LEGAL ASPECTS OF DOING BUSINESS IN LIBYA

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Introduction :

Libya, ten years ago a barren wasteland sustained by massive infusions of British and American aid, is now at the threshold of economic self-sufficiency. With the recent discovery of huge oil reserves in the Sahara, the economy of this land of 1.6 million people has, in the short space of eight years, been fundamentally transformed. It has become a viable economy. A chronic trade deficit has been replaced by a huge surplus.

The first crude exports commenced in September of 1961. As at the beginning of 1964 production was firm at the rate of 700,000 barrels per day. By the end of 1966, approximately 1.5 million barrels per day were being exported, and the opening of Libya's fourth oil port in early 1967 gives enough pipeline capacity to enable exports of 2 million barrels per day. This places Libya in the first rank of petroleum exporters – in a class with Kuwait and Saudi Arabia. The exploitation of Libya's petroleum resources will assure the country economic self-sufficiency for the first time since Roman days.

Libya, despite its new found oil wealth, must still rely heavily on external support for the development and diversification of its economy. A continuing shortage of skills and of entrepreneurial and technical abilities leaves a broad field in which foreign participation is welcome. The Libyan government has expressed confidence in private enterprise, recognized its essential contribution to the country's welfare, and has

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enacted legislation to encourage the investment of foreign capital. The country has an unprecedented opportunity to build a strong economy in association with foreign investors possessing the skill and the know-how the country now lacks. And it is truly a unique example of an underdeveloped country which needs extensive assistance in modern development and, at the same time, has the means to pay for it.

The purpose of this article is to acquaint the investor with the country and the broad outlines of its legal system, and to point up certain attitudes and judgments of a potential investor which are bedrock requirements of a successful venture.

The emphasis here, as the title connotes, is on the legal aspects of doing business. A well developed framework of substantive and procedural law exists in Libya. Only a broad outline can here be sketched, with particular emphasis in the following areas: constitution and machinery of government; general civil laws; legal procedure; petroleum legislation; company law; taxation; capital entry and repatriation; exchange control; tariff policy; import and export controls; labor law; and investment laws.[1]

The Libyan Constitution and Machinery of Government:

Libya's constitution and machinery of government are based upon classic federal and constitutional principles: separation of powers; limited government; independence of the judiciary; and natural rights of the individual.

The Kingdom is a constitutional monarchy under King Mohamed Idris, who had been the Amir of Cyrenaica and a symbol of resistance to Italian colonization. The throne is hereditary.[2] King Idris, having no

1. For detailed information on licensing and exchange controls, capital entry and repatriation, import and export procedures, establishment of a business, etc., see U.S. Department of Commerce Overseas Business Reports 63 - 116, August, 1963, "Establishing a Business in Libya;" 63 -88. April, 1963, "Licensing and Exchange Controls of Libya;" 62 - 16, December, 1962, "Living Conditions in Libya;" 64 -112, September, 1964, "Basic Data on the Economy of Libya;" and World Trade Information Service Operations Report 62 - 1, January, 1962, "Import Tariff System of Libya."
2. Libyan Constitution, Art. 45.

male heirs, has designated his young nephew Alhassan Assanusi, 38, as crown prince and next in line to the throne. King Idris, now 77, fills a double role: he is both secular monarch and religious head of his people. His dominant characteristics are erudition, piety, and political prudence. He knows no western language but has considerable character and intelligence and is an Arabic scholar of high attainment. He is one of the most sophisticated and learned heads of state in the Moslem world. He is the single unifying political force in the country today.

The country originally gained its independence as a federation of three provinces: Tripolitania, Cyrenaica and the Fezzan. Constitutional amendments in 1963, however, abolished the provincial structure and unified the government administration. A more centralized system was adopted to better weld the diverse regions of a vast but thinly populated land. A national administration and three independent provincial governments – for a land of less than two million people – had proved too cumbersome. It was an administrative burden which the country was ill able to afford.

The system is representative.[3] It is a three (3) branch system consisting of the King, the parliament, and judiciary. The official state religion is Islam,[4] although freedom of conscience and freedom to practice any religion is constitutionally protected.[5] Libya's bill of rights is set forth in Articles 8 - 35 of its constitution. These provisions insure to each resident of Libya:

(a) Equality before the law (Article 11),
(b) Personal liberty (Article 12),
(c) Protection from unreasonable searches and seizure (Article 19),
(d) Freedom of conscience and freedom of religion (Article 21),
(e) Freedom of expression (Article 22),

3. Id., at Art. 2.
4. Id., at Art. 5.
5. Id., at Art. 21.

(f) Freedom of peaceable assembly and association (Articles 25-26),

(g) Protection against expropriation (Article 31).

The government is one of limited powers[6] consisting of the King;[7] a prime minister and council of ministers appointed by the King;[8] a senate composed of twenty-four (24) members,[9] half of whom are elected and half of whom are appointed by the Throne;[10] and a house of representatives consisting of ninety-three (93) elected members at the approximate ratio of one(1) deputy to twenty thousand (20,000) population.[11] The term for a representative is four(4) years,[12] while the term for a senator is eight (8) years.[13]

The right to initiate laws is vested in the King and the Parliament.[14] The King holds a veto power over parliamentary initiated laws, which however, can be overridden by a two-thirds majority in each house.[15] The Throne's veto power, coupled with the power to appoint one-half the senate membership,[16] for all practical purposes centers the law making power in the King.

Article 210 of the Constitution provides :

> Unless they are inconsistent with the principles of liberty, and equality guaranteed by this constitution, all laws, subsidiary legislation, orders, and notices which may be in operation in any part of Libya upon the coming into force of this constitution shall continue to be effective and in operation until re-

6. Powers vested in the central government are enumerated at Art. 36 of the Constitution.
7. Id., at Art. 58.
8. Id., at Arts. 72, 78.
9. Id., at Art. 94.
10. Id., at Art. 95.
11. Id., at Art. 101.
12. Id., at Art. 104.
13. Id., at Art. 98.
14. Id., at Art. 138.
15. Id., at Art. 136.
16. Id., at Art. 95.

