



## **Executive Summary**

Libya continues to present a challenging investment climate. The government has repeatedly expressed interest in receiving greater foreign investment, but there continue to be serious obstacles to realizing that goal. The government's inability to control armed groups across the country has led to seizures of critical infrastructure facilities, political and extremist violence, and difficulty in enacting security sector reform. While the government made progress in honoring some contracts signed prior to Libya's 2011 revolution, lingering ambiguity regarding its intention to honor all such contracts heightened investor concerns.

The Privatization and Investment Board (PIB), supervised by the Ministry of Economy, remained the primary governmental body for encouraging private foreign investment in Libya. Law Number 9 of 2010 provided the primary legal framework for foreign investment promotion. Passed prior to the 2011 revolution that toppled the Qadhafi regime, the law codified measures to encourage private investment, furthering a trend dating to the mid-1990s. Post-revolutionary governments have continued that trend, but no significant laws related to investment have been passed since the revolution. Under the Constitutional Declaration in place during the post-revolutionary period, Libya's General National Congress (GNC) arguably lacks the mandate to legislate on any matter unrelated to the country's transition to a permanent constitution and government. A Constitutional Drafting Assembly was elected in February 2014 but the timeline for it to complete its work, and for the mandated popular referendum to approve the new constitution, remained unclear. As the prolonged political transition continued, elections were scheduled for June 2014 for a legislative body – the Council of Representatives (CoR) – to replace the GNC, with no change to the legislative mandate.

As a practical matter, deteriorating security, pervasive corruption, the lack of an independent and transparent regulatory framework and dispute settlement venues, ambiguous interpretation of laws regarding private ownership and property rights, and an opaque and difficult to navigate regulatory system limited potential foreign investment in Libya. State owned firms continued to dominate the Libyan economy—particularly the upstream oil and gas sector; high public sector wages impeded diversification of the economy, drained public resources, and resulted in high unemployment, especially among Libya's large youth population.

### **1. Openness To, and Restrictions Upon, Foreign Investment**

The government, primarily through the PIB, lobbied to attract FDI. There were no laws that limited foreign investment in particular sectors, but the law required investment projects valued at less than five million Libyan dinars (USD four million) to be at least 51 percent Libyan owned and for the foreign investment to exceed two million dinars.

Libya has not undergone any recent investment policy reviews by the OECD, UNCTAD, WTO, or any other international body, and no public report on such reviews was available.

The country's legal system was weak, like all institutions of government, and there was no independent judiciary. The primary law pertaining to incoming foreign investment was "Law No. 9 of the year 1378 PD (2010) Regarding Investment Promotion." Though promulgated prior to Libya's 2011 revolution, the law remains in effect. While no specific programs existed to promote investment in particular industries, the PIB publicly encouraged foreign firms to invest in eight sectors: transportation, health, education, industry, agriculture, maritime/fisheries, tourism, and public utilities. As no specific information was available about opportunities, interested firms should contact the PIB directly. Foreign investors were permitted to wholly own enterprises established in Libya as an investment project (as opposed to under prevailing commercial law, governed by resolution 207 of 2012) worth over 5 million dinars, provided the investments were not in "strategic industries." In the case of "strategic industries," which was not rigidly defined, foreign entities were reportedly required to enter a joint venture with a Libyan firm, with the Libyan firm enjoying a majority stake in the enterprise.

The PIB stated that all industries and sectors were open to privatization except those deemed strategic – in particular Libya's upstream oil and gas sector, which is governed by dominated by the National Oil Corporation – but expressed openness to negotiation on what projects qualified as "strategic," and welcomed, in principle, downstream oil and gas sector investment. The PIB allowed foreign investment at all stages of privatization, and prioritized firms with what it considers superior technological expertise and resources, foreign or domestic. The bidding criteria and process for investment were not published or transparent; it was therefore not clear whether foreign investors faced discrimination.

The screening process for incoming FDI to Libya was not clearly defined. The PIB stated that it reviewed bids or proposals for general consistency with Libya's national security, sovereignty, and economic interest. The Minister of Economy must give final approval to all FDI projects, at the recommendation of the PIB. There was no information available on the timeline of the approval process or any potential outcomes of the process other than an affirmative or negative decision by the PIB or Minister of Economy. The PIB stated that it keeps all company information confidential. There was no information about U.S. firms' specific views on this vetting process, but U.S. firms have repeatedly expressed general frustration about the slow pace by which the Libyan government makes business-related decisions. Despite these complaints, some U.S. firms have successfully invested in Libya, particularly in the country's oil and gas sector.

