

LIBYAN LEGAL DEVELOPMENTS NEWSLETTER

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Overview of Law 9/2010 for the Encouragement of Investment

Law 9/2010 for the Encouragement of Investment (the "Law") was passed on 28 January 2010 by the General Peoples Congress of Libya. The Law was published in the Official Gazette on 28 April, 2010, coming into legal effect from that date.

As a general comment on the Law, it comprehensively combines previously existing legislation regulating foreign and national capital investment into a single law, introducing elements of privatization of existing state economic enterprises as a target of investment as well as amending the regulation of tourism sectors to allow for an all encompassing regulatory body (namely the Privatization and Investment Board). Therefore, the following legislation has now been repealed:

- Law 5/1997 for the Encouragement of Foreign Capital Investment and its amendments; and
- Law 6/2007 for the Investment of Capital by Nationals; and
- Article 10 of Law 7/2004 for Tourism (such provision mandated authority and regulation for investments in the tourism sector under this law to the General Peoples Committee for Tourism).

The following is a summary of the key changes in the new Law:

- The definition of foreign investment capital has been widened to include local and hard currency, contributions in-kind as well as intangible contributions (Article 1(5)). Intangible contributions relates to intellectual property, therefore allowing contribution of trademarks, patents, copyright etc to the capital of an investment project for the purposes of establishing or operating the project (Article 4(3)). The Executive Regulation

of the Law will specify how such contributions are to be valued (Article 4).

- The Law introduces the concept of privatization, which is defined as the transfer of ownership of companies and production and services concerns owned, in whole or in part, by the State or State corporate entities to the private sector (Article 1(8)). Following the establishment of the Privatization and Investment Board earlier in 2009, which replaced the Foreign Investment Board by merging the latter with the Privatization Authority, the introduction of this concept in the new Law marks a formalization of the marriage between capital investment and privatization, in that foreign and national capital investors are encouraged to consider and invest in existing concerns as well as green-field investment projects.

- The objects of the Law have been widened in comparison with Law 5/1997 to include (Article 3 of the Law):

1. Enabling the technical qualification and development of Libyans and increasing their competences and advanced skills as well as making available work opportunities for Libyans.

2. Participating in the establishment, development and re-development of production and services economic concerns to enable them to enter and compete in international markets.

3. Sustainable use of energy.

4. Exploitation of raw materials available locally.

- The conditions which must be met by an investment project in order to qualify under the Law have also been widened in comparison with Law 5/1997 making it a requirement that at least 30% of the

labour of an investment project must be Libyan nationals and that the Executive Regulation to the Law will further detail the conditions for employment of Libyans and foreigners (Article 7(7) of the Law). No such requirement was present in the now repealed Law 5/1997.

- The Law (Article 8) sets out the permissible fields of activity for an investment project as being all those in the production and services sectors and the Executive Regulation of the Law will specify the precise fields of activity in relation to those sectors not already covered by way of exclusivity to Libyans (such as retail and wholesale) or reserved for joint venture between Libyans and foreigners (such as oil services and constructions, for instance). Furthermore, the Law prohibits the application of its provisions to foreign or national capital invested or to be invested in oil and gas projects. By way of comparison with the now repealed Law 5/1997, the latter specifically designated the permitted areas of activity (e.g. agriculture, manufacturing, real estate etc) – as supplemented by the General Peoples Committee from time to time - whilst prohibiting investments in the upstream (e.g. exploration and production) oil and gas sector.
- The incentives and benefits available to investors under the Law (Article 10) have also been widened in comparison with Law 5/1997:

1. Means of transportation, furniture, primary materials and goods and marketing and advertising materials necessary to operate the investment project now also take the benefit of the exemption from all taxes and charges of whatever kind or source for a period of 5 years.

2. The returns on stocks and shares resulting from distribution of profits of an investment project during the income tax exemption period (i.e. within 5 years from the start of operations of the investment project) are also exempted from all takes and charges due during that period. Furthermore, profits resulting from the merger, sale or spin-off of an investment project or from changing its legal form will also be exempted.

3. All transactions, dealings and documents created or executed or used by the investment project shall be exempt from stamp duty tax due in accordance with applicable laws. This marks a significant redress of a long standing issue for foreign investors given that Law 5/1997 only provided an exemption from stamp duty tax due on documents (typically worth a few hundred dirham's) and not on transactions or dealings (worth up to 2% of the value of the transaction).

4. The rights of a foreign investor have been expanded to include the right to

residence in Libya for a period of 5 years, renewable for the duration of the existence of the investment project, and the right to obtain multiple entry/exit visas. Law 5/1997 was silent in this regard (Article 12(7) of the Law).

- The Law extends all the incentives and benefits available to investors under the Law (subject to a decision of the General Peoples Committee) to those economic concerns targeted for privatization which fulfill the conditions set out in the Law (such as area of activity, compliance with objects of the Law etc), in cases where those concerns are developed or re-developed managed and operated (Article 16 of the Law).
- The Law maintains the right to compensation for a foreign investor whose project was expropriated by law or court judgment. However, the compensation shall no longer be "immediately due" as it was under Law 5/1995. The conditions for calculating and paying fair compensa-

tion have not, however, changed (Article 23 of the Law).

- All regulatory and auditory bodies (such as the Tax Authority, the Labour Authority etc) who wish to investigate an investment project by search and inspecting its files and records may now only do so by giving prior notice to the investment body (the PIB) and coordinating such an investigation with them (Article 26). This now provides investment projects significant protection against ad hoc investigations by various regulatory authorities and thus serves to strengthen the role of the PIB as the central regulator (and one-stop-shop) for investment projects.
- Lastly, the Executive Regulations of all the abovementioned repealed laws will continue in full force and effect (without prejudice to any provisions in the new Law) until the General Peoples Committee issues an Executive Regulation for the Law.



المختار والكلباش والغرابل
محامون ومستشارون قانونيون
Mukhtar, Kelbash & Elgharabli
Attorneys At Law

MKE

شارع مقطع الحجر / الظهرة صندوق بريد 1093 / طرابلس - ليبيا
Magta Alhajar St. Dahra P.O.Box: 1093 Tripoli - LIBYA

الموقع الإلكتروني : www.mkelawyers.com
بريد الإلكتروني : info@mkelawyers.com

هاتف : +218 21 3332665
هاتف : +218 21 4444426
فاكس : +218 21 3331650