> pealed or amended or replaced by other legislation enacted in accordance with the provisions of this constitution.

This preserves a large, uncodified, body of rules and regulations promulgated by Italian colonial and British military occupation authorities. Libya's current income tax law (see discussion at p. 41, *infra*) is based upon Italian Royal Decree No. 501, issued by Italy's King Victor Emmanuel in 1923.

The Courts

The Libyan Constitution provides :

> The judges shall be independent; in the administration of justice they shall be answerable only to the law[17].

The doctrine of separation of power and independence of the judiciary is thus recognized in Libya, as in most modern states.

Trial and appellate procedures before the Libyan courts are governed in detail by Libya's Civil and Commercial Procedure Code. The following courts are charged with the administration of justice :

(1) Summary Courts;

(2) Courts of First Instance;

(3) Courts of Appeal;

(4) Supreme Court of Cassation.

Summary Courts are courts of original jurisdiction for claims not exceeding 100 Libyan pounds. Judgments not exceeding £L 20 are final[18].

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17. Id., at Art. 142.

18. Civil & Commercial Procedure Code, Art. 42

This court also has original criminal jurisdiction[19] and final jurisdiction in matters of personal status[20].

Courts of First Instance have appellate jurisdiction on judgments issuing from the Summary Courts and are a court of original jurisdiction in all civil and commercial claims not within the original jurisdiction of the Summary Court.[21] Judgments not exceeding £L 100 are final.[22]

Appeals are taken from Courts of First Instance to a three judge Court of Appeals.[23] A novel aspect of appellate procedure is that the court is empowered to take new evidence, hear new witnesses, hear new defenses and new pleas, and make new findings of fact.[24] An appeal is, thus, virtually a *de novo* proceeding. The same rules of procedure apply before the Court of Appeals as before the trial court.[25]

The ultimate court of appeal is a nine member Supreme Court of Cassation, appointed to office by the King.[26] Supreme Court judges enjoy full political immunity and cannot be removed from office except by the King, with the approval of the majority of the members of the court.[27] Parties may object by way of cassation (nullification) to this court against judgments of courts of appeal based upon a fundamental misapplication or interpretation of the law.[28] The court also may render advisory opinions to the King on important legislative and constitutional questions.[29] Legal principles embodied in the decisions of the court are binding on all courts within the country.[30] Thus, the Libyan Supreme Court, like the U.S. Supreme Court, can play a significant role in the development of the country's legal system.

19. Id., at Art. 43.
20. Id., at Art. 46.
21. Id., at Art. 49.
22. Ibid.
23. Id., at Art. 52.
24. Id., at Art. 320.
25. Id., at Art. 327.
26. Libyan Constitution, Art. 143.
27. A distinguished American is currently serving on the bench: Judge James J. Robinson, of the Indiana and District of Columbia Bars.
28. Civil and Commercial Procedure Code, Art. 336.
29. Constitution, Art. 152.
30. Id., at Art. 155.

A separate system of courts, the Sharia courts, administer matters relating to religion, marriage, divorce, etc. Sharia jurisdiction extends essentially to rural and tribal communities and deals largely with matters relating to personal status of Muslims and pious foundations.

A prospective litigant in Libya should appreciate first that there are approximately eighty (80) licensed lawyers in the country, approximately a dozen of which have the rudiments of a formal legal education. There is no viable law association. There are no canons of ethics.[31] The "sporting theory" applies to an exaggerated degree.

The most distinctive aspect of litigation is that the "trial" is not to a jury, but to the court, usually composed of one (1) or three (3) judges. The court is deemed capable of keeping track of evidence taken over a period of time, and there is no need to condense proof taking into a single continuous session. There is no verbatim transcript of the testimony preserved, but usually only a summary, dictated by the court.

A trial in the American or British sense does not exist under Libyan law. In general, there is nothing comparable to motions to dismiss or for summary judgment. The whole case proceeds to trial in all its aspects, even though a preliminary motion might have been dispositive. By the same token, there is no right to a trial, as a Western person can see such a right. The court will frequently render its judgment based upon the pleadings, evidence submitted with the pleadings, or presumptions derived from such evidence, as well as statements made in argument.

Proceedings made before the court are essentially written rather than oral. Even in oral proceedings, written memoranda are filed with the court in volume. The order of proof taking is determined by the court. The concept of the plaintiff having to prove a *prima facie* case before the defendant comes forward does not exist. The court may require the defendant to prove one or more of its contentions before putting plaintiff to its proof.

31. Lawyers, for example, blatantly advertise their services in the front pages of local daily newspapers.

The Libyan lawyer will rarely contact witnesses before trial and ordinarily will not seek a written statement from prospective witnesses. Examination of witnesses is usually by the court, not examination and cross examination by counsel. Testimony by the witness is not clothed with the particular sanctity attached to it by the Common Law. Under the Civil and Commercial Procedure Code documentary evidence has greater weight than oral testimony, and if a party refuses to produce a document, the court may infer that its contents are unfavorable to the defaulting party.

Ordinarily there are no rules of admissibility of evidence. In law suits, the court simply considers all evidence submitted to it and gives all submissions such weight as the court thinks they deserve.

