

GUIDE TO ARBITRATION PLACES (GAP)

LIBYA

CHAPTER PREPARED BY

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline any and all responsibility.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Over the last century, Libya has lived through a number of profound changes, many of which have left their mark on the country and on its political and legal institutions. It has experienced, in particular, the dying days of Ottoman administration, colonisation by Italy, the Second World War, military administration by the Allied Forces following Italy's defeat, the proclamation of independence in 1951 under the auspices of the United Nations, a period of constitutional monarchy, a military *coup d'état* led by Gadhafi in 1969, and an uprising against Gadhafi's regime, followed by civil conflict from 2011 to date. At the same time, Libya has passed from a situation of extreme poverty to one of great oil wealth.

Like other civil law countries, Libya has a series of codes laying down the basic principles of its legislation. The main law for civil transaction relating to both personal and real rights is the Libyan Civil Code, which was issued in 1953 and is practically identical to the Egyptian Civil Code, which in turn was based on the French Civil Code (or Code Napoleon). The Libyan Civil and Commercial Procedure Code ("**LCCPC**") also dates back to November 1953. It establishes the hierarchy of the various courts that deal with civil and commercial matters, defining their jurisdiction and procedural rules, including procedures for producing evidence, and enforcement of judgments and arbitration awards, as further discussed below. Arabic is the official language of the country. However, English is widely used because of the influence of the oil industry on the economy and everyday life.

While Libyan law allows for arbitration and contains a number of helpful provisions with regard to the conduct of arbitral proceedings in Libya, it is not very favourable to arbitration with respect to proceedings in the appeal or enforcement stage. As a result, there is a serious risk that if a party obtains an award in its favour in a local arbitration, that the award may be submitted to ordinary appeal proceedings on the merits, or at least to nullification proceedings where there are many openings for a court to nullify the award. Although foreign arbitral awards cannot be as easily challenged as Libyan awards, there may be serious obstacles to enforcing it against a Libyan party, unless that party has assets outside Libya against which it can be enforced.

Key places of arbitration in the jurisdiction?	Tripoli, Benghazi.
Civil law/common law environment? (if mixed or other, specify)	Civil Law.
Confidentiality of arbitrations?	Confidential.
Requirement to retain (local) counsel?	Not required.
Ability to present party employee witness testimony?	Yes.
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	Hearings are supposed to take place in Libya and in person.
Availability of interest as a remedy?	Yes.

Ability to claim for reasonable costs incurred for the arbitration?	Yes.
Restrictions regarding contingency fee arrangements and/or third-party funding?	Contingency fees are common. Third party funding arrangements not clear but may be possible.
Party to the New York Convention?	No.
Party to the ICSID Convention?	No.
Compatibility with the Delos Rules?	The Libyan Arbitration Law is generally compatible with Delos Rules.
Default time-limitation period for civil actions (including contractual)?	The general statute of limitation for civil matters is 15 years (Article 361 of the Civil Code). Special statutes of limitation, such as shorter limitation periods apply for certain obligations such as commercial obligations (10 years), labour claims (1 year) and tax claims (7 years).
Other key points to note?	An arbitral award issued in an arbitration seated in Libya must be concluded in Libya and filed with a court in Libya, otherwise it will be considered a foreign arbitral award. Unless the parties agree otherwise in writing, an arbitral award can be appealed in the same manner as a first instance court decision.
World Bank, Enforcing Contracts: Doing Business score for 2020, if available?	48.4
World Justice Project, Rule of Law Index: Civil Justice score for 2020, if available?	φ

ARBITRATION PRACTITIONER SUMMARY

Arbitration in Libya is governed by Articles 739 to 777 of the LCCPC, issued and in effect since November 1953. The current provisions on arbitration are rather outdated in certain respects, especially as regards (i) the existence of a right of appeal (unless expressly waived by the parties in writing) and a right to apply for reconsideration; and (ii) the procedures for enforcement of foreign arbitral awards covered in Articles 405 to 411 of the LCCPC, which make enforcement difficult.

