

AmCham Tunisia and USLBA

Doing Business in Libya

Unlocking the Benefits of Trilateral Trade: The
United States, Libya, and Tunisia



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Foreign companies wishing to set up "direct" Incorporations in Libya have the choice between 4 operating models:

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1st Status: Joint Venture (Mushtaraka)

- **Foreign Participation** : At least 51% must be held by Libyan shareholders*.
- **Capital**: Minimum: LYD 1 million with a Minimum release of 30% (LYD 300 000) . Balance within 5 years period .
- **Shareholders could be** :
- *at least 2 legal entities :
- *or a legal entity and at least 4 natural persons,
- *or 10 natural persons (foreigners or Libyan)
- **Purpose**: Unrestricted (unless if the activity falls under the list of prohibited activities in Annex 1) but must be in line with same main activity of the foreign mother company or foreign investors.

*Ministry of Commerce can allow to Foreigners more than 49% in some cases with proven added value to the country (but this should not exceed 60%).

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2nd Status: Representative Office

- Foreign Companies choosing neither Branch model nor Mushtaraka model may open representative offices as a First step.

Features & Restrictions for A Representative Office:

- Facilitating contacts and communication between the company and its Clients based in Libya
- Obtaining commercial information
- Identifying investment opportunities
- Commercial activities are prohibited (notably including the sale of goods and the conclusion of contracts)
- Opening subject to the Minister of Economy and Finance's Specific Authorization
- Operations may last up to a 2 years period renewable once only
- The minimum funds to afford in foreign currency: Equivalent to LYD 150 000 (approximately 33K \$).

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3rd Status: Branch – Decree No. 207/2012

- Foreign companies may also open Branches but only to execute activities mentioned in limited list (Decree No 207/2012).

Features & Restrictions for A Branch:

- The Director or his deputy must be Libyan citizen
- The foreign company must be a Stock Company and have acknowledged expertise in the listed activity.
- Allowed period of activity 5 years renewable only once.
- Minimum investment: Equivalent to 250 000 LYD (approximately 55 K \$).

Article 9 of Decree 207 of 2012 listed the sectors of activities allowed for branches that notably include:

Construction and civil works, electricity, oil & gas, environmental protection, telecommunications, Survey and Planning, computers, industry, Consulting, Technical Studies and Training. (annex 2)

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4th Status : Projects under the scope of Investment Law No. 9

The subsidiary under the provisions of the law n°9/2010 on foreign investments (2010)

- **Features:** Foreign investor can set up a Company with no Libyan participation but some exceptions (pending)
- **Purpose:** Manufacturing, healthcare, tourism, services, agriculture and real estate investments
- **Excluded Sectors:** Oil and Gas
- **Capital:**
 - If 100% held by a foreign company: minimum capital required 5 million LYD
 - If a Libyan participation for at least 50%: minimum capital required 2 million LYD
- **Benefits:**
 - Full exemption from corporate income tax (CIT) for the first 5 years
 - Full exemption from customs duties, taxes or duties on imports

- Full tax exemption on reinvested earnings, during the life of the project and on dividends not transferred abroad
- **Capital Repatriation:**
 - Option to repatriate capital at the end of the project

An overview of the fiscal environment in Libya (Deemed tax case)

1. Income Tax

- **Bases & Rates:** Corporate profits at 20% + Jihad tax at 4% (Dividends 0%).
- In fact, foreign subsidiaries and branches, operating in Libya, have two options:
- **Option 1:** To be registered in compliance with local regulations .Considered a local business
- **Option 2:** In some cases (subject to the acceptance of the Libyan client and for a 1st Contract) it is possible to not to be registered: In this case, it is necessary to appoint a fiscal representative to register the contract to be executed in Libya and pay **A deemed tax** on the expected profit.
- 8 to 15% for imports;
- 15 to 20% for the construction and infrastructures;
- 20 to 30% for services;
- 25 to 40% for designs and studies.

Tax authority can also calculate taxes on expatriates' salaries with an estimation of their revenue based on 10% -15% portion of the main contract (plus 3% Jihad tax / wages)

*Possibility to negotiate the margin on a case-by-case basis.

At the registration of the total amount of the contract, the Libyan tax authority will assess the taxable profit and calculate the amount of the tax payable at the current rate of 20% plus 4%.