General Civil Laws

Heart materials of the general civil law of Libya are the Libyan Civil and Commercial Codes. These codes have been adopted virtually intact from the Egyptian Code, itself patterned after the French Napoleonic Code. The Libyan codes, thus, are remarkably similar in scope and content to the codes of France, Spain, Italy, and the Latin American countries. Table I only partially illustrates the variety and scope of substantive law covered :

TABLE I

Civil and Commercial Codes : Substantive Provisions

1) Conflicts of law (Civil Code, Arts. 6-28)
2) Contracts (Civil Code, Arts. 89-163)
3) Quasi contracts (Civil Code, Arts. 182-200)
4) Torts (Civil Code, Arts. 166-181)
5) Equity (Civil Code, Arts. 206-217)
6) Assignment (Civil Code, Arts. 290-301)
7) Sales (Civil Code, Arts. 407-470 ; Commercial Code, Arts. 94-121)
8) Gifts (Civil Code, Arts. 475-493)

9) Partnership (Civil Code, Arts. 494-536)
10) Leases (Civil Code, Arts. 557-633)
11) Suretyship (Civil Code, Arts. 781-810)
12) Real property (Civil Code, Arts. 811-988)
13) Mortgages (Civil Code, Arts. 1034-1088)
14) Agency (Commercial Code, Arts. 15-57)
15) Negotiable instruments (Commercial Code, Arts. 223-437)
16) Company law (Commercial Code, Arts. 442-705)
17) Bankruptcy (Commercial Code, Arts. 707-910)

The Codes are supplemented by a broad network of statutes, the more significant of which are here set out in Table II :

TABLE II

Selected Statutes of Libya

The Constitution of the United Kingdom of Libya, 1951.
Customs Law No. 19, 1954.
Free Trade Zone Law, 1959.
Trademarks Law No. 40, 1956.
Foreign Capital Investment Law, 1958.
Patents, Industrial Designs, and Models Law No. 8, 1959.
Commercial Agencies Law No. 15, 1959.
National Bank of Libya Law, 1955.
Banking Laws, 1958, 1961, 1963.
Exchange Control Law, 1961.
Petroleum Law No. 25, 1955, as amended.
Petroleum Royalties Law No. 79, 1958.
Labor Law, 1962.
Social Insurance Law, 1957.
Immigration Law, No. 4, 1953.
Nationality Law No. 17, 1954.
Passport and Residence of Foreign Law, No. 41, 1956.
Boycott of Israel Law No. 62, 1957, as amended.

Petroleum Laws

The predominant share of foreign investment in Libya today is governed by petroleum legislation.

In Libya, unlike the U.S., oil in strata is the property of the state.[32] The petroleum companies in Libya operate under "concession deeds" regulating in detail their right to drill, extract, transport, process, and export Libyan petroleum. The "concession deed", an international compact with the sovereign, established a special, favored legal framework within which the companies operate. The Petroleum Law,[33] within which is the incorporated concession deed, was drafted by the Libyan government in consultation with representatives of the major oil companies. It preserves a 50-50 split of profits between the government and the concessionaire. In comparison with concession deeds recently granted in Egypt and the Middle East it is generous in its terms. The oil producers voluntarily accepted major amendments in 1961 and more recently the government has persuaded the oil producers to accept further amendments[34]. Libya is a member of the Organization of Petroleum Exporting Countries and will predictably demand further concessions in the future.

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32. Petroleum Law No. 25 of 1955, Art. 1.
33. Ibid.
34. Producing companies accepted December 1965 concession amendments under which royalties are "expensed" (deducted from gross income) rather than credited in full against company payments to the Libyan government. More significantly, for purposes of computing the 50-50 split with the Government, the companies now must compute their gross income on the basis of posted prices (and not realized prices as heretofore), less 6-7% marketing discounts. Aggresive independents such as Continental and Marathon had been discounting crude from the $2.21 posted price to as low as $1.40 (as reported in the **Wall Street Journal**) to penetrate the European market. The independents were squeezed; but Libya was simply following OPEC's (Organization of Petroleum Exporting Countries) lead in aligning its concession deed terms with those of the Middle Eastern producing countries. With increased government revenues, there should be added impetus and expanded opportunities for general investors under Libya's development program.

    Pessimistic observers at the time believed the Government's summary, unilateral, and retro-active amendment of the Petroleum Law (which increased the Oasis consortium's tax bill from $64,000,000 to $148,000,000 for 1965) would have a massive psychological impact on major investors. The feeling was that Libya, prodded by OPEC, facing a budgetary deficit, was over- reacting. It was using a sledge hammer rather than reasoned negotiation. A prospective and escalated increase in the Government's take would have been less ominous to the investment community.

Essential features of the concession deed are :

(a) The concessionaire is granted the exclusive right for a period of fifty (50) years to carry out geological investigations and to search for, bore for, and extract petroleum within the concession area and to use, process, store, export and dispose of such petroleum[35].

(b) The concessionaire pays a nominal rent – 5-20 Libyan pounds[36] per 100 square kilometers of concession area until petroleum is discovered in commercial quantities, at which time it escalates to 2,500 Libyan pounds per 100 square kilometers.[37]

(c) The concessionaire undertakes specified working obligations. It must commence operations within eight (8) months from the date of the concession grant and must expend one and a half to six Libyan pounds per square kilometer (depending upon which zone the concession is located), in accordance with a schedule established by the law.[38]

(d) As an incentive to rapid exploration the concessionaire must surrender 25% of its total concession area within five (5) years, another 25% within eight (8) years, and an additional

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The immediate consequence could have been a "capping" of Libya's oil production, which was only then beginning to find its way into European markets in large quantities. Libyan crude has a distinct transportation advantage over that of the Middle East. This, in large measure, offsets its higher production cost. But with the pipelines filled to capacity, further exploration, drilling, and pipeline investment could have been deterred. Europe's additional requirements would then, perforce, shift to Libya's OPEC partners in the Middle East.

Middle Eastern acreage is largely controlled by the international majors, who face vigorous competition in European markets from the independents (whose only major source of supply is Libyan crude). Libya's move patently strengthened the majors' overall competitive position.

But the lure of Libya's oil is, apparently, irresistible. In February of 1966 forty-one (41) new concessions were awarded, and the bidding competition was vigorous. New concessionaires are now stepping up their exploration programs, and geophysical and drilling activity is again approaching an all time high.

35. Concession Deed Clause 1.
36. The Libyan pound is at par with British sterling; $2.80 equals one pound.
37. Concession Deed, Clause 6.
38. Petroleum Law, Art. 11.

16 2/3% or 25% (depending upon the concession's location) within ten (10) years.[39] After ten (10) years no more than one-third or one-fourth of an original concession will be retained by the concessionaire. Surrendered areas can, thus, be consolidated by the government and relet to new bidders[40].

