

DISPUTE RESOLUTION IN NORTH AFRICAN COUNTRIES

Case Study: Libya

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Libyan Procurement Rules 2007

(Clause 83): Role of Libyan Courts in Disputes

- In principle Libyan courts are solely entrusted with handling disputes
- It possible (*if it is necessary*) when contracting with foreign entity to revert to a special mechanism for dispute resolution after the prior approval of the Prime Ministry.

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Libyan Procurement Rules 2007

(Clause 83): Role of Libyan Courts in Disputes

- The contract should indicate that a special mechanism for dispute resolution is needed.
- The contract should indicate which disputes should be referred to the special mechanism.

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Libyan Procurement Rules 2007 (Clause 83): Role of Libyan Courts in Disputes

- The procedures of the special mechanism should be clearly spelled out.
- The method for selecting the arbitrators/adjudicators should be indicated
- Ensure that the Libyan side has a fair and equal chance in: selecting the arbitrators, and determining their scope and powers

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Libyan Procurement Rules 2007 (Clause 83): Role of Libyan Courts

- Ensure that there will be no single arbitrator
- No mention or reference to efficiency or cost of dispute resolution mechanism
- The clause underscores fairness and the safeguard of the National interest

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Tender Documents

- Use of *ad hoc* tender documents
- Rare use of standard tender documents.
- International standard tender documents used only for large contracts with foreign firms

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Tender Documents

- Government is the main employer thus have a quasi monopoly on the market
- The *ad hoc* tender documents are labeled “*oppressive*” tender documents
- In other words: “*take or leave it*”

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Current Trends and development:

- *Libya is a member of Common Market for East and South Africa (COMESA)*
- *Libya will implement the Enhancing of Procurement Reforms and Capacity Project (EPRCP) financed by the African Development Bank*

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Current Trends and development:
Objective of EPRCP

- *Harmonization of public procurement rules and regulations*
- *Improve national procurement systems*
- *Capacity building in procurement*

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Current Trends and development:

- *EPRCP will establish the conditions and provide the tools for efficient means and options for handling disputes*

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Current Trends and development:

- *The first Arabic FIDIC was held in Dubai in February 2010*
- *This will introduce FIDIC documents as options*
- *In turn lay the ground for the utilization of Dispute Boards*

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Current Trends and development:

- *The first introduction of to Libya FIDIC will be held on 26th May 2010*
- *The Libyan market will have the opportunity to test the FIDIC documents*
- *Dispute resolution mechanisms will piggyback on FIDIC*

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Conclusions

- *Current reform through the regional development partners will create a procurement systems*
- *The presence of FIDIC will provide other options for resolving disputes*
- *The opportunity for DBs can only increase with time*