After the fall

Libya has long been a country of enormous, yet unrealised, potential. It has almost 2,000km of pristine undeveloped beaches on the southern shores of the Mediterranean Sea only a two-hour flight from most major European cities and 39 billion barrels of proven oil reserves producing 2% of the world's oil.

Add to this a pressing need to overhaul its infrastructure and basic services, and Libya should have been an attractive destination for foreign investors, contractors and services - but this was never fully realised, due to problems endemic in Muammar Gaddafi's Libya, characterised by corruption, legal uncertainty, high political risk, administrative deficiency and Soviet-style bureaucracy.

On 17 February 2011, Libyans across the country rose up against the regime which, following a nine-month armed conflict that caught the world's imagination and dominated news headlines, led to the eventual overthrow of the regime and Gaddafi's death. The legacy of 42 years of Gaddafi rule will not be resolved overnight, but the enormous potential is still there, and international help is required to see it fulfilled.

Political Overview
The National Transitional Council of Libya (NTC), is the new, albeit temporary, ruling party of Libya during the transition period. This period is characterised by a lockstep approach towards creation of a fully democratic system of government.

The first step was achieved in November 2011, with the appointment of a new interim Government led by Dr Abdurrahim El-Keib, whose mandate is to prepare the country for the second step, namely the promulgation of election laws and the holding of national elections (tentatively set for summer 2012) for a 200-member National Assembly, which will replace and dissolve the NTC. As part of the third step, the National Assembly will appoint a new interim Government and a committee to draft Libya's new constitution, which will be approved by public referendum, at which point national elections will be held for a new government (or head of state, depending on the political model Libya chooses) towards the end of 2013, marking the end of the transition.

The timely and credible success of the transitional period will be vital to Libya's medium to long-term political stability, economic recovery and development. Libya faces a number of significant challenges during this period. The proliferation of arms and armed groups, which have given rise to a somewhat tense security situation, has prohibited the return of regular security forces and obstructed the establishment of a new national army.

Other challenges include those in relation to transitional justice, namely the processing of thousands of administrative detainees held since the conflict and the creation of a reconciliation process to heal the fissures created in Libyan society by the recent conflict. The international community, on both political and business fronts, will be looking closely to see how Libya deals with these challenges as indicators for political stability and economic recovery.

Business Environment
The mainstay of the Libyan economy is production of oil and gas, which accounts for 70% of GDP and 95% of exports. Proceeds from the sale of oil, particularly amid rising international market prices, helped fuel a mass development and investment programme during the later years of the Gaddafi regime, resulting in billions of dollars of housing, infrastructure and transport projects, and spurious investment activity in hedge funds, multinational corporations and capital markets around the world by newly-established Libyan sovereign wealth funds such as the Libyan Investment Authority.

Key Contacts

Chris Cross
Partner, Dubai
chris.cross@hoganlovells.com
T +971 4 377 9319

Tarek Eltumi
Senior Associate, Dubai
tarek.eltumi@hoganlovells.com
T: +971 4 377 9377

This article was first published in Legal Week on 2 March 2012 www.legalweek.com

With little tangible progress made on the Libyan development programme, coupled with post-war costs in terms of repairing war damage and payment of reparations, the strain on the Libyan coffers will be felt if oil production does not reach full capacity. Oil production is now estimated to be 1.2 million barrels per day, a significant and speedy increase from the wartime 200,000 million barrels per day and not far short of the pre-conflict production rate of 1.6 million barrels per day, a success story in its own right. However, the real windfall for the Libyan economy will be the realisation of an optimum production rate of three million barrels per day, which can be achieved if the necessary conditions are present to attract investment in the upstream and downstream sectors from major international players who have long been interested in Libya.

It remains to be seen how the new Libyan authorities will handle the estimated US$180bn (£115bn) worth of contracts inherited from the previous regime, particularly those entered into in relation to the Libyan development programme, which has been touted as the largest since the post-World War II German and Japanese programmes. Engineering and construction management firms from around the world were awarded lucrative contracts for the reconstruction of urban areas throughout Libya, specifically including 30 cities with basic infrastructure reconstruction, 41 cities with comprehensive infrastructure reconstruction and the construction of over 500,000 housing units across all urban areas. The programme also included a new railways system, airports, water de-salination plants and the overhaul of the electricity grid and power generation plants.