(e) A concessionaire, and any contractor employed by such concessionaire, may import goods duty free unless such goods of comparable quality are available in Libya at equivalent prices, and may export petroleum or any of its derivatives free of customs duty[41].

(f) A concessionaire may freely convert Libyan pounds into foreign currencies and repatriate such currencies.[42]

(g) The concessionaire agrees that within ten (10) years from the date of commencement of operations Libyans shall comprise 75% of the company's total work force.[43]

(h) Upon commencement of petroleum exports, company payments to the Libyan government are to equal 50% of net profits on concession operations.[44] Payments to the government shall include fees, rents, royalties, income taxes and other taxes and imposts. A surtax is levied, if necessary, to bring the government's share to 50%. Massive exploration and drilling expenditures incurred during the years 1956-1962 have been capitalized by the oil companies and are now being amortized against

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39. Id., at Art. 10.
40. The Libyan Ministry of Petroleum Affairs recently granted new concessions, most of them to small independent firms.
41. Concession Deed, Clause 10.
42. Id., Clause 11.
43. Id., Clause 18, "provided, however, that the requisite number having adequate skill and ability is available . . . ."
44 Id., Clause 8.

export income. There is, thus, a discrete time lag before net profits to the Libyan government accrue in full. This is a fact unappreciated by many, comparatively sophisticated, Libyans, who equate oil export with immediate income.

(i) The concession deed contains comprehensive arbitration provisions.[45] If appointed arbitrators cannot settle the dispute, or if one party fails to appoint an arbitrator, the other party may petition a judge of the International Court of Justice to appoint a sole arbitrator or umpire, whose award shall be final. Arbitration procedure is governed by the rules of the International Court of Justice.

Throughout Libya the oil companies are often flailed in parliament, press, and public houses as imperialistic villains intimately bound up with the "colonialist" government behind them. The companies have great difficulty in projecting a "business organization" image, in which there is no real connection with the home government, world Zionism or the forces of evil in general. The fact that the companies are commercial industrial organizations, with no political motives, is a distinction that eludes many Libyans. Western business and western politics are virtually inseparable in their minds. Anti-western feelings do not approach those of the Middle East. The public is still favorably disposed to the West, particularly the USA, since it was instrumental in bringing Libya its independence. But American support of Israel looms about as large to the Libyan as British and Italian colonialism. The oil companies and their western employees are envied and respected, but never loved. The companies assiduously try to avoid politics but are sometimes caught in its web.

Company Law

The usual procedures for getting into business are available in Libya : an investor may buy shares in an existing business, organize a domestic company, set up a branch operation, or sell products through a commercial agent in Libya.

45. Id., Clause 28.

Under Libyan law[46] no person may act as representative or agent of any foreign, commercial or industrial company, or foreign trading house, unless he is a Libyan or Libyan company properly registered with the Ministry of National Economy. A Libyan company, under the law, means a company at least 51% of whose capital is owned by Libyan nationals.[47] If the Ministry of National Economy concludes that an agency requires special technical experience not possessed by Libyans, appointment of a foreign agent may be authorized for a period not exceeding one calendar year, provided that one or more Libyans shall work with the foreign agent for a period to be defined by the Minister, after which such Libyan shall be appointed agent[48]. Under current regulations, a Libyan agent may represent no more than ten foreign principals.[49]

The formation of commercial entities is governed by Commercial Code, which has been adopted practically verbatim from the Egyptian Code. The following forms of commercial enterprise are recognized :

An Unlimited or General Partnership:

This is the typical personal association. A partner is personally liable for the debts of the firm to the extent of his assets. Such a partnership, however, is a separate legal entity, and the interests of the partners are personal property. A general partnership may trade under a firm name consisting of the names of one or more partners with a statement of the partnership relationship. The firm may retain the name of any partner who is resigned or has died if such partner or his heirs consent thereto.[50] The Code prescribes, at Article 448, the minimum requirements which must be stated in the articles of partnership.

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46. Commercial Agencies Law No. 15 (1959).
47. Id., Art. 1.
48. Id., Art. 7.
49. Commercial Agencies Regulation No. 1, Art. 1 (1961).
50. Libyan Commercial Code, Article 446.

Limited or Commandite Partnership :

This type of organization has two classes of partners: general partners, who are liable, with all their assets, for the obligations of the partnership; and limited partners, whose liability is limited to the amount of their contribution.[51] Limited partners may not participate in the company's management.[52]

Joint Stock Company :

This is the familiar corporate form. In a joint stock company, only the company, with its property, is liable for its obligations. Participation shares of members are represented by share certificates.[53]

Limited or Commandite Stock Company :

In this type of organization the principal members are liable without limitation, jointly and severally, for the obligations of the company; the limited members are liable up to the amount of the capital subscribed by them.[54] This organization, thus, has all the characteristics of a commandite partnership, except that the interest of the limited partners is represented by transferable shares of stock.

The Limited Liability Company :

This is a corporate form in which participation is not represented by share certificates, but only the company is liable, with its assets, for its obligations.[55] As in a joint stock company the personal assets of equity holders are not liable for the obligations of the company.

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51. Id., Art. 466.
52. Id., Art. 471.
53. Id., Art. 478.
54. Id., Art. 608.
55. Id., Art. 618.

Inscription in Trade Registry

All commercial entities must be appropriately inscribed in the Commercial Trade Registry.[56] Inscription can be effected only upon submission of :

1) the organization's name or style.
2) the purpose of the concern.
3) the registered corporate office thereof.
4) the full name of all legal representatives.
5) specimen signatures of all legal representatives.
6) the charter.
7) the initial balance sheet.

Until the organization is appropriately inscribed in the Trade Registry, it is not a separate juridical entity[57]. For transactions carried on in its behalf prior to inscription, the officers acting are liable, jointly and severally, and without limitation, to third parties.