There is no functioning law governing competition of local or foreign firms in Libya. While no statistics were available regarding investment trends, persistent political instability including the ongoing transition to a permanent constitution and government; security risk posed by government-affiliated and other militia groups, as well as extremist and terrorist groups; and the seizure of key economic infrastructure including major oil and gas terminals from July 2013 severely hampered the country's prospects for foreign investment.

**TABLE 1**

Measure	Year	Rank or value	Website Address
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TI Corruption Perceptions index	2013	(170 of 177)	<a href="http://cpi.transparency.org/cpi2013/results/">http://cpi.transparency.org/cpi2013/results/</a>
World Bank's Doing Business Report "Ease of Doing Business"	2013	(187 of 189)	<a href="http://doingbusiness.org/rankings">http://doingbusiness.org/rankings</a>
World Bank GNI per capita	2012	12,930	<a href="http://data.worldbank.org/indicator/NY.GNP.PCAP.CD">http://data.worldbank.org/indicator/NY.GNP.PCAP.CD</a>

## 2. Conversion and Transfer Policies

Since 1986, the Libyan Dinar has been officially pegged to a Special Drawing Right (SDR), with a maximum float of 7.5%. The current exchange rate of 1.932400 was set in 2003. The Dinar-U.S. Dollar rate has remained relatively stable since 2006. Daily and Historical exchange rates can be found on the website of the Libyan Central Bank: <http://cbl.gov.ly/ar/cur/show.php>. The 2010 Investment Law provides investors the right to open an account in a convertible currency in a Libyan commercial bank, to obtain local and foreign financing, to transfer net annual profits generated by an investment, and re-transfer foreign invested capital in case of liquidation, expiration of the project period, or insurmountable impediments to the investment within the first six months. The Libyan Banking Law (Law No. 1 of 2005) allows any Libyan person or entity to retain foreign exchange and conduct exchanges in that currency. Libyan commercial banks are allowed to open accounts in foreign exchange and conduct cash payments and transfers (including abroad) in foreign currency. Commercial banks operating in Libya may grant credit in foreign exchange and transact in foreign exchange among themselves.

Entities engaging in foreign exchange must be licensed by the Central Bank. Foreign exchange facilities are available at most large hotels and airports, and ATMs are becoming more widely available. The importation of currency must be declared at time of entry. The Central Bank's Decree No. 1 of 2013 regulates foreign exchange, including by specifying authorities for the execution of foreign transfers, and by prescribing limits on the transfer of currency abroad for different public and private entities. Most firms seeking to receive payment for services/products in Libya operate using letters of credit (LOCs) facilitated through foreign banks (often based in Europe). Foreign energy companies remitting large sums often make arrangements for direct transfers to accounts offshore. There have been reports of difficulties arranging LOCs with Libyan entities, owing to a range of institutional inefficiencies that slow the closure of deals.

## 3. Expropriation and Compensation

Article 23 of the 2010 Investment Law provides an express guarantee against the nationalization, expropriation, forcible seizure, confiscation, imposition of receivership, freeze or subjection of procedures of similar effect, except by virtue of a law or court ruling and fair and equitable indemnity, and provides such procedures be applied indiscriminately. Article 43 of executive regulation No. 449 of 2010 implementing the law reinforces those provisions. The Libyan government's history of state expropriation of private property, including the assets of foreign companies, most prevalent during the 1980s, had already been in decline since economic reforms began earlier in the decade. There have been no nationalizations or expropriations under current

investment law. Enforcement of laws nonetheless remains a challenge for post-revolutionary interim governments, and the judicial system remains weak.

#### **4. Dispute Settlement**

Article 24 of the 2010 Investment Law mandates disputes initiated by a foreign investor or the state be settled by competent Libyan courts, unless there is a bilateral or multilateral agreement Libya and the state the investor is subject to that includes provisions for alternative arbitration procedures. Article 407 of the 1953 Code of Civil & Commercial Procedures outlines conditions under which foreign judgments and arbitral awards are recognized and enforced. The Libyan court system consists of three levels: the courts of first instance; the courts of appeals; and the Supreme Court, which is the final appellate level. Libya's justice system has remained weak throughout the post-revolutionary period, making enforcement of foreign judgments and arbitral awards through the Libyan courts challenging and lengthy.

Libya is not a signatory to the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (The 'New York Convention'), and has not taken steps to accede. In the case of commercial disputes, most foreign entities currently opt to try cases before the International Chamber of Commerce, whose judgments Libya has a history of respecting. Libya is a member of the 1983 Riyadh Convention on Judicial Cooperation, which facilitates recognition and enforcement of judgments and arbitral awards among the Arab member states.