Therefore, at present, Libya cannot be considered a safe seat for arbitration. We believe that, for Libya to enjoy such a status, several matters have to be dealt with: (i) a proper environment of safety and security has to be re-established and vital logistics and services necessary to conduct an arbitration in the country have to be established; (ii) a new law favourable to arbitration has to be enacted (for example, based on the UNCITRAL Model Law); (iii) a culture positive to arbitration has to be developed; and (iv) Libya needs to join and ratify international conventions relating to arbitration, such as the New York Convention and ICSID.

Date of arbitration law?	November 1953.
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	No.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	Not available.
Availability of <i>ex parte</i> pre-arbitration interim measures?	Not available.
Courts' attitude towards the competence-competence principle?	Unclear; it can be safely stated that arbitrators' competence-competence decisions are subject to review by courts.
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	Libyan law is not sufficiently developed on this point. We would accordingly recommend caution.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	Yes, namely if the award contradicts with another court decision previously issued by a Libyan court. As regards the NY Convention ground where an award has not yet become binding upon the parties, Libyan law mandates a time-limit within which an award must be rendered (subject to the parties' agreement to extend this) and an award may be challenged if the arbitrators failed to comply with their procedural rules or with any other rules which must be complied with in order for the award to be valid, notably formality requirements.
Do annulment proceedings typically suspend enforcement proceedings?	Yes, enforcement orders will not be granted as long as an annulment or an appeal is pending.

<p>Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?</p>	<p>Libya is not party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the "New York Convention"). Local rules have to be followed. If an award is annulled at the place of arbitration, it will not be enforceable in Libya.</p>
<p>If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?</p>	<p>Hearings are supposed to take place in Libya and in person. Awards must be made in Libya. Remote attendance is new technology and is not covered by the law. If a remote hearing takes place despite a party's objection, this would affect the recognition and enforcement of an ensuing award in Libya.</p>
<p>Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?</p>	<p>Restrictions apply for arbitrations with specific persons such as employees, spouses and public bodies. It is important to ensure that the necessary approvals are obtained and that the public body appear or a due notice is served on them and the State Litigation Department (SLD), if the public body is to be legally represented by the SLD. Approval of the contract containing an arbitration agreement establishes approval of the agreement to arbitration. A foreign contracting party should, and is entitled to be provided with copies of the approval.</p>
<p>Is the validity of blockchain-based evidence recognised?</p>	<p>Depending on the procedure followed and its compatibility with Evidence Rules contained in the Civil Code, blockchain-based evidence may be accepted and applied.</p>
<p>Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?</p>	<p>Local arbitration awards have to be filed with court. Foreign awards must go through the enforcement procedure. Recording on blockchain alone is not sufficient to establish validity.</p>
<p>Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?</p>	<p>See above answer.</p>
<p>Other key points to note?</p>	<p>An arbitral award issued in an arbitration seated in Libya must be concluded in Libya and filed with a court in Libya, otherwise it will be considered a foreign arbitral award. Unless the parties agree otherwise in writing, an arbitral award can be appealed in the same manner as a first instance court decision.</p>

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model Law? 1985 or 2006 version?

The arbitration law in Libya is based on the relevant provisions of the Civil and Commercial Procedure Code of 1953, which have not been subject to any amendments since being enacted in 1955. The relevant provisions are not based on the UNCITRAL model law or any other model.

Libyan law allows arbitral awards to be annulled on certain grounds, even if the right to appeal has been waived (see more on appeals of arbitral awards in section 5.4). The grounds for nullification can be found in Article 769 of the LCCPC and are as follows:

- If the award has been issued in the absence of an arbitration agreement, or on the basis of a void or expired agreement;
- If it has been issued by arbitrators appointed in violation of the law;
- If it has been issued by an arbitrator who lacked the capacity to act as an arbitrator or was prohibited from so acting;
- If the dispute concerned issues which are not arbitrable;
- If the award dealt with issues not agreed in the arbitration agreement or goes beyond the scope of the agreement;
- If the award contains a manifest contradiction;
- If the award does not comply with formal requirements such as the inclusion of reasoning, signature by the arbitrators, etc.;
- If it was issued after the time-limit; or
- If the arbitrators failed to comply with their procedural rules or with any other rules which must be complied with in order for the award to be valid.

