
Libya

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1 Arbitration Agreements

1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of Libya?

As provided by Article 739 of the Code of Civil Procedure, the parties may refer a dispute to arbitration by virtue of either an arbitration submission agreement or an arbitration clause included in a contract. Only parties having full capacity to dispose of their rights may refer to arbitration (Article 740).

All arbitration agreements must be made in writing, not only for a purpose of evidence (*cf.* Article 742 of the Code of Civil Procedure: arbitration agreements may only be evidenced by a written instrument), but also as a condition for their validity (*cf.* Article 150 of the Civil Code: all clauses limiting the jurisdiction of the Courts are void if not made in writing).

1.2 What other elements ought to be incorporated in an arbitration agreement?

No other specific elements need to be incorporated in an arbitration agreement, since Article 743 of the Code of Civil Procedure now admits that the subject matter of the dispute may be defined during the proceedings.

However, in the exceptional case of an equity arbitration (*amiable composition*), the arbitrators must be namely appointed in the arbitration agreement or in a prior agreement (Article 745 of the Code of Civil Procedure).

Although it is not mandatory, it is recommended that the arbitration agreement includes:

- a determination of the law applicable to the dispute (see question 4.1 below), and eventually to the arbitration agreement itself (in order to avoid any further issue of interpretation, see question 4.3 below);
- a determination of the law or rules applicable to the arbitration procedure (see question 6.1 below);
- the number of arbitrators and a method for their selection (see question 5.1 below);
- the time limit for the issuance of the award (since the provisions of the Libyan Law regarding this issue are extremely restrictive, see question 6.3 below);
- provisions regarding the confidentiality of the arbitration (which is not expressly granted by the Libyan Law, see question 12.1 below); and

- lastly, if agreed upon by the parties, a waiver of the right to appeal the award (since all awards, even in international arbitration, may be appealed under Libyan law).

1.3 What has been the approach of the national courts to the enforcement of arbitration agreements?

The national Courts have now reversed their traditional jurisprudence for a long time, and fully admit the enforcement of arbitration agreements, as long as they respect the aforementioned formalities. The purpose of such formalities is essentially to ensure that the parties have knowingly waived the general jurisdiction of the Courts in order to refer their dispute to arbitration.

2 Governing Legislation

2.1 What legislation governs the enforcement of arbitration proceedings in Libya?

The enforcement of arbitration proceedings in Libya is governed by the provisions of the Code of Civil Procedure (Book IV: Articles 739 to 771), which was issued in 1953. Some relevant provisions may also be found in the Civil Code, as well as in specific regulations (for instance, on administrative contracts or contracts in the oil and gas industry, see question 2.4 below).

2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do they differ?

Both domestic and international arbitration is governed by the same law. There is, however, a difference regarding the enforcement of awards made in Libya and those made abroad (see question 11.3 below).

2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the two?

The Libyan rules regarding arbitration were historically inspired by the Egyptian regulations and are not based on the UNCITRAL model.

2.4 To what extent are there mandatory rules governing international arbitration proceedings sited in Libya?

Besides the general provisions herein mentioned as non-derogable, some other regulations mandatorily apply in specific sectors, including for instance public markets and administrative contracts (see the 1980 Decree on administrative contracts of 1980, as amended in 2007) or the oil and gas industry (see Law n°25-1955 of the 21st April 1955, also referred to as the Petroleum Act, and its Annexes).

3 Jurisdiction

3.1 Are there any subject matters that may not be referred to arbitration under the governing law of Libya? What is the general approach used in determining whether or not a dispute is “arbitrable”?

Pursuant to Article 740 of the Code of Civil Procedure, arbitration is prohibited in disputes involving matters of public policy, nationality, civil status (with the exception of pecuniary disputes and family matters that are considered arbitrable by the *Shari'a*), as well social security, work accidents and professional illnesses.

Additionally, a general principle excludes arbitration in disputes that cannot be settled by way of compromise or conciliation.

The interpretation of the High Court regarding the notions of public order and public policy refers to “matters of general interest” involving the “superior order of society”. There have been various applications of the notion in the political, social, economic and moral fields.

3.2 Is an arbitrator permitted to rule on the question of his or her own jurisdiction?

By virtue of a long-standing jurisprudence of the High Court, which also admits the principle of autonomy of arbitration clauses, arbitral tribunals are fully empowered to rule on the question of their own jurisdiction, even when a party claims that the arbitration agreement is void.