Work Permit

Foreign organizations seeking permanent representation in Libya, joint stock companies, limited stock companies, and limited liability companies must also obtain a work permit from the Ministry of National Economy before commencing their activities.[58] Obtaining a work permit can be a complicated and time consuming procedure. To obtain such permit, a letter of application must be submitted with corporate documents specified by the Ministry (charter, by-laws, balance sheets, certificate of officers and directors, certificate of no trade with Israel, certificate of no political activity, certificate of stock membership, etc.) all of which must be red ribbon copies, authenticated by the Secretary of State or Minister of Foreign Affairs, certified by the Libyan Embassy, translated, and forwarded to Libya. The application, after approval by the federal authorities, is issued by the Minister of National Economy.

56. Id., Art. 88.
57. Id., Arts. 450, 483, 470, 610, and 645.
58. Id., Arts. 479, 645.

Work permits are, predictably, more easily obtained if the enterprise has Libyan participation. Though not a legal *sine qua non*, as a practical matter, most companies seek such participation. Local partners can be indispensable in smoothing the way for government permits and in resolving political and labor disputes.

Taxation

Income Tax :

The basic income tax law is Italian Royal Decree No. 501 (1923), as amended by numerous Italian, British Occupation and Libyan regulations, decisions and decrees. Tax reform has been widely discussed since 1961, more particularly since passage of the 1962 constitutional amendments centralizing power in the Federal government. As of March 1967, there has been neither reform nor codification, although the Speech from the Throne in December 1966 stated that a new direct taxation law had been drafted.

The Libyan Revenue Department, which is responsible for assessments and collections, lacks experienced personnel. Assessments are usually based on indirect or confidential information. Collection, at least as to local businessmen, depends upon the willingness of the individual or the firm to pay. The tax bill is negotiated. Only foreign firms maintaining accurate accounting records are assessed and taxed on the basis of any annual examination of records. Income tax on corporations and individuals is not a key source of revenue to the government. The major share of government revenues are derived from royalties, petroleum income and sur-taxes, and customs duties.

The basic law, at Articles 2B and 5, imposes a ten (10%) per cent tax on "income deriving from industry or commerce, to the production of which jointly contributes capital and workmanship...." To this there is added a three (3%) per cent municipal tax, resulting in a total tax bill of thirteen (13%) per cent on net company income. Professionals

are taxed at the rate of ten (10%) per cent on net income;[59] employees at the rate of eight (8%) per cent on gross income.[60]

Net income is computed in accordance with standard accounting principles : wages, salaries, rents, depreciation, reasonable business expenses, etc. are deducted from gross revenue. There is no distinction between capital gains and ordinary income. Capital gains are taxed at the straight rate.[61]

Libyan Stamp Tax :

A distinctive feature of the Libyan tax system is its comprehensive stamp tax law. The essential elements of the law are set forth in Italian Royal Decree No. 150 (1923).[62] Under the law, a business tax is due on all civil, commercial, and legal instruments or documents.[63] Payment may be direct by use of watermarked-stamped paper, or by application of special revenue stamps. The decree, together with its schedule (which totals well over 500 pages) indicates the amount and method of payment applicable to any given instrument. Deeds and contracts, for example, are to be written on watermarked-stamped paper, which can be purchased at a cost of thirty milliemes (approximately nine (9) cents) per sheet[64]. Article 5 of the law imposes strict limitations on the use of watermarked-stamped paper : contracting parties must adhere to the lines pre-drawn on the paper, and must limit themselves to 12-20 syllables per line if the contract is drawn in Arabic, and 14-28 syllables per line if the contract is drafted in another language.

59. Royal Decree No. 501 (1923), Art. 2C and 5.

60. Id., at Arts. 2D and 5.

61. A few foreign companies have contended (with some logic) that the language of the tax decree extends only to a company's operating income, that gain realized on the sale of assets by other than a "trading company" is properly excludable from gross income. This is, as yet, an unresolved question. The revenue authorities almost surely will not accede to this distinction.

62. Tripolitanian Stamp Tax Law. Comparable laws have been separately enacted for Cyrenaica and the Fezzan.

63. Royal Decree No. 150, Art. 1.

64. Id., at Art. 4.

The tax on certain documents may be paid by affixing revenue stamps thereto.[65] Such stamps are purchased from authorized distributors, affixed by the user or by a public official, and cancelled with automatic punch equipment.[66] The stamps are applied and cancelled at the time the instrument is drafted and, unless otherwise stipulated, the application and cancellation of stamps must be made exclusively by the tax office.[67]

For certain instruments direct payment is mandatory. The document must be presented in the original to the appropriate tax office[68] within 30 days after the instrument is drafted,[69] and the tax paid at the time or within three (3) days thereafter.[70] For violation of the law, surtax penalties are imposed[71] More important, a contract not drawn or stamped in accordance with the stamp tax decree is unenforceable[72]

This law is a good illustration of the need for flexibility in approaching legal problems in an economy such as Libya's. The law is of such scope and detail as to comprehend every conceivable type of business document circulating within and between commercial organizations. Literal compliance is patently impracticable; and the Libyan revenue authorities are not staffed to administer such a law. A major oil company solved its problem simply by negotiating with the Revenue Department authorities a mutually acceptable procedure. Certain minimum requirements were prescribed by the revenue officers. They were then afforded opportunity periodically to inspect corporate records to assure token compliance with the statute, and – more significantly – a moderate flow

65. Ibid.
66. Id., at Art. 6.
67. Id., at Art. 6.
68. Id., at Art. 7.
69. Id., at Art. 9.
70. Id., at Art. 10.
71. Id., at Arts. 26 and 27.
72. Id., at Art. 17.

of revenue to the government. This program was implemented without difficulty. No law suits, no tax deficiency notices, no political problems thereafter arose in this area. Once a line of communication and confidence had been established, the Libyan administrators were as interested in a pragmatic approach to this problem as were the company managers.