Above cases for annulment listed in Article 769 of the LCCPC are of public order nature and cannot be waived. The right to appeal, if not waived, may cover both issues of facts and law.

1.2 When was the arbitration law last revised?

The arbitration law has not been revised since it was enacted in 1955.

2. The arbitration agreement

As a general rule, the parties to a contract have the right to agree to submit to arbitration any disputes which may arise in relation to their contract.¹ They may provide for institutional or *ad hoc* arbitration.² It should be noted that in administrative contracts all disputes are subject to the jurisdiction of the Libyan courts, unless (i) one of the contracting parties is a foreign entity, and (ii) approval of the Council of Ministers to include a clause providing for arbitration outside Libya is obtained (as required by the provision of the current "Administrative Contracts Regulation" issued by Resolution No. 563/2007 of the Council of Ministers).

¹ Article 739 of the LCCPC.

² Article 754 of the LCCPC.

2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

The parties to an arbitration agreement are free to agree on the law governing their agreement. In the absence of an express designation of a “seat” in the arbitration agreement, the court dealing with the issue will consider the common intention of the parties and will interpret the agreement to arbitrate accordingly. The court will look at the place of signature, common place of residence / business (and other factors indicating a connection to a particular jurisdiction).

2.2 In the absence of an express designation of a ‘seat’ in the arbitration agreement, how do the courts deal with references therein to a ‘venue’ or ‘place’ of arbitration?

In the absence of an express designation of the seat by agreement of the parties, the arbitral tribunal may designate the seat and include it in the “terms of reference” along with other procedural rules (Article 754 of the LCCPC). Libyan courts will typically accept such designation of seat.

2.3 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

Yes, the arbitration clause in a contract will be considered independent from the rest of the contract and will survive termination of the contract.

2.4 What are the formal requirements (if any) for an enforceable arbitration agreement?

To be enforceable, an arbitration agreement must be in writing – either in the form of an arbitration clause in a contract, or in a special agreement entered into after the dispute has arisen – and signed by the parties. The subject of the dispute must be specified in the agreement or during the proceedings.³

2.5 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?

A third party to a contract is not bound by an arbitration under the contract unless it becomes a full party to the arbitration agreement by a written document signed by all parties.

2.6 Are there any restrictions to arbitrability? In the affirmative, do these restrictions relate to specific domains and/ or specific persons?

Yes. Article 740 of the LCCPC prohibits arbitration in matters relating to public order and social security domains (such as disputes concerning gambling, slavery and prostitution) and relating to specific persons (such as spouses, public bodies and employees).⁴

3. Intervention of domestic courts

Libyan law provides for various safeguards for parties wishing to arbitrate in Libya, including the assistance of the courts where required.⁵ In this respect, Libyan law is similar to other more modern arbitration laws.

3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

The courts will reject a litigation (and not only order a stay) if there is a valid arbitration agreement covering the dispute. This would be the case if the arbitration is inside or outside Libya.

³ Article 742 of the LCCPC.

⁴ Article 740 of the LCCPC.

⁵ Article 759 of the LCCPC.

3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

The arbitrators are not allowed to issue such injunctions, but the courts will be receptive to objections to their jurisdiction if there is a valid arbitration agreement.

3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to anti-suit injunctions/anti-arbitration injunctions or orders, but not only)

A Libyan court will not interfere in an arbitration taking place outside Libya.