3.3 What is the approach of the national courts in Libya towards a party who commences court proceedings in apparent breach of an arbitration agreement?

The approach of the High Court is to consider that an action brought before the national Courts is inadmissible in presence of an arbitration agreement. The Courts shall therefore enforce the arbitration agreement, unless it is manifestly inexistent or void.

However, procedurally, it is the responsibility of the defendant to raise the existence of the arbitration agreement prior to submitting any defence on the merits of the case. In a notorious case where none of the parties (nor the judge) had done so, the High Court judged the existence of the arbitration agreement could not be raised for the first time before the High Court (High Court, Civ. 8th February 1982).

3.4 Under what circumstances can a court address the issue of the jurisdiction and competence of the national arbitral tribunal? What is the standard of review in respect of a tribunal’s decision as to its own jurisdiction?

National Courts may address the jurisdiction of an arbitral tribunal when examining a request for the recognition, the enforcement or

the annulment of an award. However, they may not review the decision of an arbitral tribunal as to its own jurisdiction, which is not open to appeal.

3.5 Under what, if any, circumstances does the national law of Libya allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?

An arbitral tribunal may practically assume jurisdiction over third-parties to the arbitration agreement, provided that it can be demonstrated that the arbitration agreement was either extended or transmitted to such third-parties, owing for instance to assignment mechanisms, or to their participation to the litigious contract in full knowledge of the terms of the arbitration agreement.

3.6 What laws or rules prescribe limitation periods for the commencement of arbitrations in Libya and what is the typical length of such periods? Do the national courts of Libya consider such rules procedural or substantive, i.e., what choice of law rules govern the application of limitation periods?

The commencement of an arbitration proceeding is limited by the term of prescription under the law applicable to the substance of the dispute, since such issue is considered as substantive. Under Libyan law, the general term of prescription for civil obligations is fifteen years, with special terms set to five years (periodical payments: salaries, interests, rents), three years (taxes) and one year.

3.7 What is the effect in Libya of pending insolvency proceedings affecting one or more of the parties to ongoing arbitration proceedings?

The arbitration procedure should be suspended until a declaration of the claim and a regularisation of the representation.

4 Choice of Law Rules

4.1 How is the law applicable to the substance of a dispute determined?

The law applicable to the substance of the dispute may be freely determined by the parties. In the absence of such determination, the arbitrators should determine the applicable law.

In an arbitration agreement the parties may also authorise the arbitrators to apply the rules of equity and justice (*amiable composition*), as provided by Article 745 of the Code of Civil Procedure.

4.2 In what circumstances will mandatory laws (of the seat or of another jurisdiction) prevail over the law chosen by the parties?

The law chosen by the parties (or more generally the law applicable to the substance of the dispute) may be superseded by the international rules and principles that are superior to this law (for instance, treaties or mandatory regulations of international organisations).

The international public policy of the jurisdiction where an enforcement of the award is pursued may also prevail to the extent that recognition would not be granted to an award if it would be in breach of such public policy. As mentioned below (see questions

11.3 and 11.5, enforcement proceeding), this is the case for the enforcement in Libya of both awards rendered in the country and abroad.

4.3 What choice of law rules govern the formation, validity, and legality of arbitration agreements?

Owing to its contractual nature, the validity and the formation of the arbitration agreement is subject to the autonomy of the parties or, in the absence of any designation, to the law showing the most relevant connecting factors. This law may either be the law of the underlying contract (even though the arbitration agreement should theoretically be assessed independently as a result of the principle of autonomy), the law of the place where the arbitration agreement was signed, or the law of the seat of the arbitration. Practically, this freedom of interpretation may cause a divergence between the arbitrators (which may be inclined to adopt an interpretation *in favorem*) and the judges (which may be inclined to apply a different solution, and eventually the formal requirements of the Libyan law, when assessing this issue for the purpose of the enforcement or the annulment of the award).

5 Selection of Arbitral Tribunal

5.1 Are there any limits to the parties' autonomy to select arbitrators?

The provisions of Libyan law guarantee the parties' full autonomy to select arbitrators. Consequently, the parties are free to appoint either nationals or foreign citizens as members of an arbitral tribunal.