#### **5. Performance Requirements and Investment Incentives**

Libya is not a member of the WTO. The WTO received Libya's application on June 10, 2004. The General Council established a Working Party on July 27, 2004, but no formal progress on Libya's application has been made. Article 10 of the 2010 Investment Law exempts investment projects from income tax and project capital and operating goods from customs duties and import taxes for five years from the date the project is approved. It also provides exemptions from the stamp tax on legal documents, taxes on re-invested profits, and excise taxes and customs duties and fees for exported goods derived from the project.

Regarding visa matters, current U.S. and Libya visa policies are drawn within a framework of 'general reciprocity'. U.S. citizens traveling to Libya on business visas require an invitation from/sponsorship by a company operating in Libya. Obtaining a Libyan business visas regularly requires a wait of several weeks or months. Libyan Embassies in third countries have followed varying rules and procedures regarding the issuance of visas, but all visa applications require approval by the Libyan Ministry of Foreign Affairs. Libyan law prohibits using a tourist visa to travel to Libya for business purposes. The Government of Libya does not allow persons with passports bearing an Israeli visa or entry/exit stamps from Israel to enter Libya. Further information can be found in the Consular Information Sheet for Libya at the State Department website: [http://travel.state.gov/travel/cis\\_pa\\_tw/cis/cis\\_951.html](http://travel.state.gov/travel/cis_pa_tw/cis/cis_951.html). The 2010 Investment Law grants investors the right to a residence permit for a period of five years, subject to renewal if the project continues.

#### **6. Right to Private Ownership and Establishment**

Laws and regulations on investment and property ownership allow domestic and foreign entities to establish business enterprises and engage in remunerative activities. However, the regulatory and legal environment is complex, and there is a systemic bias which favors government sector companies and Libyan firms over foreign entities. Investment law and commercial law differ in their foreign ownership restrictions for business enterprises. The 2010 Investment Law specifies, in general accordance with standard international practice, conditions a project must fulfill in part or in full in order to qualify as an investment rather than a commercial concern. (Commercial law stipulates no more than 49% foreign ownership of an enterprise unless it is a branch of a foreign company, which the foreign company can then 100% own.) According to 2014 information from the Libyan Privatization and Investment Board (PIB), Libya has attracted more than \$23 billion in private investment under the provisions of the 2010 law and its operative predecessor, Law No. 5 of 1996. Of this amount, PIB reported more than \$8 billion is 100% foreign owned. Foreign investors are allowed lease property from public holdings and private Libyan citizens, according to Article 17 of the 2010 Investment Law. The law does not grant foreign investors the right to own land. There is considerable ambiguity in both the public and private rental markets; many aspects of these arrangements are left to local officials.

## **7. Protection of Property Rights**

Libyan property rights are complicated by past government policy actions, and a weak regulatory environment. The Libyan government eliminated all private property rights in March 1978, and eliminated most private businesses later in the same year. The renting of property was illegal, and ownership of property was limited to a single dwelling per family, with all other properties being redistributed. Reduced rate "mortgages" were paid directly to the Libyan government, but many Libyans were exempted from these payments based on family income. This process, and destruction of official documents that followed several years later, has served to greatly complicate any subsequent effort to prove clear title to property throughout Libya. The post-revolutionary interim government has made little progress on improving the situation. For intellectual property, trademark violations are widespread and violators are adept at producing credible fakes. U.S. brands remain vulnerable to such activity. The Law of Consumer and Intellectual Property Protection is enforced by the Trademark Office within the Ministry of Economy, and Customs. In practice, enforcement generally requires a specific legal claim. While Libya is in the process of applying for entry to the WTO, it is not currently a member, and thus is not a party to TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights). The IMF has called upon Libya to bring its IPR regime in line with international best practice, and the Ministry of Economy and Trade is reportedly making a renewed effort to deal with the problem, although clear evidence of progress is not apparent. The Embassy maintains a list of local lawyers, which does not constitute an endorsement or recommendation, at the following two web addresses: <http://libya.usembassy.gov/doing-business-local.html>  
<http://libya.usembassy.gov/lawyers.html>

## **8. Transparency of the Regulatory System**

The Libyan regulatory system lacks transparency, and there is a general lack of clarity regarding the function and responsibilities of Libyan government institutions. Transparency International placed Libya 170 out of 177 countries ("1" indicates least corrupt) in its 2013 Corruption

Perceptions Index. Libya's bureaucracy is one of the most opaque and amorphous in the Middle East region; its legal and policy frameworks are similarly difficult to navigate. The issuance of licenses and permits are often delayed for significant periods for unspecified reasons, and the adjudication of these applications is most often done in a subjective and non-transparent fashion. This has created an environment ripe for graft and rent-seeking behavior.