4. The conduct of the proceedings

The proceedings will be governed by any rules of procedure that the parties may have stipulated in their arbitration agreement or in any other agreement, such as in the terms of reference. These rules may be institutional or non-institutional, or they may be national procedural rules or rules specifically adopted by the parties. Failing an agreement by the parties on the procedural rules, the arbitrators are themselves entitled to determine the applicable rules.⁶

4.1 Can parties retain foreign counsel or be self-represented?

Yes, parties can retain foreign counsel or be self-represented.

4.2 How strictly do courts control arbitrators' independence and impartiality? For example, does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances be of a gravity such as to justify this outcome?

The appointment of an arbitrator may be challenged in cases determined in Article 267 of the LCCPC, addressing removal and resignation of judges. It also applies to arbitrators, by virtue of the reference stated in Article 749 on removal of arbitrators.

Article 267 stipulates that:

"The Judge has the duty to abstain from hearing the Claim in the following circumstances:

- 1. If he has an interest in the Claim or in other Claims involving identical legal matters.*
- 2. If he or his wife or a relative to the fourth degree or whosoever usually lives with him or his dependent is a party, whether plaintiff or defendant, to the claim.*
- 3. If there is a current Claim or grave enmity or the relationship of debtor and creditor between himself or his wife and one of the parties.*
- 4. If he has advised upon the Claim or has taken part in the proceedings or given evidence therein or has previously heard the case at another stage thereof, or was an expert, arbitrator or investigator therein.*
- 5. If he was the guardian or trustee or mandatary or master of one of the parties, or if he was a director to a corporate entity or Company even, if said entity or Company is not recognised, or director of an Organ or Association or establishment having an interest in the Claim.*

In circumstances other than these mentioned above, in grave reasons, the Judge may ask permission from the Chairman of the Circuit to abstain, if the Chairman of the Circuit is himself the one who wishes to abstain then he shall he direct his request to the President of the Court."⁷

⁶ Article 754 of the LCCPC.

⁷ Article 267 of the LCCPC.

Petition for a challenge of appointment of arbitrators must be presented to a court, which will exercise close control. Disclosures have to be made, and the failure to disclose or circumstances relating to non-disclosure have to justify the disqualification of the arbitrator. A court order revoking the appointment of an arbitrator is not subject to appeal.⁸

4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of *ad hoc* arbitration)?

If a problem arises in connection with the appointment of arbitrators, an application may be made under Article 746 of the LCCPC to the court to resolve the problem. Accordingly, if, for example, a party refuses to nominate its arbitrator, the court can make an appointment on its behalf, by a decision that is not subject to appeal. Only if the court is named as an appointing authority will it interfere in the constitution of the tribunal. Otherwise, the *ad hoc* tribunal will be constituted as agreed by the parties.

Article 746 of the LCCPC states as follows:

"If controversy arises and the parties do not agree on the arbitrators, or if one or more arbitrators chosen by common agreement refuses to participate, or if one more renounces the task, or if an obstacle prevents them from fulfilling the task, or if an arbitrator is rejected, unless there is a special agreement among the parties, each of these parties must notify the adversary by means of the court officer of the nomination of the arbitrator chosen by him or of the nomination of the arbitrators chosen by him in the case, inviting him (the adversary party) to designate the arbitrator or the arbitrators whom he chooses.

In case of non-performance by the adversary of the designation of the arbitrators, within twenty days following the notification, the party who has given the notice can request the judge competent to decide the principal action to name the arbitrators. The judge, after hearing the adversary making the request, if he holds it to be necessary, must issue to that end an order not subject to appeal."⁹

However, if, for example, the parties have provided for an even number of arbitrators, the court would view this to be a problem arising in connection with the appointment of the arbitrators and would hold the arbitration agreement null and void.¹⁰

4.4 Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider *ex parte* requests?

The courts have the power to issue interim measures only if so requested by the arbitration tribunal, for example, if a witness refuses to appear.¹¹ The courts will consider *ex parte* requests relating to appointment of arbitrators and time-limits for issuing decisions.