The sole substantial requirement of the Code of Civil Proceeding (Article 741) pertains to the civil capacity of the arbitrators. Arbitrators may not be: a minor; a person under a disability or deprived of his civil rights due to a criminal sanction; or a non-rehabilitated bankrupt. Unless they are appointed by the Court (on behalf of a defaulting party), the arbitrators must accept their mission in writing (Article 747).

Additionally, it is worth mentioning that Libyan magistrates may only be appointed upon the due authorisation of the Judicial Council, acting as the supervisory body of the Libyan magistracy.

Regarding the number of arbitrators that may be appointed by the parties, the Code of Civil Procedure unsurprisingly requires the arbitral tribunal to be composed of an odd number of arbitrators (Article 744). However, disputes regarding administrative contracts may not be arbitrated by a sole arbitrator, pursuant to the provisions of the Decree on administrative contracts (Article 99, as amended in 2007).

Finally, in the very specific event of equity arbitration (*amiable composition*), the parties are required to nominate the arbitrators in the arbitration clause or in the arbitration submission agreement, in accordance with the provisions of Article 745 of the Code of Civil Procedure.

5.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

In institutional arbitration, the lack of one or more of the parties to appoint an arbitrator, or the failure of the appointed arbitrators to agree on the nomination of a presiding arbitrator is generally solved by the application of the relevant provisions of the chosen arbitration rules.

However, in the absence of any alternative mechanism, the parties may seek the support of the Libyan Courts, and request the judge

having original jurisdiction over the dispute to appoint the arbitrator on behalf of the defaulting party. Such request may be filed twenty days after an official notification, inviting the defaulting party to appoint its arbitrator. As provided by Article 746 of the Code of Civil Proceeding, the Court decision purposing to nominate an arbitrator on behalf of a defaulting party is not open to appeal.

5.3 Can a court intervene in the selection of arbitrators? If so, how?

As previously mentioned, a Libyan Court may intervene in the selection of arbitrators when requested to make up for the failure of the parties, or of the members of the arbitral tribunal, to appoint an arbitrator.

The Libyan Courts may also intervene in the composition of the arbitral tribunal upon the request of a party for the dismissal of an arbitrator (see question 5.4 below).

5.4 What are the requirements (if any) as to arbitrator independence, neutrality and/or impartiality and for disclosure of potential conflicts of interest for arbitrators imposed by law or issued by arbitration institutions within Libya?

The standard of independence imposed on arbitrators by Libyan law is similar to that imposed on Court magistrates to the extent that arbitrators are subject to the general grounds for dismissal that are set forth for all judges by Article 267 of the Code of Civil Procedure (Article 749).

In this respect, arbitrators may not hear a case that they have previously heard as a judge (or arbitrator), or in which they have been involved as a counsel, expert, witness or auditor for any party.

Additionally, arbitrators may not have an interest in the case or in another dispute pertaining to the same legal points. They may not either hear a case involving, as a party, a spouse or any relative up to the fourth degree, as well as any person sharing their meals or home on a regular basis, or whom they are the agent, subordinate or legal guardian. The exclusion is also applicable to cases involving a party (or a party's representative) that would be in dispute, or in notorious hostility, with the arbitrator or his spouse, or that would be their creditor or debtor.

Finally, arbitrators may not hear a dispute in which a company, an association or any other entity under their management or representation has an interest.

Whereas Libyan law does not specifically provide for the disclosure of potential conflicts of interest, the arbitrators that would not withdraw from their mission in such situation may incur a dismissal, by virtue of either an agreement of the parties or a Court order, upon request of one of the parties, as provided by Article 749 of the Code of Civil Procedure. The Court may only dismiss an arbitrator provided that the request to this effect has been made prior to the issuance of the award. The Court order is not subject to recourse.

6 Procedural Rules

6.1 Are there laws or rules governing the procedure of arbitration in Libya? If so, do those laws or rules apply to all arbitral proceedings sited in Libya?

The parties have full autonomy to choose the law or the rules applicable to the procedure in the arbitration agreement or in a separate agreement executed before the arbitrators start to examine

the case. If the parties fail to determine such rules or abstain from doing so, the arbitrators may select the rules which they deem appropriate. Failing this determination, the arbitrators are bound to apply the procedure applicable to litigation before the national Courts (Article 754 of the Code of Civil Procedure). However, equity arbitrators are not bound by any rules of law or procedure (Article 755).

In any event, the arbitral proceeding must comply with the general principle of due process.

