Libya

Law on Investment Promotion (2010)

Unofficial translation

Contents

Law on Investment Promotion

Law No. 9 of 2010

Great Socialist People's Libyan Arab Jamahiriya General People's Congress, Law No. 9, 2010 (1378 p.d.) on Investment Promotion

General People's Congress:

Pursuant to the Decisions of the Basic People's Congresses in the General Annual Session of 2009 (1377 P.D.):

Reviewing and taking into account:

- The Declaration for setting up the People's Authority,
- The Green Magna Charter for Human Rights in the Era of the Masses,
- Law no, 20, 1991: on the promotion of freedom,
- Law no. 1, 2007 (1374 P.D.): work system of the People's Congresses and People's Committees,
- Commercial Law and amendments,
- Law no, 67, 1973: on Customs and amendments,
- Law no. 11, 1992: on determining regulations relating to estate properiety and amendments,
- Law no. 19, 1992: on Production Tax,
- Law no. 5, 1996: on Encouraging Investment of foreign capital and amendments,
- Law no. 13, 2000: on Planning,
- Law no. 3, 2000: on Architectural Planning,
- Law no. 7, 2004: on Tourism,
- Law no. 12, 2004: on Stamp Tax,
- Law no. 1, 2005: on Banks,
- Law no. 6, 2007: on encouraging investment of national capitals,
- Law no. 7, 2010: on Income Tax,

Has formulated the following Law:

Article 1. Definitions

While enforcing this Law, the following words and phrases shall have the relevant meanings thereof, unless associated meanings may otherwise state:

1. The State: The Great Socialist People's Libyan Arab Jamahiriya.

2. Administrative Authority: the appropriate administrative authority concerned with the implementation of this Law.
3. The Secretary: The Secretary of the sector to which the administrative authority belongs.
4. . Executive Regulation: The regulation to be issued with the purpose of enforcement of the provisions of this Law.
5. Foreign Capital: The financial value in the form of cash, property, moral or material, in the foreign currency equivalent that is brought into the country, either owned by Libyans or foreigners, with the purpose of conducting an investment activity.
6. National Capital: The financial value in the form of cash, property, moral or material, in the domestic currency equivalent, which forms part of the investment project’s capital of a Libyan national or artificial entity – either its capital is fully owned by Libyan nationals or artificial entities.
7. Investment Project: Any investment activity that meets the conditions stated as per this Law, regardless of their legal form.
8. Privatization: means transfer of ownership of companies, production and service units, wholly or partially owned by the state, public artificial entities or private sector.
9. The investor: every natural, artificial national or foreign person, who invests in accordance with the provisions of this Law.

Article 2. Area covered by this law

This law applies to national, foreign, or joint venture capital jointly invested in the areas targeted by this Law.

Article 3. The objectives of the law

The Law aims at the promotion of national and foreign capital investment, with the purpose of setting up investment projects, within the scope of the state’s general policy and the objectives of economic and social development, in order to particularly ensure achievement of the following goals:

1. Technically upgrade and qualify Libyan cadres and elevate their efficiency, in order to acquire advanced skills in addition to opening employment opportunities.
2. Endeavour to introduce know-how and technology and thereof inserted into the Libyan economy.
3. Contribution towards setting up, developing or rehabilitating economic, service and production units, in a manner that assists such units to compete and be introduced into the world markets.
4. Achievement of development in the relevant area.
5. Increase and diversify income sources.

6. Control energy consumption.
7. Utilize locally available raw materials.

Article 4. Forms of investment

This Law classifies the investment of national and foreign capital, which is involved in forming the project's capital in one of the following ways:

1. Local currency, transferrable foreign currencies or their equivalent, brought in by one of the official banking methods.
2. Machine, equipment, devices, transport means, spare parts, raw material required for the execution and preparation of the investment project.
3. Ethical rights such as patents, licencing, trade marks, commercial names necessary to establish or operate the investment project.
4. Re-invested portion of the project's interests and revenues either in the same project or in another.

The Executive Regulation coordinates the method designed to assess the material and moral assets, and to re-invest the interests.

