Libya's Post Election Landscape: The Outlook for International Business **12.09.2012**

Libya's General National Congress today announced the election of Dr. Mustafa Abushagur as Libya's new Prime Minister. It is currently expected that Dr. Abushagur will have a period of two weeks to select his cabinet, after which a further period of two weeks will be allocated to hear appeals before confirming the cabinet appointments.

The National Transitional Council's Political Legacy

During its year in office, the National Transitional Council (NTC)'s Interim Government announced a record budget of LYD68.5 billion (US$52.7bn) for 2012, together with a number of initiatives to provide medical treatment for injured people, provide training and opportunities to young revolutionaries through the Warriors Affairs Commission (WAC) and conduct essential rebuilding work. Lacking a public mandate and decisive leadership, the outgoing Interim Government was unable to make significant progress. With inefficient institutions and serious systematic corruption, significant funds have been misappropriated. However, the outgoing interim government did not make any major long-term commitments to new projects and the vast majority of the budget for 2012 remains unspent. The task of confirming and allocating budgets will fall to the new Interim Government which will hold office for a period of 12 – 18 months.

The outgoing Interim Government failed to gain control of the security situation in Libya making concessions to militia groups formed during the 2011 uprising. Rather than being disbanded, a number of militias were brought under auspices of the Ministry of Interior (MoI) in their entirety – a prominent example being the Supreme Security Council (SSC), a coalition of militias which is separate from the Police force although they often work in tandem with the Police. They are paid by the government (receiving a higher salary than regular police) but they are answerable to the militia leaders as well as the MoI. This dual loyalty was demonstrated recently when members of the SSC formed a perimeter allowing the destruction of a Sufi Shrine and Mosque in central Tripoli, without taking instruction from the MoI.

What Challenges will the Abushagur Government face?

Despite being a second Interim administration Abushagur's government will have a mandate to make long-term commitments to projects. Initiated by the El Keib government, the on-going process of creating a comprehensive national strategy and master plan and completing the review of existing infrastructure and energy contracts will have to be balanced against Libya's urgent infrastructure needs and decisions about new projects.

Immediate challenges

- ***Security***
- ***DDR***
- ***Economic Development***
- ***Youth Unemployment***
- ***Reconstruction***
- ***Institution-building***
- ***Tackling corruption***
- ***Reliable power supply***
- ***Restoring / maintaining oil output***
- ***Creating a stable legal framework***

Since declaring liberation in October 2011 new militia groups have formed and membership has increased: there are more young men in militias today than there were fighting during last year's uprising. The new government faces a serious challenge in disarming and reintegrating Libya's revolutionaries and militias, and the new Prime Minister and his team have begun negotiations with revolutionary leaders to find a solution. At the heart of the issue is a lack of viable alternatives for young people in Libya, with unemployment at 30% (according to official figures), low public sector wages and a small, underdeveloped private sector. A successful DDR (deweaponisation, demobilisation and reintegration) programme depends heavily on providing training and opportunities for Libya's young population, which in turn requires economic stimuli to support the role of SME's in Libya and move away from a reliance on the Oil and Gas industry which is not manpower intensive and relies heavily on expatriate professionals. With a background in business and politics it is clear that Libya's new Prime Minister has the credentials to tackle these complex issues.

Libya's New Leader: Dr. Mustafa Abushagur

Dr. Abushagur has a formidable CV making him in the eyes of many the most qualified candidate for the role of Prime Minister. With an extensive international business background it will position him well to handle the needs of Libya's economy and the expansion of the private sector. With no links to the previous regime he is also popular with those that want complete separation from the 42 year reign of Colonel Gaddafi.

Dr. Abushagur returned to Libya for the first time in over thirty years in May 2011 where, based from Benghazi, he became an advisor to the NTC. He was later appointed as the Deputy Prime Minister to the Interim Government in November 2011.

As with all of the candidates he says that Sharia Law should be the basis of Libya's future legal system but is not considered to be an Islamist. He is widely considered to be the most likely to successfully unite the country and has stated that he will elect his Ministers from across the full range of the political spectrum.

