

# Investing in Libya's Energy Sector: Legal Insights and Strategic Pathways

Hannah Khllat

Zakria Abdalmomen

Tumi Law Firm



# Available Pathways for Foreign Participants

## 1. Commercial law: All Sectors with the Exception of:

- *Retail and wholesale trade;*
- *Importation;*
- *Catering services;*
- *All types and fields of commercial agencies' activities;*
- *Land transport services;*
- *Inspection activity on all the imported and exported commodities and goods;*
- *Activity of handling, shipment and discharge in the airports;*
- *Packing and packaging activity;*
- *Stone crushing breakers.*

*(Legal Source: Art.6 of Resolution No.207/2012)*

## 2. Investment law: All Sectors

## 3. EPSA: Energy Sector

# Legal and Regulatory Framework

## Legal Structure for Foreign Participation

- **Commercial Law Registration: Law No.23/2010**
  - **Branch Office**

100% (wholly owned) by the foreign participant  
Required to adhere to the list of permitted activities.
  - **Joint Venture**

Maximum shareholding for foreign participants – 49%  
Similarly, required to adhere to the list of permitted activities.
  - **Consortium ('Mahasa')**

Libyan law novelty  
Establishment of a legal structure per project  
Offers the most flexibility

# Legal and Regulatory Framework

## Legal Structure for Foreign Participation

- **Investment Law Registration: Law No.9/2010**

- Project can be registered under the umbrella of branch registration and/or joint venture.
- Incentives to registrations under Investment Law No.9/2010
  - Five-year income tax exemption,
  - Five-year tax exemption on reinvested profits,
  - Five-year custom duties exemption.
  - No ceiling on maximum shareholding for a foreign participant.
  - LIA as a one stop-shop

# Libyan Law and the Energy Sector

## Exploration, Production, and Service Agreements (EPSA)

- What is EPSA?
  
- History of EPSA
  - EPSA I (1974)
  - EPSA II (1980)
  - EPSA III (1988)
  - EPSA IV (2005):
  
- Investment protection measures: Resort to national and international arbitration.
  
- EPSA projects from 2011 – to date: A need for a reform.

# Critique on EPSA: What to avoid in the next round

## • Vagueness in Contractual Terms

### ➤ E.g Art.5.5 of EPSA: Environmental Policies.

- A shift of statute responsibility from NOC to IOCs.
- Art.3 of Law No.15/2003 on Environmental law should not be delegated to operators.

### ➤ E.g Art.22 of EPSA: Force Majeure.

▪ *“Force majeure shall include; without limitation: Acts of God; insurrection; riots; war and any unforeseen circumstances and acts beyond the control of each party...”*

- Limited guidance on political risk (e.g. government changes, internal conflict, sanctions).
- Lack of criteria.
- The clause ought to be updated to take into account Libya’s current political situation: Does a militia takeover of an oilfield constitute a trigger for force majeure?

# Critique on EPSA: What to avoid in the next round

- **Political Spill-Over**

- Implications of the recent House of Representatives' Resolution (15/2023) on EPSA?
- Art.27.11 of EPSA provides for government approval of all agreements entered into with NOC.
- Is the recent Resolution attempting to disempower the government?
- If so, what are the implications of this on the validity of a new EPSA?

- **Duplication of Penalty**

- Art.8 of EPSA: double penalty imposed on failing to meet the minimum exploration commitment.
  - Liquidity of assets AND 1.5% interest applied on liquidated assets.
  - 224 – 230 of Civil Code – Rejection of duplication of damages.
  - Is Art.8 an instance of NOC seeking two forms of protections from one incident?

- **Aging infrastructure of Oilfields**

- limited investment in maintenance
- Implication on upfront costs.

# Reassessing EPSA: The Need for Comprehensive Reform

- **The EPSA's Predominate Problems**

- Limited Cost Recovery Mechanisms: difficulties faced by IOCs during cash-call.
- Limited flexibility: rigidity of negotiations due to the standardization of contracts.
- High upfront costs – signature bonus.

- **A Return to Concessions?**



# Obstacles to Expect: Risk Management

- **Inexistence of a Unified Window for Registrations**
  - Resort to legal representative on-ground.
  - Slow government procedures.
  - Correspondence in hard copy letters: lack of systemised use of emails.
- **Difficulties with Financial Transfers**
  - Limited adoption of online banking
  - Halt of transfers for various reasons
  - Issues with Liquidity.
- **Difficulties in Obtaining Visas & Residences**
  - Constricted system.
  - Adoption of a 'hierarchy of nationalities

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- Corporate Compliance;
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- Litigation/ Arbitration
- Consultancy in General Business, Banking, Employment, and more.....



# Thank you!

## Contact us

Mobile: +218 (0) 91 000 8981

Skype: +44 1227 3904 55

Email: [info@tumilawfirm.com](mailto:info@tumilawfirm.com)