4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

No.

4.5.2 Does it regulate the length of arbitration proceedings?

Yes. According to Article 752 of the LCCPC, the arbitral award must be given within the agreed time limit or, in the absence of any such agreement, within three months from the date of the arbitrators' acceptance of

⁸ Article 749 of the LCCPC.

⁹ Article 746 of the LCCPC.

¹⁰ Articles 744 and 746 of the LCCPC.

¹¹ Article 759 of the LCCPC provides in relevant part that *"The arbitrators will take recourse to the president of the tribunal referred to in Art. 762, to obtain the following: 1. The condemnation of a witness who does not appear as provided in Art. 181, and the provisions for charging a reluctant witness according to Art. 182. [...]."*

their appointment. The time limit may be suspended in the event of a challenge and may in certain limited circumstances be extended for a period of no more than three months, provided that all parties agree to such an extension. If the arbitrators fail to give their award within the time limit, any of the parties may submit the dispute to the courts.¹² It is therefore advisable to agree at the outset upon a reasonable time limit so that the arbitral proceedings can run their course to the end, and so that the case cannot be submitted on its merits to the local courts.

4.5.3 Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?

Hearings are supposed to take place in Libya and in person. Awards must be made in Libya. Remote attendance is a relatively new technology in Libya, and is not covered by the law. We are not aware of any hearings or proceeding conducted remotely.

4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?

No.

4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence?

Arbitrators will act like court judges and will have the right to conduct the process as they consider appropriate, subject, of course, to observing normal rules of justice, impartiality and fairness.

4.5.6 Does it make it mandatory to hold a hearing?

Yes.

4.5.7 Does it prescribe principles governing the awarding of interest?

Awarding of interest is available and is controlled by general principles of the Libyan Civil Code.

4.5.8 Does it prescribe principles governing the allocation of arbitration costs?

The arbitrators will decide on arbitration costs and their allocation, subject to the applicable rules in case of institutional arbitration. Libyan courts may review the allocation of costs.

4.6 Liability

4.6.1 Do arbitrators benefit from immunity from civil liability?

Arbitrators do benefit from immunities to civil liability, unless a crime or wrongdoing is committed. If an arbitrator has accepted to be appointed in writing, and later refuses to act without any legitimate reason, such refusal will render the arbitrator liable in damages to the parties.¹³

4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

There should be no such concerns as long as participants do not commit a crime.

¹² Articles 752 and 753 of the LCCPC.

¹³ Article 748 of the LCCPC.

5. The award

5.1 Can parties waive the requirement for an award to provide reasons?

An award must and should have reasons as required by Article 760 of the LCCPC. However, if arbitrators are granted authority to act as "*amiable compositeur*", then a proposed settlement need not have reasons.

5.2 Can parties waive the right to seek the annulment of the award? If yes, under what conditions?

Parties can waive the right to appeal, not annulment as such, as it is a public order matter not left to the will of the parties.

5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

For arbitrations seated in Libya, an award must be given in writing, signed and dated, and include the reasons on which the decision is based. It is pronounced by a majority vote after deliberations of the arbitrators and must be signed by them.¹⁴ If one or more of the arbitrators refuse to sign, such fact is recorded in the award, which nevertheless remains valid if it is signed by a majority of the arbitrators.

Article 761 of the LCCPC stipulates that any one of the arbitrators shall deposit the original award and the original arbitration agreement with the court which would have had jurisdiction to consider the dispute.

When depositing the award, the person doing so should obtain a receipt signed by the clerk of the court. The award must be deposited within five days of its rendering.

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?

Yes. Unless the parties agree otherwise in writing, an award can be appealed for any reason (fact or law) that is available for appealing a court judgment. A successful appeal will lead to a retrial. Appeal is not available where the arbitrators are granted settlement authority. Article 767 of the LCCPC stipulates that:

"The arbitration decisions validated according to Art. 763 are appealable, following the rules prescribed for the appeal of judgments pronounced by tribunals.

