

Kluwer Arbitration Blog

Key Insights on Libya's New Arbitration Law

Mahmud Sawan (Manara Law) · Monday, November 27th, 2023

In April 2023, Libya took a significant step forward in developing its legal system by issuing [Law No 10 of 2023 on Commercial Arbitration](#) (“**New Arbitration Law**”). The New Arbitration Law establishes a comprehensive legal framework for commercial arbitration in Libya, taking inspiration from the [UNCITRAL Model Law](#) and arbitration laws in neighbouring countries.

Until April 2023, commercial arbitrations in Libya were primarily governed by Chapter 4 of the [Code of Commercial and Civil Procedures of 1953](#) (“**CCCP**”). However, Chapter 4 of the CCCP was considered outdated and ill-suited to the contemporary realities of commercial arbitration. The New Arbitration Law has replaced many of these outdated arbitration provisions with a contemporary framework.

Due to the diverse sources of its provisions, the drafting of the New Arbitration Law contains ambiguities that require further clarification through judicial interpretation and engagement within the arbitration community. This post will explore the latest provisions that have been introduced by the New Arbitration Law and comment on some of these ambiguities.

The Structure of the New Arbitration Law

The New Arbitration Law contains ten chapters which are divided into a hundred articles. The initial five chapters establish the foundational principles for commercial arbitration, covering the following topics: (i) general legal provisions on arbitration; (ii) arbitration agreements; (iii) the composition and jurisdiction of arbitral tribunals; (iv) procedural rules of arbitration; and (v) the manner in which arbitral awards are issued, interpreted and challenged.

The final five chapters focus on specific aspects of arbitration: (i) the recognition and enforcement of arbitral awards in general; (ii) the recognition and enforcement of foreign arbitral awards; (iii) electronic arbitration procedures; (iv) the establishment and regulation of arbitration centres in Libya; and (v) concluding provisions including the application and scope of the New Arbitration Law and the date it enters into force.

The Scope of the New Arbitration Law

There is ambiguity in the New Arbitration Law as to the precise scope of its application. Nevertheless, a common understanding among the Libyan legal community is that the New Arbitration Law applies to all arbitration agreements entered into, and arbitration proceedings initiated, after the enactment of the New Arbitration Law (Articles 11 and 97 [1]).

It is also understood by the Libyan legal community that in order for the New Arbitration Law to apply to arbitration proceedings initiated after its enactment, one of these two conditions must be met: (i) the arbitration must be seated in Libya, or (ii) the parties must have mutually agreed for their arbitration to be governed by the New Arbitration Law (Articles 11 and 97 [1]).

Arbitration Centres

A significant issue in the previous legal framework under the CCCP, was the absence of regulations governing arbitration centres. Over the past decade, several arbitration centres have been established in Libya. For instance, the Libyan Centre for International Commercial Arbitration which focuses on both domestic and international arbitrations. Since its establishment, this centre has taken steps to promote the growth of arbitration in Libya, including organising several conferences, workshops, and training programmes. However, the lack of a legal framework governing arbitration centres has hindered the effective functioning of those centres already established in Libya.

The New Arbitration Law introduces a legal framework governing the establishment and operational aspects of arbitration centres. Pursuant to Article 84, an application must be submitted to the Ministry of Justice for an arbitration centre to obtain a license. This application should include:

- The name, address, permits, objectives and any branches of the arbitration centre.
- Details of the head of the arbitration centre.
- A copy of the memorandum of incorporation and articles of association of the arbitration centre.

Once all these requirements are met, the Minister of Justice will issue a decree granting a license to that arbitration centre. The arbitration centre will be legally established and obtain a separate legal personality only after the publication of this license decree in the Official Gazette (Article 89).

In addition, the New Arbitration Law incentivises the opening of arbitration centres by granting them an income tax exemption for the initial five years following their establishment (Article 90). This was done to encourage the opening of arbitration centres in Libya with the overall objective to promote institutional arbitrations, as opposed to litigation.

Furthermore, the New Arbitration Law also provides for the creation of a regulatory committee within the Ministry of Justice which is to be headed by a judge and a committee of arbitration experts. This committee will be empowered to regulate and oversee the operations of arbitration centres in Libya (Articles 87 and 88).

The Power to Order Interim Measures

Under the previous CCCP arbitration framework, an arbitral tribunal seated in Libya lacked the authority to grant interim measures, even if both parties consented to this. Instead, parties had to seek interim measures through a competent court, which limited the effectiveness of arbitration proceedings.

While the introduction of the New Arbitration Law is expected to resolve this issue, it appears to contain conflicting provisions regarding this matter. Article 14(2) grants the arbitral tribunal the power to order interim measures once it commences its proceedings. On the other hand, Article 14(1) stipulates that a competent court may issue interim measures before and during arbitration proceedings upon a party's request, subject to the provisions of the CCCP.

Procedural Rules

Unlike arbitration laws in other countries, the New Arbitration Law does not specify a comprehensive set of procedural rules for governing arbitration proceedings. Parties can mutually agree upon the procedural rules to be applied in their arbitration proceedings if required. If there is no such agreement, the arbitral tribunal has the discretion to choose the most appropriate procedural rules for resolving the dispute (Article 28).