Accurate, current information on the Libyan market and key commercial regulations is difficult to obtain, and this situation serves as a deterrent to foreign investment. The post-revolutionary period has seen a flourishing of civil society, and some non-governmental organizations have devoted themselves to transparency, most notably in the energy sector. Transparency International: <http://www.transparency.org/>

## **9. Efficient Capital Markets and Portfolio Investment**

Libya has been attempting to modernize its banking sector since prior to the revolution, including through a privatization program that has opened state-owned banks to private shareholders. Currently, 21 banks operate nationally in Libya. Seven of them are wholly private, and four are state-owned Specialized Financial Institutions. The Central Bank owns the Libyan Foreign Bank, which operates as an offshore bank, with responsibility for satisfying Libya's international banking needs (apart from foreign investment). The banking system is governed by Law No. 1 of 2005, as amended by Law No. 46 of 2012 on Islamic banking. In accordance with that amendment, Law No. 1 of 2013 would prohibit interest in all civil and commercial transactions from January 1, 2015 onward. It was not clear how or whether this provision will be implemented. The banking modernization program has also been seeking, among other components, to establish electronic payment systems and expand private foreign exchange facilities. The availability of financing on the local market is weak. Libyan banks can only offer limited financial products, loans are often made on the basis of personal connections (rather than business plans), and public bank managers lack clear incentives to expand their portfolios. Lack of financing acts as a brake on Libya's development, hampering both the completion of existing projects and the start of new ones. This has been particularly damaging in the housing sector, where particularly small-scale projects often languish for lack of steady funding streams. The World Bank ranked Libya 186 out of 189 economies on the ease of getting credit, impeded by weak collateral and bankruptcy laws, and 187 out of 189 on protecting investors.

## **10. Competition from State-Owned Enterprises**

The Privatization and Investment Board has made progress in converting sectors of the economy to private ownership. All enterprises in Libya were previously state-owned. The food industry, healthcare, construction materials, downstream oil and gas, and education are sectors now partially or fully privatized. With the exception of the upstream oil and gas sector, no state-owned enterprise is considered to be efficient.

## **11. Corporate Social Responsibility**

Corporate responsibility and local staff training programs are common requirements for successful concession bids, and training programs in particular are generally essential to win bids

on most Libyan government contracts. Large investments by international energy companies have typically involved more-extensive social and development requirements, but those requirements are not stipulated in the law.

## **12. Political Violence**

There is a significant recent history of politically motivated damage and seizure by force of economic infrastructure and installations, particularly in the oil and gas industry. Significantly, men loyal to militia leader Ibrahim Jidran seized oil terminals at Zueitina, Marsa Hariga, Sidra, and Ras Lanuf in Libya's East in July 2013, allegedly over claims the country's interim government had not paid security workers at the port and to advance an agenda seeking more transparency in the sector and more regional autonomy. Civil disturbances were an almost daily occurrence, with rival militias, extremist groups, and terrorist elements jockeying for control over political institutions, economic resources, and geographical regions. These events significantly affected foreign firms' willingness and ability to invest in Libya.

## **13. Corruption**

The law provides criminal penalties for official corruption, but the government did not implement the law effectively, and officials engaged in corrupt practices with impunity. There was a lack of transparency in the government's management of security forces, oil revenues, and national economy. The government encouraged companies to establish internal codes of conduct that prohibit bribery of public officials. While some foreign firms had internal ethics programs to prevent bribery, the continued dominance of state-owned firms in the domestic market rendered corruption and bribery a recurrent practice. Libya has signed and ratified the UN Anticorruption Convention. It is not party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Foreign firms have identified corruption as an obstacle to FDI; corruption is pervasive in virtually all sectors of the economy, especially in government procurement and the oil sector.

## **14. Bilateral Investment Agreements**

Libya has signed bilateral investment protection agreements with Algeria, Austria, Belarus, Belgium, Bulgaria, China, Croatia, Egypt, Ethiopia, France, Gambia, Germany, India, Iran, Italy, Kenya, Luxembourg, Malta, Morocco, Portugal, Qatar, Russia, San Marino, Serbia, Singapore, Slovakia, South Africa, South Korea, Spain, Switzerland, Syria, Tunisia, and Turkey. Some of these have yet to formally enter into force. Libya is part of the Greater Arab Free Trade Area (GAFTA), a Free Trade Agreement joining Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Morocco, Oman, the Palestinian Authority, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, the United Arab Emirates, and Yemen. Libya is also a member of the Arab Maghreb Union (AMU) Free Trade Agreement with Morocco, Algeria, Tunisia, and Mauritania. Libya does not have a bilateral investment treaty, a Free Trade Agreement, or a bilateral taxation treaty with the United States but signed a Trade and Investment Framework Agreement (TIFA) with the United States in December 2013.