Article 5. Authority responsible for the Law's application

An appropriate administrative authority shall be set up to execute the provisions of this Law; a designation and organizing decision, thereof, shall be made by the General People's Committee, in accordance with a recommendation from the Secretary.

Article 6. Assignments of the authority responsible for the law's application

The administrative authority shall be responsible for encouraging investment of national and foreign capital and merchandizing investment projects via different m methods; in particular, the following:

1. Studies and proposals of plans organizing investment and privatization, including the preparation of a comprehensive investment map for all areas of investment and available investment opportunities, permitted within the investment areas brought about, as per this Law.
2. Collection of investment applications, verifying that the aforesaid applications meet the objectives of this Law and the fulfilment of terms, conditions and rules ; a study of the economic feasibility of the investment project, confirming that all conditions are met with respect to national and foreign investments conducted subject to the provisions of this Law.
3. Collection and publishing of information; involvement in the preparation of economic studies relating to the project's investment capabilities, which contribute to the country's economic development.
4. Adopting methods capable of attracting national and foreign capital and publicity Campaigns of investment opportunities via the different media outlets.

5. Provision of integrated “window service” to facilitate the investor’s license application, approvals and other services necessary for the investment project.
6. Periodic study of investment legislation and review thereof and submission of proposals related to development in this respect to the Secretary.
7. Take necessary procedures to execute the public policies for the elaboration of the ownership base, privatization of public companies and production units.
8. Any other assignments, as designated by the General People’s Committee, for this administrative authority.

Article 7. Conditions to be fulfilled for investment projects

The project shall fulfil all or part of the following:

1. . Transfer and introduction of expertise and know-how, modern technology, technical expertise or intellectual property right.
2. Support of ties and integration between the activities and the outstanding economic projects or the reduction of production costs or a contribution towards providing operation items and facilities thereof.
3. Exploitation or assisting in utilizing local raw materials.
4. Contribution towards the development of remote areas.
5. Production of commodities for export or a contribution towards increasing the exports thereof ; alternatively, taking such measures that would, either totally or partially, avoid the import of commodities.
6. Offering services required by the national economy ; alternatively, a contribution towards the improvement, development or rehabilitation thereof.
7. Provision of employment opportunities for the Libyan labour force, of not less than 30%, along with endeavours to provide training courses for such labour, allowing acquisition of technical skills and expertise. The Executive Regulation specifies the terms and conditions for the employment of national and foreign manpower.

Article 8. Areas of investment

Investment shall be in all production and service areas. The Executive Regulation shall determine the areas of production and services, which are not covered by this Law, or which are restricted to Libyans only, or by way of partnership between Libyans and foreigners; additionally, to determine the percentage of each side’s contribution in the project, the legal form of the project and the minimum capital that conforms with the nature of the activity.

Article 9. Permission for investment

Permission to set up, develop, restore, run, or operate an investment project shall be issued under a decision by the Secretary, based on an offer from the administrative authority. This authority shall be solely concerned with the issuance of all licenses and necessary approvals for the investment project, in order that such licenses and permissions shall satisfy from the need for / shall negate the requirement for any other licenses or permissions required under the effective legislation. The Executive Regulation shall specify the conditions and rules for the issuance of licenses and permissions.

Article 10. Privileges and exemptions

The investment project, subject to the provisions of this Law, shall enjoy the following privileges:

1. Exemption of the machinery, equipment and apparatuses necessary for the execution of the project, from all taxes, customs duties, import fees, service charges and other fees and taxes of a similar nature. However, exemptions stated, as per this clause, shall not include fees levied for services as port, demurrage or handling fees.
2. Exemption of facilities, spare parts, transport means, furniture, requirements, raw materials, publicity and advertising items, related to the operation and management of the project, for a period of 5 years, from all fees and taxes, whatsoever their type or source.
3. Exemption of commodities, produced for export, from production tax, customs duties and such charges imposed on exports.
4. Exemption of the investment project from income tax for any activity, for a duration of 5 years, the calculation of which shall commence from the date of the permission for licensing the engagement in the activity.
5. Exemption of the returns of shares and equities, arising from the distribution of the investment project’s interests, during the period of exemption, as well as interests arising from the merger, sale, division or change of the legal form of the project, from all types of taxes and levies, provided these occur during the period of exemption.
6. Exemption of interest arising from the project’s activity if re-invested.
7. Exemption of all documentary records, registers, transactions, agreements that are made, ratified, signed or used by the investment project, from the stamp duty payable in accordance with the effective legislation.

