

Formez



REGIONE CAMPANIA



**Policies for Business in the Mediterranean
Countries:**

**GREAT ARAB POPULAR SOCIALIST
LYBIAN JAMAHYRIA**



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Introduction

Libya is generally analysed in the framework of the MENA area, and more precisely, it belongs to the geopolitical North – African region. However, it is worth noting the particularity of Libya if compared with the rest of North-African countries which shared several institutional characteristics and historical backgrounds. Two factors have profoundly affected the evolution of Libya: its oil wealth and the political changes implemented by Libyan leader, Colonel Qadhafi, since his rise to power. Qadhafi created his own political system which is theoretically, a grass-roots democracy providing an alternative between Western bourgeois democracy and Communism.¹

After a period of international isolation, Libya has recently inaugurated a new political course. Both the European Union and more recently the USA² have been observing these changes closely; thus, aware of its strategic relevance, Libya aims to become a central interlocutor in the dialogue between the West and the Arab countries in the framework of Euro- Mediterranean Partnership. This paper aims to provide an analysis of current reform process of the Public Administration in the Great Arab Popular Socialist Libya.³

It is mainly focused on the relations between government and business, paying special attention to incentives and administrative procedures for foreign investors. After a brief analysis of the Libyan economic background, the paper points out the new business environment characterized by the promotion of foreign investments and new programs of privatization.

A reformist course in the economy has been inaugurated by the new Ministry of Economy, Mr. Ghanem, interested in making Libya attractable to foreign capital. These ambitions are also confirmed by the new privatization measures and simplification of procedures, encouraged by International Organizations that welcome liberalization.

¹ The theory supporting the Libyan governmental system is the Third Universal Theory, codified in the so called Green Book.

² On 23 June 2004, the relations between USA and Libya were restored after a 24-year period of total closure. This move was part of a gradual improvement in relations after Qadhafi's decision to accept responsibility for the Lockerbie affair, to pay compensation to the families of the 270 people killed and to dismantle weapons programs. Qadhafi has also pledged to support the U.S.-led war on terrorism.

See: La Repubblica, *"Usa e Libia ristabiliscono i rapporti diplomatici"*, 28 June 2004.

³ This is the official name of Libya. In this paper, it will be referred to as "Libya".

1. General information

Libya⁴ could be defined a socialist-oriented economy dependent primarily upon revenues from the oil sector, which provide all export earnings and approximately 25 percent of GDP. These oil revenues and a small population give Libya one of the highest per capita GDPs in Africa. Import restrictions and inefficient resource allocations have led to periodic shortages of basic goods and foodstuffs. The non oil manufacturing and construction sectors, which account for about 20% of GDP, have expanded from processing mostly agricultural products to include the production of petrochemicals, iron, steel, and aluminium.

Tab.1 Economic data and indicators

Currency	Libyan Dinar.
Exchange Rate	1 euro = 1.38 Libyan Dinar (LYD)
GDP	purchasing power parity - \$35 billion (2003)
GDP per capita	purchasing power parity - \$6,400 (2003)
GDP growth rate	3.2% (2003 est.)
Inflation	2.8
Labour Force	1.6 million (2001 est.)
Major Trading Partners	Italy 42.8%, Germany 14.1%, Spain 13.6%, Turkey 6.9% (2002)
Major import trading Partners	Italy 25.4%, Germany 9.9%, South Korea 6.5%, UK 6.5%, Tunisia 6.4%, Japan 6.3%, France 5.7% (2002)
Main exported products	Mineral fuels, lubricants and related products; Manufactured goods, mainly classified according to the raw material Food products and live animals
Main imported products	Machinery and transport equipment Manufactured goods, mainly classified according to the raw material Food products and live animals Miscellaneous manufactured articles