## **15. OPIC and Other Investment Insurance Programs**

OPIC is pursuing an Investment Incentive Agreement (IIA) with Libya to enable it to offer financial support for projects in Libya. While these discussions are underway and progress is being made toward allowing OPIC to operate in Libya, as of June 2014 OPIC had not begun to operate in Libya.

## **16. Labor**

Libya's labor market is characterized by a dominant public sector that employs 70 percent of formal sector employees in the Libyan economy, according to the World Bank. Just four percent of Libyans in the formal sector work for private firms. The Libyan labor market has many skilled workers with high levels of education, but high public sector wages and benefits result in outsized expectations among job seekers, particularly among the highly-skilled. Official statistics put Libya's 2013 unemployment rate at 15 percent, but unofficial statistics suggest the rate may be as high as 30 percent—and as high as 50 percent among youth. Many unemployed Libyans hold university degrees. The World Bank also noted significant “mismatches” between the skills Libyan degree holders possess and those demanded by foreign and domestic employers in Libya. The 2010 Investment Law permits investors to hire foreign workers when national substitutes are not available.

The law does not provide the right for workers to form and join independent unions. Formal sector workers are automatically members of the General Trade Union Federation of Workers, but can opt out on request. Foreign workers are not permitted to organize. Workers are permitted to bargain collectively, but the law stipulated that cooperative agreements had to conform to the “national economic interest,” thus significantly limiting collective bargaining. There was no data available about the prevalence of collective bargaining, or about the effectiveness of labor dispute or arbitration services.

There were several strikes in Libya in 2013, but none posed a significant investment risk to foreign investors, and the government generally did not intervene in these strikes. In April 2013, teachers at state-run schools in Benghazi went on strike over late pay, and Libyan Airlines employees went on strike several times in 2013 over several different demands, including having their bonuses reinstated and moving the company's headquarters from Tripoli to Benghazi. The law prohibits forced or compulsory labor, but the government did not effectively enforce the laws. There were reports of foreign workers subjected to conditions indicative of forced labor, including Filipinos, Bangladeshis, and sub-Saharan Africans working in the construction and domestic sectors. The law prohibits children younger than 18 from being employed except in a form of apprenticeship. It was unclear whether child labor occurred, and no information was available concerning whether the law limits working hours or sets occupational health and safety restrictions for children. It was not clear whether the government had the capacity to enforce compulsory or child labor laws; nor was it clear whether non-enforcement of these laws posed a commercial risk to investors.

## **17. Foreign Trade Zones/Free Ports**

Libyan Law Number 215 of 2006 established the Zuwara Free Trade Zone (ZFTZ), and Law Number 495 of 2000 (amended by Law Number 32 of 2006) created the Misrata Free Trade Zone (MFTZ). Both the ZFTZ and the MFTZ are overseen by the Libya Free Trade Zone Board, created by Law Number 168 of 2006. By law, the ZFTZ and MFTZ are financially and administratively independent, and are free to legislate “within the boundaries of Libyan law.” In March 2013, the MFTZ opened a new 804 meter-long dock, allowing the zone to berth medium-sized cargo vessels and for up to 19 ships to dock simultaneously. The MFTZ reportedly unloaded 208,339 20-foot equivalent units in 2013, a 30 percent increase from 159,634 units in 2012. The ZFTC is currently not in operation.

### 18. Foreign Direct Investment and Foreign Portfolio Investment Statistics

	Host Country Statistical source*		USG or international statistical source		USG or international Source of data (Source of Data: BEA; IMF; Eurostat; UNCTAD, Other)
<b>Economic Data</b>	Year	Amount	Year	Amount	
Host Country Gross Domestic Product (GDP) (Millions U.S. Dollars)	N/A	N/A	2009	62,360	<a href="http://www.worldbank.org/en/country">http://www.worldbank.org/en/country</a>
<b>Foreign Direct Investment</b>	Host Country Statistical source*		USG or international statistical source		USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other
U.S. FDI in partner country (Millions U.S. Dollars, stock positions)	N/A	N/A	2012	2,315	<a href="#">(BEA)</a> click selections to reach.

### 19. Contact Point at Post for Public Inquiries

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