In all cases, the New Arbitration Law requires that the chosen arbitration procedural rules are aligned with fundamental guarantees of a fair trial. In particular, the New Arbitration Law emphasises that the selected procedural rules must safeguard the right to a defence (Article 28).

It is worth noting that the arbitration rules of the International Chamber of Commerce are commonly used to govern arbitration proceedings involving Libyan parties, particularly in the oil and gas industry.

Under Article 9, parties have the freedom to decide which law will govern the substance of their dispute. If there is no such agreement, the arbitral tribunal may select a relevant law to apply to the dispute. The tribunal must then resolve the dispute according to the law selected by the parties (Article 9[1]). If the parties grant the tribunal conciliatory powers, it is empowered to resolve the dispute based on principles of justice and equity, without having regard to the applicable law (Article 9[1]).

Additionally, parties have the liberty to agree on the language(s) to be used during arbitration proceedings. In the absence of such an agreement, the arbitral tribunal is empowered to make the determination regarding the language(s) to be employed in the arbitration proceedings (Article 31).

Costs

The fees for arbitrators are determined through an agreement between the disputing parties and the arbitral tribunal. If an arbitration centre administers the proceedings, the arbitrators' fees are governed by the fee schedule established within the arbitration centre's system (Article 46).

If an agreement on fees cannot be reached, and there is no arbitration centre involved, the arbitral tribunal may establish its fees by providing a reasoned decision. This decision can be challenged

before the President of the Court of Appeal in the jurisdiction of the seat of the arbitration (Article 46).

Recognition and Enforcement of Arbitral Awards

Under the New Arbitration Law, both domestic and foreign arbitral awards are enforceable in Libya, but the respective procedures vary depending on whether the award is domestic or foreign.

To enforce a domestic arbitral award in Libya, an application must be made to a competent court for an enforcement order. This court will issue this order after ensuring that the party against whom the arbitral award is being enforced has been notified in accordance with applicable laws (Articles 60 and 61).

In a major development, the New Arbitration Law introduces a distinct procedure for enforcing foreign arbitral awards in Libya, which is subject to the principle of reciprocity. Previously, under the CCCP, foreign arbitral awards were enforced based on the rules for enforcing foreign court judgments in Libya. Under the New Arbitration Law, a written application (along with the original arbitration agreement and a copy of the arbitral award) must be submitted to the President of the competent Court of Appeal to enforce a foreign arbitral award. The President will issue an enforcement order within two days of receiving this application (Articles 62 and 63).

However, if the foreign arbitral award has been appealed by the losing party, the President of the Court of Appeal may suspend enforcement proceedings. In such cases and based on the successful party's request, the President may order the losing party to provide adequate security to ensure enforcement if the appeal is ultimately rejected (Article 64).

While the term 'recognition' appears in the headings of Chapters 6 and 7, the New Arbitration Law does not include specific provisions for the recognition of arbitral awards, as a distinct process separate from enforcement.

Despite the comprehensiveness of this new enforcement regime, the fact that Libya is still not a party to the [Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958](#) ("**New York Convention**") may present practical challenges when it comes to enforcing foreign arbitral awards in Libya.

Electronic Arbitration

Recognising the growing role of modern technology in arbitration, the New Arbitration Law dedicates Chapter 8 to establishing a legal framework for electronic forms of arbitration. This chapter comprises six sections that address various aspects of electronic arbitration, including electronic arbitration agreements, the composition of arbitral tribunals, arbitration proceedings and the issuance and documentation relating to electronic arbitral awards.

It is worth noting that Libya has also recently enacted other laws to address the increasing use of technology in the legal domain, such as [Law No. 5 of 2022 on Electronic Crimes](#) and [Law No. 6 of 2022 on Electronic Transactions](#). These legislations are expected to provide essential foundational

provisions for the practice of electronic arbitration.

Final Remarks

The enactment of the New Arbitration Law marks a significant move towards modernising Libya's legal framework for commercial arbitration. Drawing inspiration from international and regional practices, the New Arbitration Law addresses limitations in the previous arbitration legislation in Libya and introduces a more contemporary and comprehensive approach to arbitrations seated in Libya.

Admittedly, the New Arbitration Law does have some ambiguities and language usage issues that may necessitate the introduction of legislative revisions to the New Arbitration Law, or judicial interpretation. Nevertheless, the New Arbitration Law establishes a robust basis for more efficient and equitable arbitration proceedings. It embraces electronic arbitration, regulates arbitration centres, and clarifies various aspects of arbitration processes. With this legislative advancement, Libya is poised to enhance its standing in the global arbitration community, offering a more favourable environment for dispute resolution and economic development.

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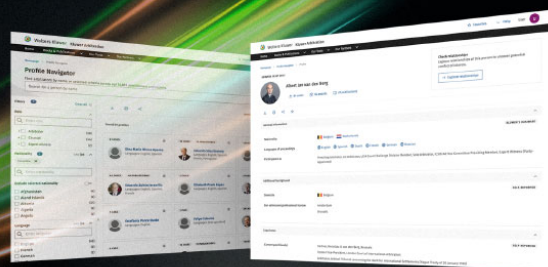
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