Dr. Abushagur is well aware that the security issue is Libya's utmost priority. However, he has also identified the need for radical improvement in Government services such as education, healthcare and transport infrastructure. Other priorities include the development of Libya's private sector which will stabilise the country's economy and will address the problem of unemployment. Land ownership will be another priority for Abushagur, not only because he has lost land himself, but also because many major projects and developments have been commissioned without the consent of those that actually own the land.

He states that women's rights are important and if women want to stay at home that is fine but they should be encouraged to get involved in business and politics. Abushagur has said that the visa system must be improved and Libya should become more accessible whilst at the same time not allowing the likes of the Gulf States to take advantage of the country. On the topic of reconciliation with the Gaddafi loyalists, he says that although this is important there must also be justice served for crimes committed.

Opportunities for International Business

Libya’s priorities were reflected in the 2012 budget, with the largest portion LYD 19.1 billion (US$15.2bn) allocated to reconstruction and development. Of the ministries, the largest allocation was LYD 4.6 billion (US$3.7bn) for the ministry of education followed by the ministries of defense (LYD 4 billion), Health (LYD 2.91 billion) and Interior (LYD 2.8 billion), electricity & renewable energies (LYD 2.5 billion), Finance (LYD 1.75 billion) and higher education and scientific research (LYD 1.1 billion).

The **National Oil Corporation (NOC)** reportedly requested a budget of LYD 6 billion (US$4.8bn) although no decision has yet been made on this and funds are being provided to the NOC on a monthly basis (based on the previous budget) for operations and maintenance. Currently, accounting for over 65% of Libya’s GDP, the Oil Industry remains a strong sector for International business, with ageing infrastructure limiting efforts to restore pre-conflict output, opportunities are currently focused on equipment and maintenance.

With Libya’s historic lack of planning and investment in national **infrastructure,** combined with the additional damage sustained during the 2011 conflict, addressing infrastructure needs is a major priority in Libya. A review process over some 11,000 contracts has been initiated by the Ministry of Planning who will also be creating a new national strategy and master plans for Libya. The level of investment required over the next decade has been estimated at US$200 billion, with major requirements for new housing, hospitals, education facilities, power generation, water distribution and waste treatment, and transport including roads, rail, harbours and airports.

Other priority sectors which suffer from a legacy of underinvestment and misappropriation of funds are **healthcare** and **education**. In the healthcare sector the short-term focus will be on strategic reform and repairing damaged infrastructure, expanding capacity to meet the needs of the returning war-wounded and meeting supply needs. The longer term reform of Libya's healthcare system will be a major undertaking requiring significant investment over decades.

Education and training will be at the core of Libya’s development, with the immediate need being to tackle unemployment and provide training and opportunities to young Libyans, including over

250,000 who have already been registered by the Warriors Affairs Commission (WAC), an organisation set-up by the Interim Government to support young revolutionaries. A budget of LYD 8 billion (US$6.4bn) was reportedly earmarked for the WAC; however, it is unclear what the future mandate of the organisation will be under the new Government. Major investment is also required to update Libya's educational facilities, teaching materials and standards.

Training is also a major concern for International companies in all sectors, as in recent years it has been standard practice for the provision of vocational training to be a contractual condition for major public projects in order to up-skill the local workforce engaged in the delivery of the project. These conditions are likely to remain, as training is required in all key sectors including oil and gas, healthcare, construction, IT and telecoms, etc.

In addition to the core sectors, there will be significant opportunities in **Defence & Security** (although decree 248 issued by the NTC currently precludes foreign companies from providing security related services in Libya), **ICT (Information and Communications Technology), Banking and Finance, Retail, Food & Beverage and Entertainment Facilities** particularly as public sector wages increase and Libya's underdeveloped private sector continues to grow.

