investors can constitute specific companies for investments in Libya in order to carry out investing operations in the following areas of business: industry, health care, tourism, services, and agriculture, with the exception of oil and gas business.

An investment company can be formed also in other areas of business, but its constitution is subject to a Government decision upon proposal of the competent Ministry.

The investment company can be entirely owned by foreign investors, provided that the budget invested is over 5 million

LYD. In the event the company is owned for a least 50% by Libyan Nationals, the minimum budget lowers to 2 million. LYD. The investments companies subject to this regulation can benefit from the following:

1. Exemption from custom duties on import of all the goods necessary for the financed projects, among which are machineries, appliances and instruments;
2. Exemption from custom duties, and taxes for 5 years to guarantee the smooth functioning of the projects financed, including taxes on machineries, spare parts and raw materials;
3. Free export of the products included in the financed projects;
4. Exemption from stamp duties on all commercial documents;
5. 5-year exemption from income tax of the company (not encompassing payroll tax);

The invested capital can be repatriated to the home country at the end of the project, or after a 5-year time limit following the authorization of the investment, or in the event the company will be subject to winding-up procedures, or in the event of the sale of the project to others.

The investor has the right to hire foreign workers with the necessary skills to meet the requirements of the projects he has invested in.

Specific restrictions apply to the participation of foreign individuals in accordance with special legislation regarding bank and insurance activities.

6. Income taxation

Libya has a traditional system of taxation. Income tax is disciplined by Law n. 7 of 2010, which has amended law n. 11 of 2004 -which imposed a progressive tax rate-, establishing a fixed tax rate of 20%. The taxpayer can opt to declare his income on either an accrual or a cash basis.

The tax return is to be submitted within 4 months from the closing of the fiscal year, and companies have to keep both the journal and the inventory (also in electronic format).

If they are distributed, the capital bonuses are tax free, regardless of where the partner who benefits from the distribution resides.

On June 10th 2009 Italy and Libya have signed a bilateral agreement to avoid the double taxation on the income, which has not been ratified in Italy yet, since the bill concerning its ratification is still at a preliminary stage.

7. Law of registration tax

Law n. 8/2010 disciplines the registration tax system, prescribing that registration tax must be paid with regard to various documents, deeds, and all the business transactions included in the aforementioned statute.

All the contracts and invoices related to a contract are subject to a stamp duty, usually ranging between 1% and 1,5%.

For instance:

- a) Registration of agreements and invoices for the provision of goods and services is subject to a stamp duty of 1%;
- b) Purchase of vehicles in Libya is subject to a registration tax of 2% (it used to be 1%);
- c) Purchase of raw material in Libya is subject to a registration tax of 1% (it used to be 2%)

The registration tax rate for contracts amounts to 1% of the overall value of the contract, whereas the stamp duty on the subcontract is 0,1% of the overall value of the subcontract.

All contracts are to be registered within 60 days from their stipulation.

The social conferments, whether in money or in kind, to a Libyan company at the time of its constitution or when a capital increase is deliberated is subject to a registration tax of 0.05% of the nominal value of the shares issued at the time of the conferment.