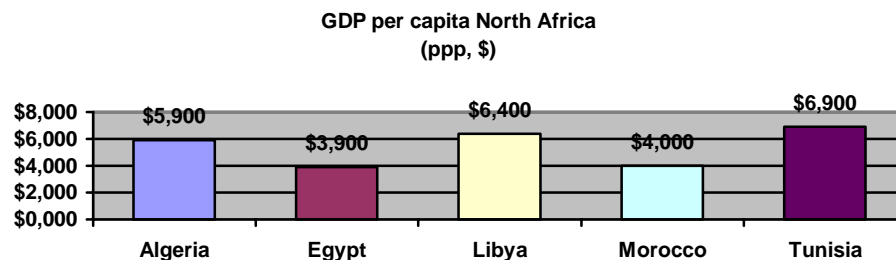
Source: Cia, *World Fact Book 2004*, (<http://www.cia.gov/cia/publications/factbook/geos/ly.html>)

After the suspension of the international sanctions, in spite of a still unattractive business environment, interest for Libyan markets is increasing, because of the country's key role in the Euro-Mediterranean area.

In fact:

⁴ On August 5, 1996, the United States imposed additional sanctions on Libya. This action -- the Iran-Libya Sanctions Act (ILSA) of 1996 -- extended U.S. sanctions on Libya to cover foreign companies that make new investments of \$40 million or more over a 12-month period in Libya's oil or gas sectors. According to official Libyan figures, UN sanctions since 1992 have cost Libya more than \$24 billion, the hardest-hit sector being the oil industry (estimated \$5 billion in lost revenues). The U.S. embargo on Libya prevented any American company from investing in or doing business with Libya. In response to Libya's extradition of the Lockerbie suspects, the U.S. lifted sanctions banning the sale of food and medicine to Libya in April 1999. (On 28 June 2004, USA and Libya restored their diplomatic relations. *Ibidem* p.1).

- Libya is rich in natural and mineral resources that can be considered the basis for many potential industrial, agricultural and tourism projects.
- Libya is a major oil producer and can be considered the hot spot for new explorations.
- Profiles and ready access to European markets make Libya one of the industry's highest profile targets.
- Recently, after major strategic changes and the resolution of the Lockerbie case, Libya has re-entered the world economic scene.
- Libya has a pool of skilled workers eager to emerge in the work force.
- New political and economical reforms (the so-called "**Green Perestroika**") are designed to help Libya in its development goals and to sustain the new course.⁵



Source: Cia, *World Fact Book*, 2003

2. Libya: entering a new era of trade and investment promotion

Libya is still not a simple market for foreign investors because of the intricate laws and regulations, as well as a general lack of clear law and corruption at many levels. However, in the belief that global economic integration will attract much-needed foreign direct investment and will expand economic growth, the Libyan government has been trying to tout for an economic liberalization program, focused on structural modernization and privatization. The foreign investments are considered a successful means to develop certain underdeveloped regions, to diversify its economy, to create new qualified job, to reduce costs of production, to innovate services, to rationalize the exploitation of local resources. ⁶

A turning point in this process was the adoption of **Law n.5/1426 in 1997** (Concerning Encouragement of Foreign Capitals Investment) and the subsequent establishment of the **Authority for the Encouragement of Foreign Investment**, (Libyan Foreign Investment Board) created with the purpose of

⁵ Mohamed Sid-Ahmed, "*Gheddafi's perestroika*", Al - Ahram Weekly, Issue n.689, May 2004.

⁶ Milli Gazette, *Investing in Libya*, January 2001.

facilitating foreign investment procedures and overseeing the application process. The Law n.5/1426 was amended last June 2003; the amendments allow co-investments between Libyan and foreign partners, they also subtracted the projects of foreign investments to the main legal obligations regulating the activities of Libyan societies, in particular, to the registration procedure in the trade or industrial registers. The application field of the law remains restricted because it confirmed that investments in Libya (even by Libyans nationals and subjects of Arab and non Arab States) are still permissible in five main sectors, while all other domains should be determined by the government.⁷

2.1 Libyan Foreign Investment Board

The L.F.I.B. was established as a key component of the Investment Law No. 5. 1997 and it is still the most important body in charge with investments policy.

The main objectives of the board are to:

- Provide advice, information and support for investors.
- Identify and promote investment opportunities, through the elaboration and the presentation of investment plans and economic studies for development of the country.
- Receive and consider applications for foreign capital investments.
- Issue licenses as well as obtaining approvals required for investment projects.
- Develop investment programs and promotional activities to attract investors.
- Recommend or renew exemptions, facilities or benefits for the investment projects.
- Look into complaints and protests of investors without affecting the investor's right to petition and legal action.