The current interim government has recently decreed the creation of a special committee with the task of preparing the required foundations and rules for negotiating with contractual counterparties of the Libyan state, and in particular laying the foundations for assessing and limiting damages, and determining the dues payable to contractual counterparties before the events of 17 February 2011.

The committee has also been given the task of determining the feasibility of continuing to deal with contractual counterparties or whether to re-tender projects, as well as making recommendations as to the implementation, amendment, annulment or re-contracting of existing contracts and examining and evaluating the demands and claims of contractual companies and verifying their validity.

Given the volume of contracts inherited, this committee faces a momentous task, exacerbated by the natural post-revolution expectations of the Libyan people as to improved living standards and development progress, and the expectations of those international companies party to Libyan contracts that their rights will be safeguarded and new opportunities will be created.

Successfully facing the challenges of increased oil production, careful handling of existing contracts and commitments, as well as other short-term issues such as the current liquidity and foreign exchange crisis, are necessary drivers for economic recovery and stability, thereby ensuring significant progress towards unlocking Libya's potential.

LEGAL REFORM

Key to unlocking Libya's potential, attracting foreign capital investment and developing and stimulating the local economy is legal reform. Libya has inherited legislation heavily influenced by Gaddafi-era ideology, based on socialist and protectionist principles that limited free market competitiveness, stifled private business and caused deep-rooted socio-economic issues as a result of practices such as property expropriation. The foundations of Libyan law, namely the Civil Code and the Commercial Code, remain relatively unscathed and still share many similarities with other Arab legal codes based in the 1950s.

However, Libyan banking law and property law are in serious need of reform. Although Libyan banking laws were reformed in 2005 in relation to ownership and structuring of banks, access to retail and corporate finance remains difficult, and has limited the growth and expansion of small-to-medium sized businesses and the purchasing power of Libyan consumers.

The introduction of Islamic finance in Libya, with the first such legal reform tentatively set for March 2012 with the introduction of a new Islamic finance law, may potentially unlock retail and corporate financing in Libya given the cultural and religious appeal of Islamic finance among Libya's moderate Muslim population. The Libyan state will also need to look at reform of the banking and finance laws as a means of funding large development projects. For instance, providing a legal basis for sovereign guarantees could stimulate project financing of independent power projects and independent water and power projects by Libyan and international financial institutions seeking to mitigate demand risk, particularly in the heavily subsidised power sector, where consumers cannot pay full market rates due to low income. Enacting legal reforms that attract international finance to Libyan development programmes would no doubt ease the financial burdens on the Libyan state to meet its wider development goals.

Property prices are often seen as a good measure of the strength of a country's economy. Libya witnessed a property boom over the last five years, with a fivefold increase in some areas, but the potential of the Libyan property market is held back by ambiguity in ascertaining property ownership, due to widespread state expropriation and the enactment of Law No.4/1984. This law entitled the occupier of a vacant property to legally and beneficially own that property, effectively evicting the true owner of the property on grounds of non-occupation. Legal reform of property laws with the effect of abolishing Law No.4/1984, structuring a claims and reparations process for those affected by that law and state expropriation and introducing new types of title such as strata title, would encourage banks and property developers to invest in the Libyan property market and no doubt strengthen the local economy and open new business opportunities to diversify away from reliance on oil and gas.

The opportunities for investment in all sectors in Libya are limitless, providing that political stability and a successful transitional period are achieved, legal reforms are enacted and the legacy of the Gaddafi era is effectively dealt with. This may be easier said than done, but the sheer potential of the country, given its strategic geographic location, small homogenous population and significant wealth, means that the international community will be keen to support Libya, as it did during the conflict, to stabilise and ultimately develop as a leading democratic free market economy in the Arab world.

This article was first published in Legal Week on 2 March 2012
www.legalweek.com