*(**ie. consultancy**+ can help you identify and develop opportunities in Libya. Please contact us for more information about how our industry experts can help you in your sector.)*

Libyan Commercial Law: A Potential Barrier to Foreign Engagement

Options for Market Entry

- ***Representative Office***
  (promotional activity only)
- ***Branch Office***
  (100% foreign, limited range of activities)
- ***JV – Joint Stock Company***
  (currently 51%-49% structure in favour of Libyan partner)
- ***Agency Law***
- *(direct sales through local agent / distributor)*
- ***Law no.9 Foreign Investment***
  (100% foreign ownership, tax benefits based required level of investment)

Despite the considerable opportunities in Libya and the strong business case for foreign companies to operate in-country by establishing a local presence/entity, many prospective new market entrants have been frustrated by the lack of clear guidance on how to do so.

Libya's commercial laws, like its political and social landscape, are going through a transitional period, and nobody knows for certain what will happen.

Resolution 103 was issued in May this year which maintained the current 65% Foreign - 35% structure for Joint Stock Companies but allowed for the foreign shareholding to be up to 80% under certain circumstances. It also allowed for JV partnership's to be formed as a Limited Liability Company (LLC) with a capital of LYD 50,000 and lifted restrictions on the range of services which can be provided by JVs in the oil & gas sector. However, the Ministry of Economy, under pressure from those who favour tighter regulation and restriction of foreign participation, reverted to the text of a previous internal draft, releasing decree 207 in July, which although not officially law is currently being applied.

Decree 207 increases the capital required for a representative office from LYD 50,000 to LYD 150,000 (US$40,000 to US$120,000) and the capital required for a branch office from LYD 150,000 to LYD 250,000 and changes the shareholding of a joint stock company lifting the minimum engagement for the Libyan partner from 35% to 51%. Under exceptional circumstances, with permission from the Ministry of Economy, a foreign company can increase its share in the joint stock company to 60%. If the decree were to be passed into law it would apply to both new market entrants and existing companies who would be allowed a period of six months from the date of issuance to settle their position.

With the new Ministers expected to take office in early October we are not likely to see a definitive new commercial law being passed before late 2012 or early 2013. However, it is likely that under a Abushagur government we are likely to see a lowering of barriers to entry for international companies, giving SME's a viable route to market, providing new job opportunities, opening up new industries and raising standards through competition. Requirements for local partnership and the engagement and training of local staff will remain conditional to some degree.

(A full legal guide to company set-up options is available from ***ie.consultancy+.*** *Our team can give you specific advice on setting-up in Libya and assist with set-up procedures).*

Security Profile: Is Libya safe for Business Travellers?

In the wake of last night's attack on the American mission in Benghazi which resulted in the tragic death of the American Ambassador Chris Stevens, perceived threat levels will inevitably be increased. It may be that in the short-term, American citizens will be at a higher risk from extremist elements. Although their views are not representative of the general Libyan population, extremist Salafis have been more vocal and active in recent months taking advantage of the Interim Government's weak grip on national security. The situation is further compounded by the Interim Government's decision to incorporate militias into the state security apparatus in their entirety, leading to the formation of the Supreme Security Council (SSC) which, despite being officially part of the Ministry of Interior, remains separate from the police and answerable to its own leaders. Despite the high proliferation of weapons amongst the population and an increase in crime, including armed car-jacking at fake checkpoints which have affected a number of expatriate workers living in Tripoli, Libya's capital and its environs have been (and remain) relatively safe for foreign business travellers

Other instances of violence tend to be small-scale, localised issues between opposing militias or families. There has not been a great deal of activity from Gaddafi loyalists, although two car bombs which exploded outside a military academy and the Ministry of Interior during the Eid celebrations in August were attributed to Regime loyalists. No attacks or specific threats have been made against foreign businesses, premises, hotels or business travellers in Tripoli and the western regions.

In Benghazi, Libya's second city the situation is markedly worse. The authorities do not have a grip on security; there have been a number of politically motivated attacks including the assassination of an army general. And there is a greater threat from Islamic extremists in Eastern Libya.

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