The investor may carry forward the losses that the project may incur during the exemption years to the following years.

The Executive Regulation of this Law shall decide the conditions and rules necessary for the execution of this Article.

Article 11. Transactions in machines and equipment

There shall be no transactions that lead to the sale or discharge of machinery, equipment, furniture, transport means, apparatuses, spare parts, raw material and operation facilities imported for the purpose of the project, unless under the consent of the administrative authority and after fulfilment of all payable fees and customs duties decided for the importation of such items.

Article 12. Investor’s rights

The investor shall have the right in the following:

1. Open a bank account, in favour of his project, in the local currency or foreign currency with one of the banks operating in the country.
2. Receive financial loans from local and foreign banks and financial institutions, according to the legislation in effect.
3. Re-export the invested foreign capital, in the case of the termination of the project’s duration, liquidation, or sale thereof, either in part or in whole.
4. Should difficulties or circumstances, beyond the control of the investor, prevent the foreign capital’s investment after the elapse of 6 months from the date of such capital’s import, the said foreign capital shall be transferred abroad in the same manner as it was originally brought in.
5. Transfer distributable annual net interests and revenues achieved by the foreign capital invested in the project.
6. Recruit foreign manpower in the case that national manpower is not available.
7. Issuance of residence visas renewable for 5 years, the duration of the project, and multiple exit/re-entry visas.

Article 13. Foreign employees

Expatriate employees shall have the right to transfer their salaries and any other privileges offered to them, within the investment project, outside Libya. They shall enjoy exemption from customs duties relating to their personal effects. The afore mentioned will be in accordance with the stipulations of the Executive Regulation.

Article 14. Investment record

Without prejudice to the provisions and stipulations of the Trade Register, the administrative authority will establish a special register to be called “Investment Records”, in which all investment projects will be registered indicating the legal frame of such projects, size of investments, type of business, names and nationalities of owners and shareholders and the percentage of expatriate workers therein.

The Executive Regulation shall specify the rules and procedures of registration in the Investment Record.

Article 15. Additional privileges and exemptions

It may be possible, in accordance with a decision from the General People's Committee, under a proposal from the Secretary, to offer for the investment projects, tax privileges and exemptions for a period, not exceeding 3 years, or other additional privileges, if those projects prove that:

1. They contribute to the achievement of food security.
2. Utilise measures that are capable of achieving abundance in energy or water or contribute to environment protection.
3. Contribute to the development of the area.

The Executive Regulation shall specify the classification of the rules and provisions taking into account that the project is one that fulfils these aforementioned considerations.

Article 16. Privatization of economic units

The economic units targeted for privatization, whether the units are developed, rehabilitated, managed or operated, which attain the goals and fulfil the conditions included per this Law, shall enjoy all privileges and exemptions stated herein, provided that a decision thereof shall be made by the General People's Committee.

Article 17. Rental of estates

As an exemption from the effective legislation related to privatization, the investor shall have the right to rent the necessary properties, in order to set up or operate the project, either public or private properties, which shall be according to the conditions and stipulations specified by the Executive Regulation.

Article 18. Authorities over the project

It may be possible to transfer the ownership of the project, either wholly or partially to another investor, with the consent of the administrative authority. The new owner shall replace the previous owner, with respect to the rights and obligations incumbent upon him, in accordance with the provisions of this Law and other legislation in effect. The Executive Regulation shall specify the conditions and stipulations under which the transfer of ownership takes place.

Article 19. Violations

If it is proved that the investor has committed a violation of any of the provisions of this Law, in the first instance, he shall be warned by the administrative authority to fix the violation within a suitable period to be specified. In the case that the investor fails to do so, the administrative authority shall have the right to deprive the project of some of the privileges and exemptions decided, as per this Law, or to withdraw his license or refer the matter to the judiciary authority concerned to compel the investor to settle what he was previously exempted from.

