

LIBYA LEGAL COUNTRY PROFILE

LEGAL SYSTEM OVERVIEW

The current legal system of Libya has been described as ‘in flux and driven by state and non-state entities’ and there are no laws applied consistently across the entirety of the country.¹ The Constitution of 2011 is no longer applicable to the current political situation, but in July 2017 a new Draft Constitution was created. This, however, has not yet been passed by the House of Representatives nor seemingly backed by Haftar’s faction. This draft constitution, which may be accepted once Haftar has consolidated his power and support, defines a potential legal system with Islamic Sharia being the primary source of legislation. Legislation shall be controlled by a Shura Council, made up of the popularly elected Senate and House of Representatives. Executive authority shall rest with the President and his government and the Constitution shall be supreme over all laws, whilst the judiciary shall be independent, with actions taken to prevent corruption.²

Nevertheless, currently the role of the judiciary is ambiguous owing to the lack of constitution. The system suffers heavily from political interference in the different regions of Libya and the power of militias has heavily curbed any *de facto* power the judiciary possessed. Militias arbitrarily detain civilians and harass, intimidate and even assassinated judges, lawyers and other judicial workers.³ The judicial system is also heavily corrupt and rulings are not applied consistently. Most foreign businesses operating in Libya usually settle disputes before the International Chamber of Commerce, but the domestic enforcement of foreign judgements remains weak.⁴

Despite the lack of legislative and judicial authority, the Libyan Civil Code of 1954 and Commercial Code of 1953 have roughly endured and offer some form of legal stability which has transcended political change. These Codes are a mixed system based on the French and Egyptian Civil Codes mixed with Sharia law, particularly for matters related to personal status. The codes deal with civil, commercial and family law. In the absence of legislative provisions, Sharia law is applicable, making it the secondary source of law, contrary to the 2011 Interim Constitution and the 2017 Draft Constitution. These Libyan Civil Laws define contracts and situations where they can be nullified, such as consent deriving from an error, fraud or duress.⁵

Libya has signed a number of international treaties, such as the Geneva Convention and is a member of African Union and Organisation of Petroleum Exporting Countries, amongst others. Nevertheless, given the current political situation of Libya, participation in multilateral organisations is negligible and adherence to international law is poor. Under the new Draft Constitution, ratified international treaties and conventions shall be ‘superior to the law and inferior to the Constitution’, hinting that the adherence to international law may remain ambiguous.

BUSINESS OVERVIEW

The Civil War, combined with decreased oil prices, has taken its toll on the Libyan economy; mineral products, such as petroleum gas and crude petroleum, account for roughly 95% of Libya’s exports but production has drastically fallen to 25% of 2010 levels, leading to an annualised decrease of 28% in export levels since 2010. Thus, government currency reserves are rapidly being depleted.⁶

¹ <https://www.cia.gov/library/publications/the-world-factbook/geos/ly.html>.

² <https://www.temehu.com/CDA/final-draft-libya-constitution-29-july-2017-english-translation.pdf>.

³ <https://www.hrw.org/news/2014/04/14/libyas-justice-pandemonium>.

⁴ <http://www.business-anti-corruption.com/country-profiles/libya>.

⁵ https://works.bepress.com/dan_e_stigall/6/.

⁶ <https://globaledge.msu.edu/countries/libya/risk>.

Conflict, systemic corruption and a lack of stable judiciary and legislation provide major obstacles to doing business in Libya. Indeed, Libya ranks 167 of 190 in the World Bank's Starting a Business Index and 185 of 190 in their Ease of Doing Business rankings.⁷

However, commercial opportunities do exist in Libya. Extensive reconstruction and investment will be necessary once the security situation has stabilised. Libya's energy sector is likely to provide particular appeal as its oil and gas reserves are estimated at 75 and 94 years, respectively, of standard production.⁸ As such, major opportunities exist in the development of energy infrastructure, mineral transport and energy security, although the political turmoil effects current opportunities in this sector and the July Draft Constitution states that natural resources shall belong to the state, with a proportion of returns to be allocated to the state 'for the benefit of future generations'. Roughly 10% of GDP is spent on healthcare, with the majority of medical suppliers being European: the UK, Italians, Swiss and Germans are at the forefront of the market.⁹ Market entry is best through a local distributor or agent, and changes to Libyan law requires a partnership with a local partner regardless. However, owing to the Libyan foreign currency liquidity crisis firms have been advised in the past to do business with the private sector and to seek payment upfront. It should also be confirmed that Libyan persons or entities are not on sanctions list, before doing business.

