Treaty Rights and Remedies of Italian Investors in Libya

The civil war that erupted in Libya in February 2011 and the turmoil that ensued have created a situation of instability and insecurity that has put at serious risk the numerous investments made or held by Italian companies.

On December 13, 2000, Italy and Libya concluded a bilateral agreement for the promotion and protection of investments, which entered into force on October 20, 2004 ("Italy-Libya BIT" or "BIT").

If their investments are impaired or lost as a result of actions and omissions of or attributable to Libya, Italian investors may avail themselves of the substantive protections and procedural remedies afforded by the Italy-Libya BIT. Likewise, Italy entered into bilateral investment treaties with Egypt and Tunisia, which offer Italian investors similar protections and remedies.

The Italy-Libya BIT protects Italian citizens and juridical persons having their principal seat in Italy (Article 1(3)).

The broad definition of the term "investment" contained in the Italy-Libya BIT protects most types of investments made by Italian companies in Libya. The Italy-Libya BIT defines "investments" to include "all kinds of assets" invested, before or after the entry into force of the BIT, by an Italian investor in Libya, including "movable and immovable property," "shares, bonds and interests in companies," "claims to money or other rights having economic value," intellectual property rights, and concessions (Article 1(1)).

The Italy-Libya BIT grants traditional substantive investment treaty protections to Italian investors. Under the Italy-Libya BIT, Italian investors are entitled to "full and complete protection and security" in conformity with Libyan legislation (provided that it is not inconsistent with the BIT and international law, Article 2(3)), compensation for losses due to civil war, state of emergency, insurrection and similar events (Article 4),[1] free transfer of capital (Article 5), and payment of prompt and effective compensation in case of direct or indirect expropriation (Article 6). In addition, Italian investors may invoke the substantive protections granted by Libya to investors of other States by invoking the most-favored-nation clause in Article 3 of the Italy-Libya BIT. Libya has for example entered into bilateral investment agreements with Austria, Switzerland and France, which provide for additional protections such as fair and equitable treatment.

[1] This protection is focused on most-favored-nation and national treatment with respect to restoration of the status quo ante and compensation thereby suffered.

The Italy-Libya BIT provides Italian investors with access to an international forum to remedy treaty violations (Article 9). After a period of six months during which the parties should seek to settle the dispute amicably, Italian investors are entitled to commence UNCITRAL arbitration to enforce their rights under the Italy-Libya BIT.

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