6.2 In arbitration proceedings conducted in Libya, are there any particular procedural steps that are required by law?

The conduct of the hearings is governed by the law or rules that were determined, as previously mentioned, by the parties or by the arbitrators.

Regarding the duration of the arbitration, unless the parties have determined a different time-limit, the arbitrators must render their award within three months following the acceptance of the last arbitrator to be appointed (Article 752 of the Code of Civil Procedure). They may request an extension only once, for the sole purpose of further investigations and provided that such extension does not exceed three months. The extension must be granted in writing by all of the parties. Special events may also affect the time-limit (thirty-days extension upon the dismissal or replacement of an arbitrator, or the death of a party, Articles 750 and 751; unlimited suspension upon the deferral to the Courts of a matter which is not within the jurisdiction of the arbitral tribunal, Article 757, see question 6.7 below).

If the arbitrators fail to render the award within the conventional or the legal time-limit, any party may terminate the arbitration and refer the dispute to the Court, or request the Court to appoint other arbitrators if the parties still agree to settle the dispute by way of arbitration (Article 753).

If the award is, however, rendered at a time when none of the parties have raised the issue of the expiration of the time-limit, such expiration may not be a ground for setting-aside the award later on (see question 10.1 below).

6.3 Are there any particular rules that govern the conduct of counsel from Libya in arbitral proceedings sited in Libya? If so: (i) do those same rules also govern the conduct of counsel from Libya in arbitral proceedings sited elsewhere; and (ii) do those same rules also govern the conduct of counsel from countries other than Libya in arbitral proceedings sited in Libya?

There are no such particular rules.

6.4 What powers and duties does the national law of Libya impose upon arbitrators?

Pursuant to Article 748 of the Code of Civil Procedure, arbitrators may not, once they have accepted their mission, withdraw without a reasonable justification, otherwise they might be held liable on the ground of their contractual obligation towards the parties.

From a general point of view, arbitrators are bound to render an award in good faith, diligently and impartially, and within the contractual or legal arbitration time-limit.

6.5 Are there rules restricting the appearance of lawyers from other jurisdictions in legal matters in Libya and, if so, is it clear that such restrictions do not apply to arbitration proceedings sited in Libya?

Non-Arab lawyers may appear before the national Courts upon a special authorisation of the Ministry of Justice (that is granted for a determined case, and considering the rule of reciprocity). However this restriction is not applicable to international arbitration.

6.6 To what extent are there laws or rules in Libya providing for arbitrator immunity?

There are no specific rules providing for arbitrator immunity. As previously mentioned, arbitrators might be held personally liable for their unjustified failure to render an award, as well as in the event of deliberate misconduct.

6.7 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?

National Courts don't have such jurisdiction, unless they are requested in their mission to support the arbitral tribunal when the arbitration is sited in Libya (for instance: in order to designate or dismiss an arbitrator, see questions 5.2 to 5.4 above; to order interim relief and attachments, see question 7.2 below; or to summon a refraining witness and order rogatory commissions, see questions 8.2 and 8.3 below).

Article 757 of the Code of Civil Procedure also provides that matters outside the jurisdiction of the arbitrators (including forgery, criminal proceedings) must be deferred to the competent Courts. Arbitrators must then stay the proceedings and invite the parties to take the necessary legal actions. In such event, the time-period for arbitration is suspended until the notification to the arbitrators of the final judgment on the deferred matter.

7 Preliminary Relief and Interim Measures

7.1 Is an arbitrator in Libya permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitrator seek the assistance of a court to do so?

Arbitrators are not authorised to grant any attachment or other interim measures of protection. Such measures are to be ordered by a Court pursuant to Article 758 of the Code of Civil Procedure.

7.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party's request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?

As mentioned, the Courts have an exclusive competence to order interim relief and measures of protection. However, the Court may not, on such request, examine the merits of the dispute. Additionally, the Court must comply with the decisions of the arbitrators if, for instance, they decide to release an attachment.

7.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?

By ordering such interim and conservatory measures when legally admissible, the Courts do provide effective assistance to the arbitral procedure.

7.4 Under what circumstances will a national court of Libya issue an anti-suit injunction in aid of an arbitration?

Libyan law does not have any provisions regarding anti-suit injunctions, and there is no Court practice in this regard.

7.5 Does the national law allow for the national court and/or arbitral tribunal to order security for costs?

Libyan law does not have any provisions regarding security for costs, and there is no Court practice in this regard.

