

SOMALIA LEGAL COUNTRY PROFILE

LEGAL COUNTRY OVERVIEW

The Somali legal system is mixed, consisting of civil, Sharia and customary law. The Provisional Constitution of the Federal Republic of Somalia defines the hierarchy of laws in Somalia and confirms the role of Islam in the state. Article 4 states that ‘after the Shari’ah, the Constitution of the Federal Republic of Somalia is the supreme law of the country’.¹ The Constitution also confirms Islam as the state religion and prohibits the propagation of other religions. Laws which are not compliant with the principles of Sharia cannot be enacted and neither may laws which are contrary to the Constitution. Puntland also has its own constitution, which is inferior to the Federal Constitution, as does Somaliland. Somaliland’s Constitution is similar to that of the Federal Government; it also reaffirms the role of Islam, laws contrary to the principles of which cannot to enacted, as well as the supremacy of the Somaliland Constitution.² Sharia law governs the areas which fall under al-Shabaab control.

The independence of the judiciary is enshrined by Articles 3 and 106 of the Federal Constitution, Article 97 of the Somaliland Constitution and Article 64 of Puntland’s Constitution.³ Nevertheless, in the Federal state there is no clear separation of powers and the judiciary barely functions, relying on a combination of secular, customary and Sharia law. The judiciaries of Puntland and Somaliland also rely on this combination of legal systems. Whilst their judiciaries function, they are still weak, suffering from interference from their respective executive branches and a lack of expertise in statutory and institutional law. Throughout Somalia, judicial branches suffer from a lack of territorial penetration, meaning tribal leaders are often a source of judgement.⁴

Corruption is a dominant issue within Somalia, and particularly the legal system. Courts are subject to political and tribal pressures whilst officials tolerate illegal activity in return for bribes. Indeed, bribery is commonplace in all sectors including government contracts. Abuse of office and the embezzlement of state funds are also common, and given the levels of corruption within the security and judicial apparatuses, impunity is widespread. Transparency is also poor.

The core of civil and commercial law in Federal Somalia and unionist areas is the 1973 Civil Code. The Code governs and define contracts, their obligations, resolution and nullification. Further laws include the Labour Code, which governs employer-employee relations, as well as the Penal and Criminal Procedure Codes, which define crimes, their punishments and legal concepts such as presumption of innocence, *haebus corpus* and rules of evidence.⁵ Somaliland has a number of further key laws governing commercial life. As the draft Commercial Code has yet to have been passed, the dated Credit Instruments Law 1965 is presumed to be in effect.⁶ Furthermore, the Somaliland Foreign Investment Law was implemented to encourage investment and defines procedures and protections for foreign investors. The Somaliland Company Law is also relevant, covering the formation and type of firms, company management and the issue of share capital, amongst other topics.⁷

¹ https://www.constituteproject.org/constitution/Somalia_2012.pdf?lang=en.

² <http://www.puntlandgovt.com/puntland-constitution/>; http://www.somalilandlaw.com/body_somaliland_constitution.htm.

³ https://www.constituteproject.org/constitution/Somalia_2012.pdf?lang=en; file:///Users/pladmin/Downloads/SOM88085%20Eng.pdf; http://www.puntlandgovt.com/puntland-constitution/.

⁴ https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI_2016_Somalia.pdf.

⁵ http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=88091&p_country=SOM&p_count=35&p_classification=01.03&p_classcount=1;

http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=91560&p_country=SOM&p_count=35&p_classification=01.04&p_classcount=4.

⁶ http://www.somalilandlaw.com/commercial_law.htm.

⁷ http://www.somalilandlaw.com/xeerkamaalgashiga_FINAL.pdf; http://www.somalilandlaw.com/somaliland_company_law.html.

Somalia is a signatory to the Geneva Conventions, the Climate Change Kyoto Protocol and Paris Agreements. Somalia is also a member of the Arab League, the African Union, World Health Organisation and International Monetary Fund. The Provisional Constitution confirms adherence to international law but in reality, the government is in no position to effectively engage with or implement many international treaties or agreements.

BUSINESS OVERVIEW

The Somalia economy is not diverse nor developed and over half the population live below the poverty line.⁸ It is highly dependent on remittances, estimated at US\$1.3 billion annually, and agriculture-livestock, both domestically and for export. Import values also account for over 66% of GDP. Meanwhile, real GDP growth is predicted to remain low at 3.5-3.8% annually over 2018-2022, over a percentage point below the average predicted growth for emerging and developing economies.⁹ The Somali shilling, however, has appreciated drastically against the US dollar in recent years, outperforming almost every other currency.