Tax authority may use the taxable rate of expected margin as follows:

An overview of the fiscal environment in Libya

2. Other Taxes

- **Registration and stamp duty (Damgha):** The most common right is the one that applies to contract that relate to the furniture of goods and services, the construction industry, the transport, the building and public works contracts and all other service or works contracts. The rate is 1% on the contact gross amount.
- **Registration fee on leases:** 1% on the annual rent (due by the tenant)
- **Registration fee on Credit opening contract:** 0.2% on the principal amount (due by the principal).
- **VAT:** Not applicable
- **Transfer tax:** Not applicable.
- **Property tax:** Not applicable.
- **Dividend taxation:** Not applicable.

Triangulation between Libya / US Companies / Tunisia

Tunisia and Libya had always a deep and privileged neighborhood relations for more than one reason: political, economical , family through mixed marriage, tourism in Tunisia and vice versa.

The two countries are complementary on a logic of a natural geographical and economic extension.

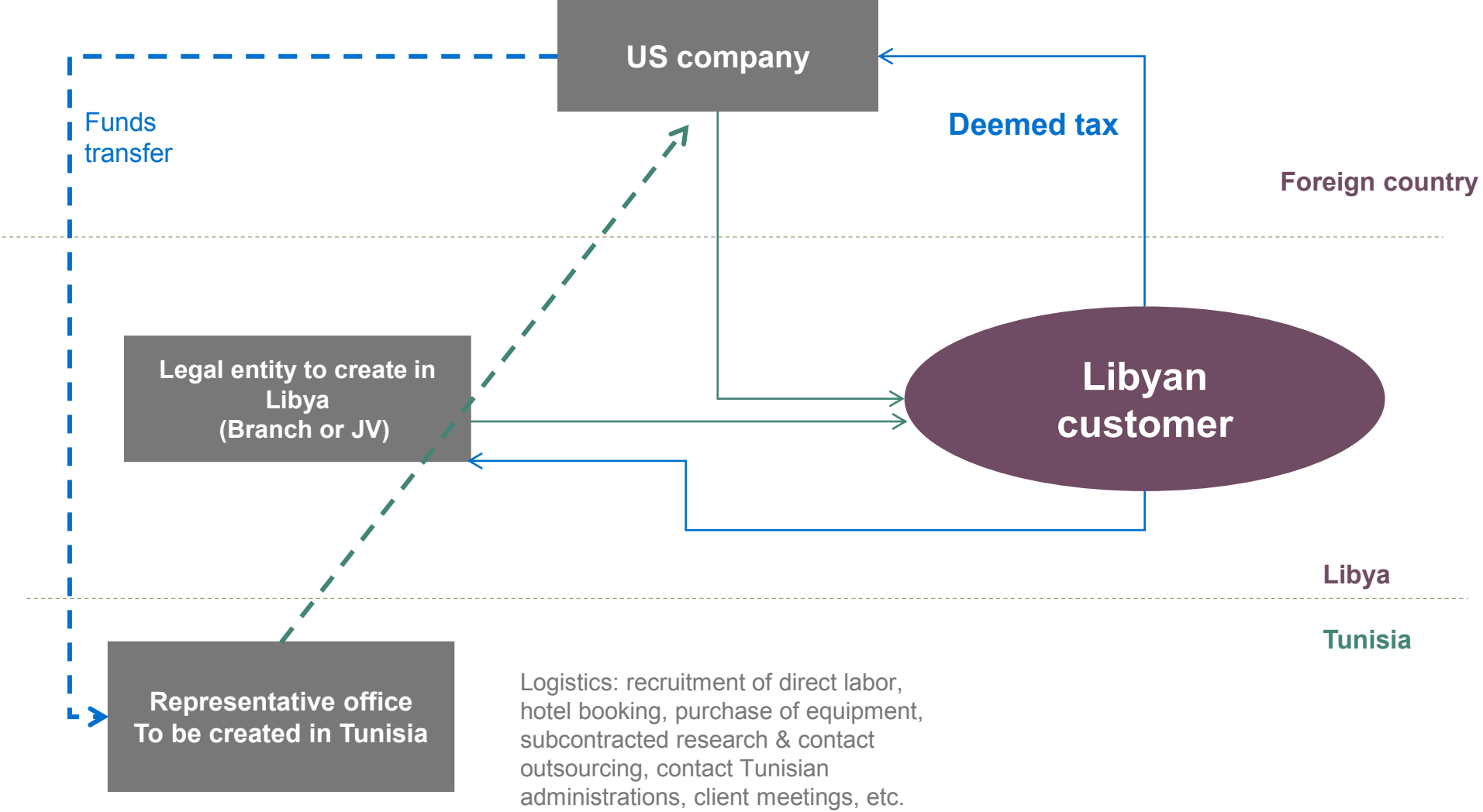
In this harmony we think about a joint cooperation with Tunisia by providing logistical support adapted to the current context.