8 Evidentiary Matters

8.1 What rules of evidence (if any) apply to arbitral proceedings in Libya?

Article 756 of the Code of Civil Procedure provides that the arbitrators settle the case on the basis of the evidence produced by the parties. They must fix a deadline for such submissions and, if a party fails to comply, they may base their award on the submissions of the other party.

8.2 Are there limits on the scope of an arbitrator's authority to order the disclosure of documents and other disclosure (including third party disclosure)?

Since Libyan law does not restrict such authority, arbitrators may enjoin the production of evidence by the parties and attach a penalty to such production. When the evidence is held by a third party, the arbitrators may call such party as a witness. If the witness refrains from appearing or testifying, the arbitral tribunal may seek the Court assistance in order to summon the defaulting witness (see question 8.4 below).

Article 756 of the Code of Civil Procedure, however, specifies that all investigative proceedings must be performed by all of the arbitrators, each of them signing the minutes, unless one arbitrator has been delegated to perform a specific investigation. In such event, the delegation must be mentioned in the minutes.

8.3 Under what circumstances, if any, is a court able to intervene in matters of disclosure/discovery?

As provided by Article 759 of the Code of Civil Procedure, the arbitrators may request the President of the Court, who has original jurisdiction over the dispute, to order domestic or international rogatory commissions, as well as to summon a refraining witness (see question 8.4 below).

8.4 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal or is cross-examination allowed?

Arbitrators may hear witnesses without oath, and their cross-examination is allowed.

Pursuant to Article 756 of the Code of Civil Procedure, minutes of the arbitration hearings, including the oral witness testimonies, should be drafted and signed by all of the arbitrators. Should one arbitrator be designated to perform the hearing of a witness, the minutes would then be signed by this sole arbitrator, with the express mention of such delegation.

The Code of Civil Procedure also provides for the support of the Courts when a witness refrains from appearing before the arbitral tribunal without valid reasons. In such situation, Article 759 of the Code enables the arbitrators to request the President of the Court who has original jurisdiction over the dispute to summon and to fine the defaulting witness.

8.5 What is the scope of the privilege rules under the law of Libya? For example, do all communications with outside counsel and/or in-house counsel attract privilege? In what circumstances is privilege deemed to have been waived?

The privilege results from the professional rules, and is deemed to be waived when expressly specified.

9 Making an Award

9.1 What, if any, are the legal requirements of an arbitral award? For example, is there any requirement under the law of Libya that the Award contain reasons or that the arbitrators sign every page?

The legal requirements of an arbitral awards, as set forth by Article 760 of the Libyan Code of Civil Procedure, include a summary of the claims and of the arguments raised by the parties, the motivation of the decision, as well as the place and date of issuance of the award. A copy of the arbitration agreement should also be attached to the award, the purpose of all of these formal requirements being the control of the validity of the award within further enforcement proceedings or recourses against it.

Finally, the eventual refusal of an arbitrator to sign the award should be mentioned in the decision. The award is valid and enforceable if it was signed by the majority of the arbitrators.

10 Challenge of an Award

10.1 On what bases, if any, are parties entitled to challenge an arbitral award made in Libya?

1. As provided by Article 769 of the Code of Civil Procedure, a final award (that is to say an award that may not be appealed any more, see question 10.4 below) may be set aside on the following limited grounds:

- the nullity, inexistence or expiration of the arbitration agreement;

- the lack of capacity of a party;
- the inarbitrability of the dispute;
- the irregular appointment of the arbitrators, or their lack of capacity;
- the breach of one of the provisions of Article 760 of the Code of Civil Procedure, regarding the legal requirements of an award;
- the failure of the arbitrators to comply with their mission, or the unauthorised issuance of the award (for instance by a minority of arbitrators, or in the absence of the others);
- the breach of a mandatory rule of procedure, or the expiration of the time-period agreed upon for arbitration (provided that it was duly raised by a party before the issuance of the award, see question 6.3 above); or
- there is an obvious contradiction contained in the award.

The request for annulment may be submitted to the Court which has original jurisdiction over the dispute within 30 days of the notification of the award, and no later than one year after the order of enforcement (Article 770).

Upon annulment of the award, the Court may either settle the dispute or transfer it to a judge for further investigation (Article 771).

2. Additionally, arbitral awards may be subject to a request for rehearing (notably, in the event of a fraud, or in the event of the disclosure of vital evidence after its issuance), as provided by Article 768 of the Code of Civil Procedure.