Appeal is not admissible if the arbitrators were delegated settlement authority, if the arbitrators were in an appeal, or if the parties have expressly renounced their right to appeal, or if the amount involved in the suit does not exceed the maximum limit of the defined competence of the judge before whom the principal action would have had to be brought.

*The appeal is brought before the tribunal or court which would have been competent to try the case, if judgment of the first grade had been pronounced by a competent tribunal."*¹⁵

5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

In relation to local arbitration awards, once deposited, either party can request the summary judge to ratify the award. The summary judge will carefully review the arbitral agreement and the award itself, and grant

¹⁴ Articles 756 and 760 of the LCCPC.

¹⁵ Article 767 of the LCCPC. Kindly note that the translation is verbatim. While it may appear confusing, the meaning is that an appeal is not accepted where the arbitrators had settlement authority and did so or where the arbitrators were appointed to act on a dispute before a court of appeal or where an award is not appealable because of the value of the claim.

an enforcement order if there are no obstacles to the execution of the award. Article 763 of the LCCPC states that:

"The arbitration decision does not become subject to execution except by virtue of an order issued at the request of one of the interested parties by the judge of urgent matters in the tribunal or the court in the record office of which has been deposited the original of the decision, after examination of the award and the Terms of Reference and the ascertainment of the nonexistence of obstacles to execution. The order which directs execution is to be affixed at the bottom of the original of the arbitration decision.

The records officer shall give notice to the parties of the deposit and of the validation by the judge, following the method prescribed for notification of a judgment. The party who intends to file an objection against the refusal of validation of the arbitration decision can file it before the tribunal of first instance if the judge who has refused confirmation is a summary judge and before the Court of Appeal if the tribunal is of first instance."

As Libya has not ratified the New York Convention, the enforcement of awards issued outside the country can be lengthy and cumbersome. Article 408 of the LCCPC indicates that enforcement of foreign awards is subject to the same rules applicable to the enforcement of foreign court judgments, contained in Articles 405 *et seq.* of the LCCPC.

Article 405 of the LCCPC states that the enforcement of judgments (or awards) issued in a foreign country is permitted under the same conditions as are required for a Libyan court judgment to be enforced in that same foreign country. An applicant for an enforcement order will therefore have to produce evidence as to the conditions for enforcement of a Libyan court judgment in the country where the award was issued.

For example, Libya is party to the Riyadh Convention on Judicial Cooperation between Arab countries dated 6 April 1983 (the "**Riyadh Convention**"). Article 37 of the Riyadh Convention sets out the principle that arbitral awards issued in any member country shall be enforced in any other member country. However, the Riyadh Convention provides in the same Article 37 for limitations on enforcement which are not very different from local restrictive controls. For example, Article 37 of the Riyadh Convention stipulates that enforcement can be refused if the subject-matter adjudicated is non-arbitrable or the award offends principles of Shari'a law, public order or rules of conduct according to the law of the requesting party.

The proceedings for obtaining an enforcement order require service of suit on the other party before the court of first instance within whose jurisdiction the enforcement is sought. In line with Article 407 of the LCCPC, the court may only order the enforcement of a foreign award if it satisfies the following four conditions:

- The award was issued by a tribunal having jurisdiction according to the laws of the country where it was issued, and has become final and enforceable in that country;
- The parties were notified to appear and were validly represented;
- The award does not conflict with any judgment or order previously issued by a Libyan court; and
- It does not contain anything contrary to morality or rules of public order in Libya.

Article 411 of the LCCPC indicates that the rules of enforcement provided for in the LCCPC shall be without prejudice to the rules determined in international treaties concluded or to be concluded by Libya and other countries relating to the enforcement of foreign awards.

5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

Yes, enforcement orders will not be granted as long as an annulment or an appeal is pending.

5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

Yes, if an award is annulled at the seat, this means it does not exist anymore from the perspective of Libyan law.