Accordingly, in order to guarantee a concerted approach in the reconstruction of Libya, Tunisia can afford specific actions such as:

1. A fiscal framework of establishment as an office for the coordination of businesses in Libya
2. Transport & logistics by sea and land; fast-track procedure department through Tunisian customs, facilitations for expatriates;

3. A hosting capacity in the Southeast regions (Djerba, Medenine and Ben Guerdane) by giving benefits to local investors to develop business centers equipped with adequate reception areas and accommodation capacities.
4. Other actions to be agreed to identify the Interlocutor in Tunisia (employees to be recruited for Libya, Tunisian subcontractors or co-contractors, suppliers of goods & services , etc.); Being able to meet the Libyan client and any other Libyan party through meetings in Tunisia, etc.

Triangulation between Libya / US Companies / Tunisia



—— Billing Flow
—— Settlement Flow

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Annex 1

According to Decree 207 of 2012, foreign participation is prohibited in the following 12 sectors of activity:

1. Retail and wholesaling,
2. Importation of goods,
3. Catering
4. Agencies/distributorships,
5. Land transportation
6. Inspection activities on imported and exported goods.
7. Marine handling, shipping and air cargo activities,
8. Accounting, audit , financial advisory , legal and economic consultancy
9. Stones and rockets crashing,
10. Interim activities
11. Contracts of Civil Works < 30 million LYD,(\$ 6,700 000)
12. Any other restricted activities exclusive for Libyans,

Annex 2

1. **Construction and civil works**

- Construction and building
- Road building and construction of bridges, dikes and dams.
- Marine construction like maritime quays, breakwater, ship building basins and port deepening.
- Construction of airports and runways.
- Railways and railway stations.

- Construction of gas transmission and distribution networks using carbon and polyethylene pipes of all types and sizes
- Installation and maintenance of domestic gas networks and calibration of gas measuring instruments of all types

In order to practice the areas mentioned in clauses 1 to 5, the value of the contract must not be less than fifty million Libyan dinars.

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Annex 2

2. electricity

- Installation and maintenance of plants.
- Installation and maintenance of power transmission cable networks.
- Construction and maintenance of thermal and osmosis desalination plants.

3. Oil and Gas

- Petroleum exploration, including geological surveys, geophysical and geochemical methods, etc.
 - Review and analysis of data and submission of geological studies.
- Drilling and maintenance of oil wells and related equipment such as submersible pumps.
- Mud works and drilling fluids
- Construction of oil tanks and pipelines for the pumping of oil and gas, as well as for their maintenance
- Construction of floating marine platforms for oil and gas exploration.
- Assembly and maintenance of petroleum refineries and petrochemical plants.
- Furniture of maritime transport services for materials and equipment related to drilling in marine areas

- Removal of mines from the oil fields.

4. Telecommunications

- Construction and maintenance of telecommunication systems by cable and wireless.
- Build stations, towers, telecommunication and air navigation stations and their maintenance.

5. Industry

- Electrical, mechanical and electromechanical
- Work required for the construction and maintenance of factories.
- Excavation and extraction of metals, except oil.
- Construction and maintenance of thermal ovens for different installations.
- Installation and maintenance of industrial safety systems.

6 Survey and Planning

- Ortho-photography, surveying and mapping for different purposes.
- Submission of technical assessments required for planning cities and urban areas.
- Supervise the execution of engineering projects.

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Annex 2 (Continuation)

. Environmental protection

- Establishment of stations for sanitation purposes
- Waste treatment.
- Treatment of environmental pollution and installation of corresponding systems.
- Treatment of seawater intrusion in groundwater as well as the maintenance of sanitation networks and elevation stations

8. Computers

Construction of automatic control systems along with fabrication of its software and maintenance.

9. Consulting, technical studies and training

- Training and preparation of studies in the fields of information technology, telecommunications, control systems,
- Prepare and provide technical studies and necessary for the implementation of major industrial and construction projects
- Supervise the implementation of engineering projects

10. Healthcare

- Assembly and maintenance of medical equipment with calibration
- Management of hospitals and medical units

11. Air transport

In compliance with applicable law.