Tax on Capital :

All Libyan share issuing companies are taxed at four (4%) per cent per year on shares issued to bearer, at two (2%) per cent per year on shares issued to individuals by name, and two (2%) per cent on capital investment in a limited liability company. This tax is also applicable, technically, to foreign owned firms with branch operations in Libya, but, as a result of a provisional dispensation by tax authorities, it is not being levied or collected.

Real Property Taxes :

Under Libyan tax regulations[73] improved properties are subject to a property tax at the rate of eight (8%) per cent of their net income, real or imputed. No property tax is payable for the first two years after completion of a structure. During the next ten years the tax base increases at a rate of one-tenth (1/10) of the income per annum, so that the entire rental income, actual or imputed, will become taxable on the twelfth year.

Libyan law prohibits[74] the acquisition of property in Libya by non-Libyans, whether natural persons or bodies corporate. Thus, a foreign investor operating in Libya cannot acquire property for business purposes. An exception can be made by the finance minister. In practice, however, ministerial approval has never been obtained.[75]

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73. Libyan Property Tax Regulation No. 1.

74. Non-acquisition of Property Law (1961).

75. The effect of this law is to assure to a few Libyan landlords tremendous incomes on rentals to the foreign community.

Capital Entry and Repatriation

Libya is a member of the sterling area and follows the area's general policies. The Libyan pound is pegged to sterling at a par value of $ 2.80, around which the buying and selling prices fluctuate within a narrow range. The Libyan pound is sub-divided into 1,000 milliemes.

In general there are few restrictions on entry of capital, provided the investment promises benefits to the local economy. For projects qualifying under the Foreign Capital Investments Law repatriation of capital and profits is guaranteed.[76] Petroleum concessionaires may freely import funds for their operations and repatriate excess funds in the concessionaire's primary currency (usually dollars) to the company's country of origin.[77] For capital entering under other than special laws, repatriation conditions should be carefully negotiated at time of entry. There are no specific arrangements for guarantees in these cases.

Exchange Control

The country's foreign exchange laws, geared to an economy with a chronic trade deficit, are now outmoded. With substantial foreign exchange surpluses now being generated by Libya's petroleum exports, repeal of all foreign exchange restrictions might logically be expected within the near future.

The National Bank of Libya administers the Exchange Control Law of 1955[78]. Under the law "transactions in foreign currency, transfers of currency from Libya, and of liabilities expressed in foreign currency" may not be effected except with an exchange control permit issued by the

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76. Foreign Capital Investments Law, 1958, Art. 5.

77. Petroleum Law No. 25, 1955, Second Schedule, Clause 11. U.S. service companies have arranged for payment by the concessionaire to their accounts in U.S. banks. In 1963 the Libyan exchange authorities questioned this procedure, but ultimately withdrew their objection.

78. Exchange Control Regulation No. 1, 1957, Art. 1.

bank.[79] Persons violating this law are subject to stiff penalties : three (3) years in prison, a fine of £ 1,000, or both.[80]

> Exchange control permits are routinely issued for :
> remittances covering imports, when proof is produced that the goods have been imported to the full value of the application and that a valid import license has been obtained; and transfer of accrued income of a "non-resident" to his country of origin. A "non-resident" may, alternatively, arrange to be paid in his home country for services rendered in Libya[81].

The term "non-resident" includes foreign nationals residing, but not domiciled, in Libya (after a six (6) year period the case is reviewed on an individual basis); persons enjoying diplomatic status; and members of the armed forces of a foreign state. Business organizations are not deemed "non-residents" for foreign exchange purposes. All applications for exchange permits are reviewed on an individual basis.

"Non-residents," with approval of the National Bank, may open "external accounts" at any local commercial bank in either Libyan or foreign currency. Deposits and transfers may be made freely under these accounts and funds may be converted into any foreign currency.

Tariff Policy

Despite the fact that 1963 brought Libya's first favorable balance of trade since independence, the country's tariff structure[82] is still basically designed for a condition of adverse trade balance. Thus, even after recent reductions in import duties on a number of basic consumer goods, Libya still imposes high tariffs on luxury goods, and low tariffs on most foodstuffs and consumer goods, industrial machinery, plant equipment

79. Exchange Control Law, 1955, Art. 1; Exchange Control Regulation No. 1, 1957, Arts. 2, 10.

80. Exchange Control Law, 1955, Art. 8.

81. Exchange Control Law, 1955, Art. 3 (3) (b).

82. See Customs Law No. 19 (1954).

and spare parts. Exemption from all duties is granted to agricultural equipment and certain agricultural supplies and to petroleum exploration and development equipment. Customs exemptions can also be negotiated under the Foreign Capital Investments and National Industries Laws.

Import and Export Controls

Two categories of import licenses are in effect: the specific or individual license and the open general license. The majority of imports fall into the category of open general license. Imports subject to individual license generally include processed foodstuffs, certain locally manufactured goods, and a few revenue producing items. All imports from Israel are prohibited.[83]

Import licenses, issued by the Ministry of Finance, are valid for three (3) months for commodities which originate or will be shipped from countries in the Mediterranean basin. Licenses valid for six (6) months are issued for commodities which originate or which will be shipped from other countries. Licenses may be renewed for a period which does not exceed one-half the period defined in the license. Longer periods of validity may be granted for the importation of industrial and agricultural equipment manufactured under an order from an importer.

Export licenses, valid for a period of two (2) months, are required for all goods. Exports to Israel are prohibited.[84]

The Libyan Labor Law

An investor's day-to-day operations in Libya will be more intimately affected by the Libyan Labor Law than any other local statute.

The Labor Law of 1962 maintains the basic provisions of prior (1958) legislation while adding new guarantees for labor and management. The earlier law represented the first step toward improving

83. Boycott of Israel Law No. 62 (1957) as amended.

84. Ibid.

working conditions and maximizing employment in Libya. Among its provisions were prohibition of double employment, limitation of working hours, and protection against unjustified dismissal. The law generally provides more comprehensive statutory coverage of this area.