COUNTRY OVERVIEW

Libya is located in Northern Africa on the Mediterranean coast, Tunisia, Egypt, Sudan, Chad, Niger and Algeria. The current population stands at 6.65 million people, with 12% of these believed to be immigrants, making it the 106th most populated country in the world. Over 90% of the population live along the Mediterranean Coast between Tripoli and Al Bayda, as the Sahara and lack of fresh water make the interior largely uninhabitable. Tripoli, the capital, is also the most populous city, containing 1.13 million inhabitants. The official language is Arabic, although Italian and English are widely understood in the major cities, as well as Berber throughout the country. 96.6% of the population are Muslim, virtually all being Sunnis, and the country also contains a small Christian minority.¹⁰

Libya continues to be viewed as a very high-risk country in relation to commercial activities and travel predominantly owing to the ongoing civil war, vast number of armed militias and the presence of terrorist groups such as Daesh and al-Qaeda in the Islamic Maghreb affiliated groups. There is a high risk of terrorism and kidnap, by criminals, militias and extremist groups, across Libya.

Corruption continues to plague Libya, with the country being ranked 170 of 176 countries by Transparency International's 2016 Corruption Index.¹¹

All sectors of the Libyan economy and state suffer from endemic corruption but particularly the public procurement sector and the oil industry, whilst state owned enterprises dominate their markets. Corruption was rampant under Gaddafi's regime, but has significantly worsened in the post-revolution era.¹²

⁷ <http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB2018-Full-Report.pdf>.

⁸ <https://globaledge.msu.edu/countries/libya/risk>

⁹ https://2016.export.gov/industry/health/healthcareresourceguide/eg_main_108598.asp.

¹⁰ <https://www.cia.gov/library/publications/the-world-factbook/geos/ly.html>

¹¹ https://www.transparency.org/news/feature/corruption_perceptions_index_2016#table.

¹² <http://www.business-anti-corruption.com/country-profiles/libya>.

The Libyan economy has remained in recession since 2013, with GDP contracting by an estimated 8.3% in 2016 to an estimate of US\$33.1 billion, although if certain conditions are met the economy is expected to rapidly grow in the near future.¹³ The official currency of Libya is the Libyan Dinar.

The Libyan government is currently in transition and contested. There are currently three centres of power. The Presidential Council, based in Tripoli, was created from the UN-brokered Libyan Political Agreement in December 2015 and is currently headed by Fayez al-Sarraj, the Prime Minister of the Government of National Accord, and thus the UN recognised head of state. The Central Bank of Libya, which takes oil revenues, and the National Oil Corporation are both loyal to the Presidential Council. The rival Government of National Salvation, formed from the rump of the General National Congress also presides in Tripoli and is led by Prime Minister Khalifa Ghwell. Nevertheless, it no longer controls any relevant institutions. The final centre of power is formed by the authorities in Tobruk and al-Bayda, notably the House of Representatives, the recognized legislative body of Libya. The House was supposed to fall under the Libyan Political Agreement but twice voted down the Government of National Accord. These authorities fall under the military control of the anti-Islamist General Khalifa Haftar, the commander of the Libyan National Army. Haftar and the Tobruk authorities have also established their own Central Bank and National Oil Corporation.¹⁴

¹³ <http://pubdocs.worldbank.org/en/282581475460786200/Libya-MEM-Fall-2016-ENG.pdf>; <https://www.cia.gov/library/publications/the-world-factbook/geos/ly.html>; <http://www.imf.org/external/datamapper/NGDPD@WEO/LBY>, Current prices, October 2017.

¹⁴ http://www.ecfr.eu/mena/mapping_libya_conflict.