2.2 One-Stop Shop Service

The establishment of one-stop shop service could be considered an important sign in the context of simplification of procedures. It provides all services needed by foreign investors and this is being done by means of administrative offices within the L.F.I.B.'s premises.

These offices include:

- Customs office
- Immigration and passports office

⁷ Muslim Trade Network, *Trade Guideline, Libya*, <http://www.muslimtrade.net>

- Tax office
- Labour force office

a) Procedures and approvals that fall within the one-stop shop services include:

- License and permits' procedures
- Export and import procedures
- Import of foreign manpower procedures
- Amendments and changes introduced to the project procedures
- Ownership and renting of real estate procedures
- Transfer of dividends procedures
- Complaint procedures

b) License and permits' procedures:

- An application and commitment for investment shall be submitted by the applicant himself⁸ or by his representative to the appropriate department in the Libyan Foreign Investment Board on the form specified by the Management.
- An approval from the General Corporation that supervises the public partner and the commitment to the investment project is required for a foreign investor who is willing to invest with a public partner.
- The Libyan Foreign Investment Board shall forward the application and the commitment to the Management Committee of L.F.I.B. for further discussion and recommendations.
- Upon the approval of the Management Committee, the Secretary of the General People's Committee for economic and trade will issue his decision for establishing the project under the investment Law.⁹ The Libyan Foreign Investment Board shall notify the investor by the Secretary decision related to the approval of his investment project.
- The investor shall open an account under the project's name in one of the Libyan commercial banks or in the Libyan Arab Foreign Bank and start transferring the project capital. If part of the project's capital is fixed asset, the investor shall present all ownership documents and purchase invoices to the customs office, in order to facilitate the customs procedures.
- The investor shall apply to the Investment Register Office for registration using the form prepared by the Investment Board along with the following documents:

⁸ Foreign investor who is willing to invest by himself or with a private local partner in a joint ownership.

⁹ The Secretary is entitled to request further information about the issuing of his decision.

- 1) Deed of Incorporation and Articles of Association for the Project or the Deed of Incorporation and Articles of Association of the parent company if the Project takes the form of a branch of the said company, the branch appoints its general manager and legal representative in Libya. If the investor is an individual, the information he supplied upon applying for obtaining the permission for investment would be sufficient.
- 2) The power of attorney or delegation of authority issued to the project manager or its legal representative.
- 3) A specimen of the signature of Project's general manager or its legal representative in Libya.
- 4) A certificate from the relevant competent authority to as evidence of the transfer of part or all of the Project's capital to Libya.
- 5) The investment registrar office shall issue to the applicant a certificate proves his registration in the investment register.¹⁰

c) Obligations for the investors

In order for the project to succeed, the investor shall abide by the following obligations:

- Maintain accounting books and records of the project.
- The preparation of an annual budget and cost-benefit accounts approved by a legal accountant in Libya.
- Enable the Board to review accounting books and other related documents.
- Submit periodical reports to the Board regarding the activity of the project and the extent to which is following regulation as mentioned in the license.
- Abiding by investment regulations and laws.
- Not to practice any other activities not mentioned in the license.
- Abide by all Libyan regulations and laws.

2.3 Incentives and Guarantees for foreign investors

¹⁰ If specific problems are noted, the applicant will be informed within 10 days. Within 30 days of this communication, the investor could appeal to the Committee both against the rejection of the request of authorization and against administrative decisions in contrast with the Law 5/1997 (for example, payments the investors is exempted from). Within a week, the Committee presents the appeal and its opinion to the Secretary, whose decision is definitive.

In order to create a more defined business environment, classical and new incentives and facilitations for the investors were established:¹¹

- exemption for any projects from income taxes on its activities for a period of five years as of the date of commencement of the production or work. At the discretion and by the decision of the General People Congress, and on the request of the Secretary, the period could even be increased by an additional three years.
- exemption, from customs and other import taxes of equipments and machineries for the realization of the project and the necessary inputs to operation for the first five years of activity;
- exemption from taxes and customs taxes to the export.¹²

As for the guarantees, art. 12 of law N.5/99 refers to the guarantees for foreign investor and the following possibilities:

- to transfer the capital invested in case of total or partial sale, in case of conclusion or liquidation of the project, after 5 years from the date of release of the license, or within six months from the act of the investment if independent difficulties emerge;
- to transfer profits and relative affairs;
- to employ foreign manpower when the local supply is not sufficient,
- to purchase the land where the project is located,
- to build or to rent the necessary immovable properties;
- To open an account in convertible currency.

