DISPUTE RESOLUTION IN NORTH AFRICAN COUNTRIES

Case Study: Libya

Ahmed Benbarka
Istanbul, 14-16/05/2010
Dispute Resolution In N. African

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.
Dispute Resolution In N. African

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.
Dispute Resolution In N. African

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
Dispute Resolution In N. African

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
Dispute Resolution In N. African 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
Dispute Resolution In N. African

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”
Dispute Resolution In N. African

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*
Dispute Resolution In N. African

Current Trends and development:
Objective of EPRCP

- Harmonization of public procurement rules and regulations
- Improve national procurement systems
- Capacity building in procurement
Dispute Resolution In N. African

Current Trends and development:

- *EPRCP will establish the conditions and provide the tools for efficient means and options for handling disputes*
Dispute Resolution In N. African

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
Dispute Resolution In N. African 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
Dispute Resolution In N. African

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