Libya has suffered from chronic unemployment; and it does today, despite the oil boom. The capital intensive oil industry can, at most, provide jobs for 10% of the labor force. Employment is a highly prized property right; and the law is founded on the premise that it is a vested right which an employee cannot forfeit except on grounds of gross misconduct.

The following is a summary of the main features of the law :

Coverage :

All persons (expatriates as well as nationals) employed in Libya are covered by the law except :

1) Family members of a family establishment,
2) Persons engaged in agriculture,
3) Domestic servants,
4) Mariners and other persons employed in navigation or fishing within the scope of the Libyan Maritime Code.[85]

The Ministry of Labor and Social Affairs is responsible for administering the law.

Hours :

Except for persons in managerial or supervisory positions, or those engaged in private and confidential positions, or in special cases and emergencies approved by the Ministry of Labor,[86] male adults ordinarily work eight (8) hours per day and forty-eight (48) hours per week.[87] Overtime is permitted, at time and a half for each hour of overtime, up

85. Libyan Labor Law (1962), Art. 2.

86. See Labor Regulation No. 1 (1960)

87. Labor Law (1962), Art. 32.

to three (3) hours per day (11 hours total) and up to a total of twelve (12) hours per week (60 hours total).[88] Women may work up to eight (8) hours per day and forty-eight (48) hours per week, but may not perform overtime. Juveniles (males or females between 12 and 16 years of age) must obtain a certificate of medical fitness before being employed, and may not work more than six (6) hours per day. Upon approval of the Ministry, field workers in the petroleum and other industries may accrue rest days and holidays over a two month period and consolidate them in a single field break period.[89]

The law requires payment of wages within seven (7) days after expiration of a pay period, which may not exceed one (1) month.[90] It also prescribes limitations on deductions from wages.[91] An employer, for example, may never deduct more than 10% from wages due as a result of previous advances or loans.

Wages :

Article 24 of the law established in each province a Wages Advisory Council. This council, in consultation with provincial authorities, and upon approval of the Minister of Labor and Social Affairs, is entitled to fix a minimum wage to be given specified categories of workers in the province. Employers who pay their workers wages less than the minimum wage are subject to heavy fines and penalties.

Discipline-Discharge :

The law imposes specific obligations upon the employer[92] and the employee.[93] An employee is, *inter alia*, explicitly bound to good conduct, to the performance of his assigned task, and to the care of machinery and instruments placed at his disposal. Breach of these obli-

88. Ibid.
89. Ibid.
90. Id., at Art. 25.
91. Ibid.
92. Article 13.
93. Article 14.

gations is deemed justification for dismissal. The employer is bound to treat his workers with propriety, refrain from infringing upon their freedom of religious beliefs, accord reasonable time for the exercise of voting and trade union rights, and bear the expenses of transfer to a new assignment.

The Labor Law is fairly drafted. In construction and interpretation, however, foreign operators have found it virtually impossible to dismiss a local employee without paying legal damages for breach of contract. A major oil company recently released thirty-one truck drivers for wilful concerted refusal to report to their field assignment. This was a clear violation of their contract of employment and a breach of the employee obligations set forth in Article 14 of the law. This concerted action also constituted an illegal strike under Articles 67 and 81 of the law. On this state of facts the Court of First Instance, nevertheless, awarded damages to each employee for the company's unwarranted dismissal.[94]

Under the law a dismissed employee may first appeal to the local director of labor for a suspension of such dismissal.[95] If the local labor inspector cannot successfully mediate the dispute, the laborer's petition for a temporary injunction is immediately entertained by the Court of First Instance. In practice, such injunction is always issued. This, in effect, keeps dismissed employees on the company payroll until the case is decided on its merits, which may take from two to four months. In the usual case, a dismissed employee is awarded four to six months wages, not reinstatement. This is the price most companies are willing to pay. But the public relations departments of the major oil companies, understandably, do not welcome such suits. Some companies are now experimenting with labor mediation machinery, which it is hoped will keep down the volume of labor litigation, currently a major item on the trial dockets in Tripoli.

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94. Since the awards were nominal, the case was widely interpreted as a victory for the company and a defeat for the trade union which instigated the strike. Complete judicial vindication for the American employer was politically unrealistic.

95. Id., at Art. 16.

The law permits an employer some flexibility in releasing employees for "economic and/or technical reasons."[96] If an activity (a mine clearance or geophysical operation, e.g.) is being discontinued, and the company can establish that the employee is not transferable, the employer's obligation to the dismissed employee is limited to payment of two (2) weeks wages per year of service. The burden of proof in establishing that an employee lacks skills which would make him transferable to another department, has, in practice, proved a heavy one.

Training :

Under the law, the Ministry of Labor may require certain industrial and commercial establishments to accept Libyan workers for training, at wages and under conditions to be agreed upon between the Ministry and the employer.[97] The number of such trainees may not exceed 10% of the total work force.[98]

Trade and Labor Disputes :

The law provides for the establishment of trade unions[99] but outlaws strikes.[100] Compulsory mediation procedures are outlined in detail.[101] Individual disputes, those involving less than twenty (20) workers, are decided by conciliation officers, with appeal to the regular courts permitted.[102] Collective disputes are mediated by a conciliation board, with appeal to an arbitration tribunal composed of three (3) Appellate Court judges, whose decision shall be final and binding on the parties.[103] This rather sophisticated mediation machinery has never been utilized. Ministry officials normally mediate disputes in either category.

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96. Id., at Art. 19.
97. Id., at Art. 9.
98. Ibid.
99. Id., at Art. 42.
100. Id., at Arts. 80, 81.
101. Id., at Arts. 66-79.
102. Id., at Art. 77.
103. Id., at Art. 76.

Social Insurance Legislation

The Social Insurance Law of 1957 provides for the payment of employee benefits during sickness, maternity, and invalid status as well as for medical care, unemployment, and retirement pension. All employees (expatriates included), except in the smallest establishments, are covered. Employee contributions under this program are nominal, on the order of one (1) to two (2) pounds per employee per month.