The article 23 of the law prevents any possibility of nationalization of the investment; expropriation is possible only on the basis of a sentence and after compensation at market price. In the case of controversies it is possible to appeal both to the ordinary magistracy and to international arbitration.

Moreover, the new income tax law ¹³has dealt with the price structure in order to achieve quality by decreasing the tax rate on incomes resulting from work and increase on incomes resulting from capital. The new law also cancels the general income tax (Super tax) and it puts a top limit to the penalties imposed on delay of tax payment.

3. Free Zones in Libya

¹¹ The most important law regulating the subject is the Law n5/1997 amended in June 2003.

¹² For detailed information about the Law, see www.investinlibya.com/en_law5.html.

¹³ Law n.11 2004.

As previously asserted, the new strategic choices of the Libyan government are finalized to diversify the economy and income sources.¹⁴ In order to achieve these aims, the Libyan authorities intend to utilize national capabilities through the strategy of the so-called “free zones”¹⁵. In fact, the Free Trade Act of 1999 created a new legal framework for the establishment of offshore Free Trade Zones in Libyan Jamahiriya.¹⁶

3.1 Fields of investment and economical activities in Free Zones

- Storage of transit and domestic goods, as well as goods produced within the Free Zones which are intended for export zones and goods imported for re-export.
- Unpacking, cleaning, re-packing and similar operations which change the state of products in the Free Zone and guarantee their manufacture to meet the demand of the market.
- Performing industrial processes
- Rendering financial, banking, insurance and other related service needed by the investors within the Free Zone.

3.2 Privileges and Exemptions of Free Zones

Privileges, exemptions and alleviation granted to the investors in the Free Zones are:

- Free repatriation of invested capital and gained profits.
- Movement of capital and products between the Free Zone and foreign countries is not subject to any monetary restrictions or monitoring regulations¹⁷
- Profits gained from activities also enjoy the same exemptions if reinvested.
- Investors can transfer losses suffered during exemptions period to the following years.
- Legal guarantees against the nationalisation of projects.
- Ownership of projects can either in full or in part can be transferred to another investor.
- Project periods according to clients demand.
- Easy establishment of projects in the Free Zones.

¹⁴ http://www.libyaninvestment.com/br/establish_free_zone_authority.html.

¹⁵ Free zone: any part of the territory specified by law and designated for commercial and industrial operations, exchange of goods and provision of services free of customs, tax and monetary restrictions in accordance with the provisions of the legislation governing free zones.

¹⁶ <http://www.ArabDataNet.com>, *Country Guide: Libya*.

¹⁷ Income tax exemption for 5 years which can be extended by three more years.

- Machines, equipment and instrumentation needed for projects established in the Free Zone are exempted from customs duties and other taxes of similar effect.
- Equipment and spare parts are exempted from all customs duties, import taxes and all taxes of similar effect.
- Goods exported or imported from or to the Free Zone are not subject to time limitation of warehousing.
- Movement of goods between the Free Zone and outside of the Libya are not subject to customs duties.
- Projects established in the Free Zone are not subject to procedures of trade register and register of importers and exporters.
- Investors are entitled to employ and import foreign labour with specialized technical qualifications needed for the establishment or operation of projects.