10.2 Can parties agree to exclude any basis of challenge against an arbitral award that would otherwise apply as a matter of law?

No. The request for annulment shall remain admissible, even if a party waived its right thereto (Article 770). Additionally, the request for annulment remains possible even if the parties have waived their right to appeal the award.

10.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?

Since arbitral awards are appealable under Libyan law, the parties may not extend such scope. They may only waive their right to appeal.

10.4 What is the procedure for appealing an arbitral award in Libya?

Unless they have waived their right thereto, the parties may appeal an arbitral award according to the rules applicable for appeal against Court judgments (Article 767 of the Code of Civil Procedure). The appeal may therefore be filed before the Court which would have had jurisdiction over the case, within 30 days after the order granting the enforcement of the award (see question 11.3 below), or 20 days if it was made by a sole arbitrator (Article 311). Awards are not appealable if they were made in a case pending an appeal, or if the disputed amount would exclude an appeal in an ordinary procedure. Appeal is not available in equity arbitration.

Unless otherwise stated by the enforcement order, the appeal of an award does not suspend its execution.

11 Enforcement of an Award

11.1 Has Libya signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?

Libya has not ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

11.2 Has Libya signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?

The main regional instrument that was ratified by Libya is the Riyadh Arab Agreement for Judicial Cooperation, which was adopted in the League of Arab States on the 6th April 1983. The fifth chapter of this Agreement provides for the recognition of judgments pronounced in civil, commercial, administrative and personal statute actions, including specific provisions that are applicable to arbitral awards and adjudications (article 37 of the Agreement).

Libya has entered into several other relevant judicial cooperation agreements, mostly as part of its bilateral relations with Arab States.

11.3 What is the approach of the national courts in Libya towards the recognition and enforcement of arbitration awards in practice? What steps are parties required to take?

Arbitral awards are only enforceable by virtue of a Court order granting leave to enforce.

1. Regarding awards made in Libya, such order is granted upon the request of a party by the judge of summary proceedings (*juge des référés*) of the Court which has original jurisdiction over the dispute, provided that the award was duly registered with such Court, along with the original arbitration agreement and within five days following its issuance (Article 762 and 763 of the Code of Civil Procedure). The leave of enforcement is notified to the parties, after establishing the formal validity of the award and the arbitration agreement, and its compliance with the Libyan public order. Such ruling is made without consideration of the merits of the case. A refusal may be appealed.

2. Regarding awards made outside Libya, which are governed by the rules applicable to judgments made abroad (Articles 406 and 407, upon reference of Article 761), an enforcement order is granted, still with no consideration for the merits of the dispute, by the Court of First Instance of the venue where the enforcement is sought, after establishing:

- the competence of the arbitral tribunal and the due representation of the parties under the law of the country where the award was made;
- the compliance of the award with Libyan public order, and the absence of contradiction with a previous judgment of the Libyan Courts;
- that the award has the force of a final judgment and is enforceable in the country where it was made (Article 408); and
- that this country allows the enforcement of Libyan judgments according to the rule of reciprocity (Article 405).

It is worth mentioning that the procedure requires a writ of summons to be served to the other party, according to the normal procedure governing litigation in Libya.

3. The enforcement of a foreign Court judgment recognising a foreign award is subject to the same requirements as an award made outside Libya.

11.4 What is the effect of an arbitration award in terms of *res judicata* in Libya? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?

Once leave to enforce is granted, the award (whether foreign or domestic) acquires the same authority as a national judgment. However, since the enforcement of the award is not subject to any review of the merits, scholars deem that the dispute and claims become *res judicata* as of the date of issuance of the award. The same claims may then only be re-heard upon a regular appeal of the award (see question 10.4 above).

11.5 What is the standard for refusing enforcement of an arbitral award on the grounds of public policy?

As previously stated, the interpretation of the High Court regarding the notions of public order and public policy refers to “matters of general interest” involving the “superior order of society”. Various applications of the notion were made in either the political, social, economic or moral fields.

12 Confidentiality

12.1 Are arbitral proceedings sited in Libya confidential? In what circumstances, if any, are proceedings not protected by confidentiality? What, if any, law governs confidentiality?

As in numerous jurisdictions, the confidentiality of the arbitral proceeding is not protected by the law but by usage. Practically, the arbitration remains confidential to the extent that the dispute is not taken to the Courts for the purpose of recourse or for another subsequent proceeding.