Investment Incentives

A potential investor should carefully consider whether a proposed project might qualify under either of two protective incentive laws enacted by the government to attract foreign investment : The Foreign Capital Investments Law and the National Industries Law. Investors seeking the guarantees and incentives offered should be prepared for an extensive period of negotiations, in which the precise conditions under which operations might be taken are carefully outlined. Both laws are yet untested vehicles for foreign investment.

Foreign Capital Investment Law :

Under Libya's Foreign Capital Investments Law of 1958 the Minister of Finance may, upon consultation with the Minister of National Economy, accord favorable treatment or preferential treatment to projects recognized as "contributing to the economic development of Libya."[104] Such preferential treatment may include, *inter alia*, exemption from customs duties and taxes for a period to be fixed by the Minister of Finance. A "project" is defined in the law[105] as any undertaking in which at least 51% of the total capital is foreign. "Petroleum research, drilling, and other operations concerning oil" are not eligible for benefits under the law.[106]

104. Foreign Capital Investments Law (1958), Arts. 3, 4.

105. Id., at Art. 11.

106. Id., at Art. 10.

Conditions of operations are negotiated with the Minister of Finance.[107] Items of permanent importance would include the proportion of Libyan labor to be utilized, the establishment of training programs for Libyan labor, and Libyan capital participation in the enterprise. Once the project has been negotiated and approved, the law guarantees repatriation of initial capital and profits to the country of origin and the transfer of salaries of all foreign staff.[108]

The National Industries Law :

The Libyan National Industries Development Law of 1956 provides for the granting of certain privileges and concessions to new Libyan industries at the discretion of the Ministers of National Economy and Finance. To qualify for consideration a proposed establishment must : (1) conduct operations throughout the year; (2) employ a motive force of not less than 10 horse power; (3) have a labor force of not less than 10 persons; (4) employ Libyan labor in a ratio prescribed by the Minister of National Economy; (5) have a foreign capital investment ratio acceptable to the Ministry of National Economy.[109]

Organizations qualifying under this law may be granted exemptions from any or all of the following :

1) property taxes for ten (10) years;

2) income taxes for five years from the date of commencement of operations;

3) customs duties on specified machinery, equipment, spare parts and raw materials for a period not exceeding five (5) years.[110]

Certificates of exemption may be suspended or cancelled, in the discretion of the Minister of National Economy, if exempt machinery,

107. Id., at Art. 7.
108. Id., at Art. 5.
109. Law for the Development of National Industries (1956), Art. 2.
110. Id., Art. 7.

equipment, or supplies are used for purposes other than those originally declared, if the organization has used fraudulent methods or concealed information or falsified statements to the government, or if the organization fails to commence work within one year of the date the exemption was granted.[111]

Attitude and Approach

Finally, a word about attitude and approach, whether the investor is simply seeking a work permit or is negotiating an investment program under the Foreign Capital Investment or National Industries Law. At bottom, the art of politics can be much more important than legal niceties or hard boiled business calculations.

There are few private foreign professionals in the country – bankers, accountants, attorneys, etc – who are fully equipped to help the foreign investor bridge a tremendous cultural, ethnic, political, and sociological gap.[112] A local partner, therefore, can be invaluable in the negotiation process. It is he who best understands the land, its people, its customs, and who is sensitive to the interplay between government policies, laws and institutions. Selection of a local partner can be the single most important element in an entire investment program.

The investor must understand that planned help from government administrators will rarely be extended. The few able administrators are over-worked and too busy to hold hands with every visitor. For others, pride and lack of knowledge express themselves this way. The point is: the main burden of fact finding, analysis, and explanation will fall on the investor, and it will take far more time to get and give information than

111. Id.. Art. 11.

112. Saba and Co. and Nawar and Co., both accounting firms with broad Middle East and North African experience, have general partners in Tripoli. These firms have an understanding in depth of Libyan business practices and can assist a client in some administrative and quasi legal areas. The excellent firm of Price Waterhouse also maintains a branch of its Milan office in Tripoli. The Bank of America has a minority interest in the Sahara Bank and both the Benghazi and Tripoli branches have American employees in management positions.

is usually allotted. Libya is no place to negotiate an investment on a tight travel schedule. In this vein, an invester must, paradoxically, avoid channels wherever possible. Here, as throughout the Middle East, one must go to the top for action, preferably the Under Secretary, a career civil servant, with some prospects for longevity. The Under Secretary is the best informed and frequently ablest public servant in the Ministry. The Minister is invariably a political appointee, subject to transfer or replacement by the Throne (and this has been distressingly frequent in Libya).

Lastly, we must recognize that the role of government in the economic development of Libya is ubiquitous and is likely to remain so indefinitely. This does not mean that there is no room for investment in a viable private sector of the economy; it is simply that in Libya, with an acute shortage of trained people, the trained few have concentrated – and rightly so – in the federal agencies. The government, a beneficiary of huge petroleum payments and generous foreign aid grants, is the major source of capital. Economic planning is executed and administered as a national function. Thus, it is well to keep firmly fixed in mind that a foreign investor enters Libya as a partner of the government. He must be prepared to demonstrate that his operations yield, not only profit to the company, but a net gain to the economy. Intimate relations with government agencies, their policies, and their staff are a cost of doing business, in day-to-day operations as well as in the investment negotiation stage.

Conclusion

Libya's development over the past fifteen years has been remarkable. In 1950 the country hardly possessed the basic elements essential for the building of a state. Poor and internally divided, many people at first wondered if the new Kingdom would survive. The oil discoveries in the late '50's and early '60's however revolutionized the country's prospects. In the early 1950's the grand mufti of Libya, Sheikh Mohammed Al-Alem, shrewdly observed that Libya needed what all backward economies needed – money and skills : "Get some food into our bellies,

get some knowledge into our heads." With the discovery of petroleum resources, it can be said that Libya now has the money; it needs the knowledge. The scope of investment opportunity, the country's liberal attitude toward foreign investment, and the pace of economic activity today augur well for the future. Libya seems well on the way toward emerging as a model North African nation.