3.3 Services available to investors

The following services, facilities, and utilities are available:

- Land plots of different sizes according to investor's needs,
- Modern offices and covered warehouses at reasonable costs,
- Energy (oil, gas, electricity) at low price,
- Drinking water and sewage utilities and other services at suitable costs,
- Modern and versatile financial and banking services according to investors needs,
- Modern telecommunication services,
- Marine transport services to different international ports,
- Road transport services to African countries across the desert and to neighbouring Arab countries,
- Health insurance services to investors and employees working in projects established in the Free Zone,
 - Complete insurance services,
 - Legal and other consulting services. ¹⁸

3.4 General Authority for the Free Zones

With the General People's Committee Resolution no.20/1999, a public body has been established called the 'Free Zones Authority'. The Authority

¹⁸ For detailed information see,
http://www.libyaninvestment.com/br/free_zone_in_libya.html.

supervises the Free Zones and carries out measures to develop the commercial, industrial and service aspect for the benefit of the national economy. The management committee of the authority is in charge of affairs of the free zones and supervision of their business. It shall have the widest powers and necessary authority to do so, in particular:

- To lay down general policy for the Authority and the rules regulating investment in the free zones.
- To consider applications for licences to invest in the free zones for the establishment of commercial, industrial and service enterprises, and divestment of the same, and to refer to the Director General of the Customs Authority as necessary for the issue of licences.
- To determine and levy charges for the various services provided within the free zones, such as handling and storage services and rents for installations and properties.
- To lay down the regulations governing the granting of entry, exit and residence permits in the free zone, and to make the necessary arrangements for the system of social insurance and security and health services in co-ordination with the relevant authorities.
- To approve the annual balance sheet and final account of the Authority.
- To approve the administrative and financial regulations of the Authority and to agree loans.

The movement of capital and products between the free zone and foreign countries is not subjected to monetary regulations or restrictions. Companies operating in these Free Zones are also offered a five year income tax exemption which may be extended by three years with an additional allowance to transfer losses suffered during exemptions to the following years. The legal protection of the investor is also ensured in these zones. There are legal guarantees against the nationalisation of projects established in the free zones. Machinery, equipment and other necessities for projects in the free zones may be imported without being subject to customs duties.¹⁹

4. Setting up in business for foreign actors

The new discipline for entrepreneurship introduced by the Law 5/1997 marks an inversion of tendency if compared with the law operating from 1968. However, the procedure of setting up a business in Libya is not a simple one. Companies formed in Libya must be Libyan controlled. There are two options

¹⁹ For detailed information see,
http://www.libyaninvestment.com/br/establish_free_zone_authorithy.html

for entering the market - branch registration, forming a joint venture or operating under the umbrella of a company already in Libya.

Generally, the foreign investor could operate in Libyan market only through shareholding. In fact, Libyan law says that all the constituted companies in the country have controlling capital held by a local company. The foreign investor can operate with an own branch exclusively in specific areas of activity: communications and telecommunications services; airplanes and maritime transport, consultation in the mining and geological sector, drilling and services connected to the extraction of oil, civil engineering works, electronics, explosives removal, services of accountability consultation, photographic surveys and tourist activity.

The shareholding for foreign actors is admitted only in the joint stock companies. However, the Libyan quote must be at least equal to the 51% of the social capital, which cannot be inferior to the 30.000 dinars²⁰; this majority must be also respected inside the Board of Directors, whose President must be a Libyan citizen.²¹

4.1 Break up and liquidation of the societies

Article. 40 of the Executive Rule of the Law 5/97, provides for the liquidation of investment projects in the following cases:

- loss superior to half of invested capital;
- deadline of the duration of the project;
- attainment of the objective of the project;
- annulment of authorization from the competent authority;
- application by the interested party.

In the case in which a provision of liquidation will be promulgated, the project managers will have to proceed to the liquidators' nomination to give realization to the liquidation of the project and to compile the liquidation budget.

4.2 Resolution of disputes

Article 23 of the Law on Foreign Investments says that the investment project cannot be nationalized, dispossessed, submitted to custody or to sequestration or other similar provisions, without a judicial sentence and an equitable reimbursement calculated on the base of current market price.

²⁰ 1 EURO = 1.38 LIBYAN DINAR (LYD)

²¹ See <http://www.tradepartners.gov.uk/libya>

The amount of reimbursement could be transferred, within a maximum period of one year. According to article 24, in the case of a dispute between the foreign investor and the State, they should appeal to the competent Libyan courts. ²²

Article 21 of the Law no. 5/97 says that the investor is allowed to report administrative provisions considered invalid according to the law. In particular, the investor could apply to the competent court if one of the following conditions persists:

- no fulfilment of privileges provided by the Law covering the projects of foreign investors,
- demand of tax different from the amount established by law,
- measures implicating the withdrawal of the project or its definitive liquidation.