12.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?

Yes it can.

13 Remedies / Interests / Costs

13.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?

There is no such limitation, provided that remedies are subject to the principle of full compensation for damages (including losses, lost profits and moral damages, but not indirect damages). Punitive damages do not exist under Libyan law.

13.2 What, if any, interest is available, and how is the rate of interest determined?

Interest is governed by the law applicable to the merits of the case.

Under Libyan law, the interest rate for late payments is set to 4% in civil matters and 5% in commercial matters (Article 229 of the Civil Code), unless the parties have agreed otherwise. However, the interest rate shall not exceed 10% (Article 230).

13.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?

The parties are entitled to recover fees and costs, according to the decision of the arbitral tribunal.

13.4 Is an award subject to tax? If so, in what circumstances and on what basis?

Arbitral awards are not subject to tax.

13.5 Are there any restrictions on third parties, including lawyers, funding claims under the law of Libya? Are contingency fees legal under the law of Libya? Are there any “professional” funders active in the market, either for litigation or arbitration?

Libya has not adopted any position yet on this issue. Currently there is no professional funding market in Libya.

14 Investor State Arbitrations

14.1 Has Libya signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965) (otherwise known as “ICSID”)?

Libya has not signed the Washington Convention of 1965.

14.2 How many Bilateral Investment Treaties (BITs) or other multi-party investment treaties (such as the Energy Charter Treaty) is Libya party to?

Libya is a currently party to 33 BITs, 18 of which have entered into force. The vast majority of the treaties that have entered into force are with European countries (13 treaties), and 3 others are with Arab countries.

Libya has also ratified substantive multilateral treaties that provide for investor-state arbitration within the League of Arab States (*cf.* Unified Agreement for the Investment of Arab Capital in the Arab States, Amman 26th Nov. 1980) and the Organisation of Islamic Cooperation (*cf.* Agreement for the protection, promotion and guarantee of investments among the OIC member States, Baghdad, 1981).

Libya is not a member of the Energy Charter Conference.

14.3 Does Libya have any noteworthy language that it uses in its investment treaties (for example in relation to “most favoured nation” or exhaustion of local remedies provisions)? If so, what is the intended significance of that language?

Libyan investment treaties use the notion of most favoured nation or national treatment in their most commonly accepted meaning.

14.4 What is the approach of the national courts in Libya towards the defence of state immunity regarding jurisdiction and execution?

It is commonly admitted that a State waives the benefit of its immunity when it signs an arbitration agreement, or ratifies an investment treaty providing for the settlement of disputes by way of arbitration.

15 General

15.1 Are there noteworthy trends in or current issues affecting the use of arbitration in Libya (such as pending or proposed legislation)? Are there any trends regarding the type of disputes commonly being referred to arbitration?

In our experience, many disputes relating to the consequences of the Libyan Revolution on international contracts and foreign investment are currently being referred to arbitration. In the middle term, the trend of privatisation is also increasing the use of arbitration in Libya, and is also affecting its nature, since most international contracts used to be entered into by State entities.

15.2 What, if any, recent steps have institutions in Libya taken to address current issues in arbitration (such as time and costs)?

Whereas several neighbouring countries have recently adopted new legislations, Libya had prepared a new draft law on arbitration that was inspired by several sources, including the UNCITRAL model and the Unified Arab Code of Civil Procedure, as well as the French and Tunisian laws on arbitration. However, this reform has been suspended.

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Kamal Sefrioui is managing partner of Sefrioui Law Firm and is a member of the bars of Paris and Geneva.

Kamal Sefrioui acts as counsel in international arbitration, in institutional and *ad hoc* proceedings. He also specialises in international commercial law and in the laws of the Arab world.

He speaks French, Arabic and English.



SEFRIOUI LAW FIRM

Sefrioui Law Firm is a Paris-based arbitration practice that was created in 1969. The firm is particularly active in the fields of international trade, construction, aviation, maritime law and investments. The firm has also handled major international litigations, in matters ranging from State responsibility for support of terrorism to the international export of contaminated blood products.

Sefrioui Law Firm has historically represented several Arab governments and public entities in their international disputes, relative to both their sovereign and commercial activities.

The firm also assists companies on a regular basis, including major industries, financial institutions and investors from Europe, North Africa, and the Arab Gulf.

The firm has offices in Paris and in Geneva.