There are a number of serious obstacles to doing business in Somalia, such as the security situation, poor performing economy, weak institutions, embedded patronage networks and corruption. This is reflected by Somalia's position in the World Bank's 2018 Ease of Doing Business Index: Somalia ranks 190 of 190. Somalia also ranks 187 of 190 in the World Bank's 2018 Starting a Business Index.¹⁰

Yet, for patient and risk-tolerant investors there are opportunities within Somalia. Normality is beginning to return to large portions of the country, foreign investment is increasing and the Somali diaspora is returning for economic opportunities.¹¹ Somaliland has been the focus of much of this foreign investment, given its comparative stability and written commercial laws. For example, Coca-Cola runs a large bottling plant near the region's capital, Hargeisa, and in 2017 UAE based DP World committed a US\$442 million investment into Berbera Port, with the aim of transforming it into a regional trade hub.¹² The UAE are also funding transport infrastructure improvements to link Berbera with Ethiopia and the African interior. Opportunities in Somaliland exist in further developing transport infrastructure as well the service, health, education and power sectors, which are predominantly provided by the private sector and Somali diaspora.¹³ There are also a number of opportunities in federal Somalia. Somalia's waters have rich fishing grounds which are farmed at a level far below their potential sustainable capacity: commercial fishing is almost non-existent. Similarly, the livestock and agricultural sectors are underinvested, lacking livestock export infrastructure and commercial farming capability. Perhaps most lucrative, however, is the future potential for offshore hydrocarbon extraction, following exploration research by Spectrum Geo. The mining sector is also relatively young and unexploited deposits include gold, uranium, tin and bauxite.¹⁴

COUNTRY OVERVIEW

⁸ <http://www.worldbank.org/en/country/somalia/overview#1>.

⁹ http://www.imf.org/external/datamapper/NGDP_RPCH@WEO/OEMDC/SOM.

¹⁰ <http://www.doingbusiness.org/data/exploreeconomies/somalia#starting-a-business>.

¹¹ <https://frontera.net/news/africa/why-you-should-invest-in-somalia/>.

¹² <http://edition.cnn.com/2017/08/01/africa/somaliland-new-gateway-africa/index.html>.

¹³ <https://www.adamsmithinternational.com/explore-our-work/west/somalia/improving-investment-flows-to-somaliland>.

¹⁴ <http://www.tradeinvestsomalia.com/opportunities-maritime-and-fisheries.html>; <http://www.tradeinvestsomalia.com/opportunities-agriculture.html>; <https://www.reuters.com/article/us-africa-oil-somalia/prospect-of-offshore-oil-offers-mixed-blessing-for-somalia-idUSKBN1321IW>; <http://www.tradeinvestsomalia.com/opportunities-mining-and-mineral-resources.html>.

The Federal Republic of Somalia is located in Eastern Africa, in the Horn of Africa, bordering Djibouti, Ethiopia and Kenya. The population is estimated at roughly 14.32 million people by the World Bank, making it the world's 72nd most populous country.¹⁵ Mogadishu, the capital, is the most populous city, with 2.14 million inhabitants. Somali and Arabic are the official languages although Italian and English may also be spoken depending on geographical location. Sunni Islam is the majority religion and also the state religion.¹⁶

Somalia continues to be viewed as a very high-risk country owing to a myriad of factors including the security situation, weak state and economic inequality. There is a high risk of terrorism and violence across much of Somalia. Indeed, Somalia is ranked as the world's second most fragile state.¹⁷

Corruption is a major problem in the Somalian public and private sectors, an issue reflected by Transparency International's 2016 Corruption Index which ranked Somalia at 176 of 176.¹⁸

The Somalian economy is extremely underdeveloped owing to years of civil war, famine and drought, with GDP totalling just US\$6.52 billion and real GDP growth rates are low.¹⁹ The official currency is the Somali Shilling.

Somalia is officially a federal parliamentary republic. The current head of state is President Mohamed Abdullahi Mohamed, who was elected in February 2017, and Prime Minister Hassan Khayre is the head of government. The president, who appoints the prime minister, is elected every four years by the lower house of the Federal Parliament. The bicameral Federal Parliament forms Somalia's legislative branch of government and consists of the Upper House and the House of the People; members of these Houses are elected to four year terms.²⁰ Furthermore, Somalia has a number of quasi-independent *de facto* state-like entities, notably Puntland and Somaliland. Puntland, the north-eastern region of the Somalia, declared itself an autonomous state in 1998, although remains unionist in nature and wishes to remain part of a federal Somalia. The current leader is President Abdiweli Mohamed Ali. Meanwhile, Somaliland, in Somalia's northwest, declared unilateral independence in 1991. Although not internationally recognised, Somaliland has relatively free and fair elections for the executive and legislative branches, security apparatuses, government institutions and its own currency, the Somaliland Shilling. The current president is Muse Bihi Abdi.²¹

¹⁵ <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=SO>.

¹⁶ <https://www.cia.gov/library/publications/the-world-factbook/geos/so.html>.

¹⁷ <http://fundforpeace.org/fsi/country-data/>.

¹⁸ https://www.transparency.org/news/feature/corruption_perceptions_index_2016#table.

¹⁹ <http://www.imf.org/external/datamapper/NGDPD@WEO/SOM>.

²⁰ <https://www.cia.gov/library/publications/the-world-factbook/geos/so.html>.

²¹ <http://www.bbc.co.uk/news/world-africa-14114727>; <http://www.bbc.co.uk/news/world-africa-14115069>.