5. Private sector development

During the sanctions, Libya was obviously isolated from foreign trade and its population was unable to enjoy foreign goods. At the same time, the government implemented several trade barriers to protect local industries and its products from foreign competition. This is still true in areas that the government considers to be of strategic importance, such as oil, petrochemicals, iron and steel, etc. But during the 2003 an impressive turnaround was made in the sense that most trade barriers were lifted and the Libyan economy started to benefit from a free trade policy. The consequences of this were the waves of foreign products flooding the Libyan markets. Libyan authorities combined these measures with an impulse of the neglected private sector. *Although it must be said that in Libya there is not a clear difference between public and private sector*, like in other countries, the so-called “**green perestroika**” indicates a series of economic liberalization measures designed to encourage privatization of public sector companies and broaden the scope of private sector activities to include retail trade, small-scale industries, and agricultural businesses.

In June 2003, President Qadhafi called for privatization of the country's oil sector, in addition to other areas of the economy. Qadhafi also pledged to bring Libya into the World Trade Organization (WTO). The appointment of former Trade and Economy Minister, Mr Ghanem, as Prime Minister marks an important turning point of the process. He is in fact a promoter of a policy of economic openness and soon after his appointment; Ghanem said that the privatization plan will be applied in three phases until the year 2008. In fact, in October 2003, Prime Minister Ghanem announced a list of firms in a variety of

²² This provision does not operate if there is a bilateral accord between Libya and the State of investor, or there are some sort of multilateral accords.

sectors to be privatized starting from 2004. In line with this declaration of intents, the General Board of Ownership Transfer director, Mahamud Ahmed al-Ftise, declared that Libya will open in July the capital of 54 large state owned companies to foreign investors.²³ He said that the companies are large factories, each valued at a minimum of 150 million dollars. Foreign investors will be allowed to take majority stakes in these companies. The companies to be offered to foreign investors are the largest among those to be privatised. The small and medium firms will be offered to Libyans.²⁴

Conclusions

Libya is trying to reduce its dependency on oil as the country's sole source of income, and to increase investment. Libya also is attempting to position itself as a key economic intermediary between Europe and Africa, has become more involved in the Euro-Mediterranean process, and has pushed for a new African Union.²⁵

As Libya's re-acceptance into the international community has generated significant opportunities for foreign businesses, and already elicited considerable interest from investors worldwide, Libyan authorities are inaugurating a new era of openness. In this regard, Libya's agreement to the publication of 2003 IMF Article 4 report could be considered an evident move towards this goal. The business environment has been changing, the most important Libyan businessmen are now involved in the import/export business and several initiatives have been taken between the Economy and Trade Ministry, the Libyan Union of Chambers of Commerce, Trade and Industry and the Libyan Foreign Investment Board. The final aim is to connect the Libyan economy to the world's trade and investment flows, to the globalisation stream. One very important step in this direction will be the accession to the World Trade Organization, sought after by the Libyan Government. Although they have not even entered the pre-negotiations phase, the goal is clear, they are moving towards it and they seem confident of the final positive result. "We are working very hard in order to prepare the country for this organization," explains Mr. Ghanem, in charge of the issue. "There have been a lot of changes in the legislation; [...] we have removed all the import and export licenses and some of the restrictions. We are also trying

²³ The 54 companies are part of the group of 360 state-owned companies that the government wants to privatize in the 2004-2008 period.

²⁴ *Libya to open capital of 54 companies to foreigners in July*, www.libyaninvestment.org, 24/04/04.

²⁵ For details about the Project, see http://www.gmrp.org/index_en.html.

to promote the involvement of the private sector in the economy, to facilitate our membership”, the minister concludes.²⁶

However, to realize its full economic potential, Libya needs to offer an open and reliable business environment and in this regard there is still a long way to go.

Libya has the potential to be a leader in the economic development of the region. With its small population, significant natural and historic resources, it could be a catalyst. However, as with many other countries in the region, its leadership and its policies could hold the country back.

Libya is now at cross-roads and the most immediate events turn out decisive for the future of Libyan country.

²⁶ <http://www.eia.doe.gov>