Article 20. Withdrawal of the license

The permissions and licenses issued for the project may be withdrawn or its final liquidation effected, under the following circumstances:

1. Failure to commence the execution of the project, or failure to complete the execution within the specified completion date, without any justification.
2. Violation of the provisions of this Law.

The aforementioned shall be in accordance with the rules, conditions and procedures specified by the Executive Regulation of this Law.

Article 21. Complaint

The investor shall have the right to make a written complaint against any decision that may be made against him due to a violation of the provisions of this Law, within 30 days from the date of the written notification served on him and confirmed by a signed receipt. The Executive Regulation shall specify the authority to which this complaint shall be lodged, the complaint procedures and the period required for the final resolution.

Article 22. Accounting documents of the project

The owner of the project must retain legal documents and final accounts necessary for the project according to the effective legislation, as well as the preparation of an annual budget and final accounts authenticated by a legal accountant, in accordance with the conditions indicated as per the Commercial Activity Law and the professional standards.

Article 23. The project's guarantee

It is not allowed to nationalize the project or privatize, take by force, confiscate, impose custody, freeze, or subjugate to procedures having the same effect, except under a judicial decision and for a fair compensation, provided that these procedures shall be taken in a non discriminatory manner. The compensation shall be computed on the basis of a fair market value of the project at the time when the measure is to be taken. It is permissible to transfer the value of the compensation, in a transferable currency in a period not exceeding one year from the date of issue of a law or a decision on the prevailing exchange rates.

Article 24. Settlement of disputes

Any dispute that may arise between the foreign investor and the state, which may be attributed to the investor or due to procedures taken against him by the state, shall be forwarded to the appropriate courts of the state, unless if there are mutual agreements between the state and the investor's state or multilateral agreements to which the investor's state is a party thereof, including texts relating to reconciliation or arbitration or special agreement between the investor and the state stipulating arbitration as a condition.

Article 25. Fees for services

A decision shall be made by the Secretary, in accordance with a proposal from the administrative authority, to determine the fees payable by the investor for presenting the services.

Article 26. Judicial control officer

The personnel of the administrative authority, who are appointed under a decision from the appropriate Secretary, shall be entitled to occupy the capacity of Judicial Control Officers authorized to superintend the execution of this Law's provisions, detect any violations and submit to the authorities concerned. In order for them to fulfil this purpose, they are authorized to inspect investment projects and go through the books and documents relating to its activity. Other control and inspection authorities concerned shall report to the administrative bodies and coordinate with them before carrying out any inspection or superintendence work on the investment projects licensed for investment in accordance with the provisions of this Law.

Article 27. Exceptions within the scope of this Law

The provision of this Law shall not apply on national and foreign capitals invested or will be invested in oil and gas projects.

Article 28. Validity of legislation organizing the economic activity

The provisions of legislation organizing the economic activity shall be applicable on those who are subject to the provisions of this Law, this is with regard to matters that are not covered herewith.

Article 29. Executive regulation

The Executive Regulation of this Law shall be issued under a decision from the General People's Committee in accordance with an offer from the Secretary.

Article 30. Annulment of previous laws

Law no. 5, 1996, on promotion of foreign capitals' investment and amendments, Law no. 6, 2007, on investment of national capitals, Article 10 of Law no. 7, 2004, on tourism, shall be revoked, as any other ruling that violates the provisions of this Law shall be revoked.

The provisions of this Law shall be valid for all investment projects, acts, events relating thereto and those outstanding ones in accordance with the aforesaid laws per this Article during the time of issuance of this law, this shall be without violation to the privileges and exemptions offered before its issuance.

The executive regulations and decisions issued in accordance with the provisions of the said laws shall be into force in a manner that shall not withstand the provisions of this Law, up until the Executive Regulation of this Law is issued.

Article 31. Publication of the Law

This Law shall enter into force as of the date of publication per the Official Gazette.

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