5.8 Are foreign awards readily enforceable in practice?

Practice shows that the procedure can be tedious and difficult. In the 1950s and 1960s, a large number of oil concessions were signed between the Libyan State and foreign oil companies. All such concessions provided for *ad hoc* foreign arbitration of disputes between the parties. In the 1970s, such *ad hoc* arbitration was put to the test as a result of the nationalisation by Libya of the interests of a number of oil companies, mostly American. All such disputes ended in amicable settlement after having reached the stages of enforcement attempts following the rendering of an award.

6. Funding arrangements

6.1 Are there laws or regulations relating to, or restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such laws, regulations or restrictions?

There are no restrictions on legal fees structures. This is a matter left to the agreement of the parties. There exists a committee at the Bar Association that considers complaints regarding excessive fees upon a complaint.

7. Arbitration and technology

7.1 Is the validity of blockchain-based evidence recognised?

It is safe to say that blockchain based evidence is not recognised. Documents filed with public authorities such as the Commercial Registry, Chamber of Commerce, Customs etc. can be used as evidence.

7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?

No. The arbitration agreement and award have to be in hard copy and deposited as hard copies.

7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?

No.

7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?

No.

8. Is there likely to be any significant reform of the arbitration law in the near future?

Due to the absence of a solid arbitration culture, local arbitration has not really developed in practice, and the Libyan courts have not had ample opportunities to intervene and to build up a body of case law relating to arbitration. There have been efforts to update the law but the current political/military conflict, the split in institutions, and the absence of a strong central parliament and government are all putting a hold on such efforts.

In 2010, a committee was established in the Ministry of Economy to propose a new law to restructure the framework of arbitration in Libya. The Committee proposed a full text for a new and separate law consisting of 67 Articles. It dealt with issues such as competence-competence, appeal, annulment and enforcement, and was meant to be a step forward in the process of modernising Libyan law with respect to arbitration. Due to the uprising of February 2011 and ensuing conflicts, the proposed law has never been enacted and remains a draft.¹⁶

Another attempt to create a more favourable atmosphere for arbitration has been the establishment of the Libyan Centre for International Commercial Arbitration. The Centre is based in Tripoli and has the status of an independent entity with a legal personality. It has been designed to handle local disputes alongside arbitrations raised under international investment agreements to which Libya is a party. It published a draft law on arbitration, which – just like the Ministry of Economy's proposal – has not become more than merely a draft.

The new law, if and when adopted, is aimed at removing obstacles to arbitration, simplifying the procedure, and facilitating enforcement. It is expected to follow international practices and urge the authorities to join and/or ratify international conventions relating to arbitration.

9. Compatibility of the Delos Rules with local arbitration law

The Delos Rules are generally compatible with the Libyan Arbitration Law.

10. Further reading

- 1) International Arbitration Magazine volume 8, April 2013 year 5.
Article by Dr. Koni Ali Aboda "Challenges Facing Arbitration in Libya" in Arabic.
- 2) Laws and System of Arbitration (in Arabic) 3 volumes
By Faris Mohamed Omran.
Libyan law listed in volume II pages 237-254.
- 3) Legal Organization of Arbitration-International and local.
By Dr. Munir Abdulmajed -1997 (in Arabic).
- 4) Annulment Appeals in Arbitration Awards in Private International Disputes.
By Dr. Hafid Said Alhaddad (In Arabic 1997).

¹⁶ Dr. Kuoni Ali Aboda "Some Challenges Facing Arbitration in Libya" [2013] International Arbitration Journal, vol. 18 p. 101.

ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> , with offices and a case team?	∅
Main arbitration hearing facilities for in-person hearings?	Available but not up to standard.
Main reprographics facilities in reasonable proximity to the above main arbitration providers with offices in the jurisdiction?	Poor.
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	Poor.
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	Available but not up to standard.
Other leading arbitral bodies with offices in the jurisdiction?	∅