



“We would like to share the **Thomson Reuters** Libya – AML Country Guide for 2023, first published on Thomson Reuters Regulatory Intelligence on the 24<sup>th</sup> February 2023 ,of which our firm has proudly contributed to, lead by our trusted colleague Dr. Huwaida El Fnayesh.”

**COUNTRY UPDATE-Libya: AML**

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**Member of FATF?**

No, the state of Libya is not a member of FATF. However, the international Financial Action Task Force (FATF) recently lifted Libya from the list of countries unable to fight money laundering and terrorism financing after Libya was included in the list of states subject to follow-up with respect to its ability to apply standards and obligations to combat money-laundering and terrorism financing crimes.

**On FATF blacklist?**

No, Libya is not on the FATF blacklist. FATF’s approval to lift Libya from the list of countries unable to fight money laundering means that Libya is complying with the most important requirements and obligations to combat money laundering and terrorism financing crimes, in accordance with international standards.

**Member of Egmont?**

No, Libya is not a member of Egmont.

**Key directives / legislative framework**

*Controversy*



With regard to the legal framework for money laundering legislation in Libya, the following Legal controversy should be noted:

The current laws regarding money laundering in Libya stem from a key law which is the “Law No. 2 of 2005”, published by The General People’s Congress (GPC). However, in 2017 the “AML/CFT” law No.1013 was published by The Presidential Council of the Government of National Accord (GNA). “AML/CFT” stands for anti-money laundering/combating financial terrorism. While both

decisions and laws are officially published, the legal validity of the “AML/CFT” law No. 1013 of 2017 is questioned. This is owed to the fact that the “AML/CFT” law was published by The Presidential Council of the GNA and not as standard through the GPC. The GPC is the standardized and commonly recognized legislative body in Libya.

#### *AML/CFT Law No. 1013 of 2017*

This law stipulates the establishment of a committee referred to as the “National Committee for Combatting Money Laundering and Terrorism Financing” to be headed by the Governor of the Central Bank of Libya or their deputy. Similar to the law published in 2005 a call for the creation of a “Financial Information Unit” is also raised, as well as their purpose of collecting information to be shared

with relevant authorities. This section also goes on to outline the scope of this unit to include license suspicion, sanctioning, and fining

organizations up to 1 million LYD as they see fit. This is to include instances of negligence that enable money laundering or financial terrorism. Additionally, this law lays out a framework of preventative measures such as prohibiting relations with shell banks and corporations as well as maintaining accounts through fictitious names. Restrictions on “politically exposed” persons are also laid out in addition to the “know-your-customer” requirements.



### *Conclusion*

Overall, it may be argued that the law published in 2017 is a summarized and improved version of the law published in 2005. The “AML/ CFT” law is also described as “robust and complete” although its implementation significantly lags based on the unstable political situation in Libya. Furthermore, a key caveat to the “AML/CFT” law is its publication by a body not legally competent to issue it which is The Presidential Council of the GNA instead of the GPC as per usual.

### *Additional provisions*

In addition, there are some provisions in the Penal Code, the Criminal Procedures Law, the Commercial Code, Law No. 5 of 2010 on encouraging the investment of foreign capital, Law No. 1 of 2005 on banks and related supplementary laws.

In accordance with the Law No. 2 of 2005 on Combating Money Laundering, the National committee for combating money laundering and terrorism financing was formed under the supervision of the Central Bank of Libya.

The national committee for combating ML holds its meetings at the Central Bank of Libya in Tripoli. The committee discusses a range

of issues related to combating money laundering and terrorism financing and the implementation of Security Council resolutions concerning Libya in particular and the requirements of the Libyan state to referendum international standards to combat money laundering and terrorism financing.

The committee also issues resolutions, suggests recommendations and strategies related to money laundering and terrorism financing crimes. The Committee frequently reviews the requirements of international standards to combat money laundering and terrorism financing in order to prevent Libya from entering the Embargo list.



In addition, the Central Bank of Libya has passed the Publication (resolution) No.1 of year 2016, concerning money laundering and terrorism financing policies and the due diligence of clients.

*CBL Circular No. 5/2023*

The Circular issued by the Central Bank of Libya on January 5, 2023, provides for instructions from the Central Bank of Libya to apply the standards of the Basel Convention regarding disclosure and transparency in the banking sector in general. To explain, this circular requires Libyan banks to submit periodic reports and annual reports in accordance with Basel III requirements.

This circular was issued based on Banking Law No. (1) of 2005 and its amendment, and in compliance with the disclosure requirements specified in international accounting standards and international financial reporting standards, and with reference to Standard No. (7) of the International Financial Reporting Standards, and in line with Disclosure requirements contained in the third pillar

of Basel III decisions issued by the Basel Committee on Banking Supervision, and in line with the strategy of the Central Bank of Libya to raise disclosure and transparency rates.

**Who are the regulators/monitoring authorities?**

The main regulator and monitoring authority regarding the AML issues in Libyan jurisdiction is the Central Bank of Libya (CBL) in addition to the role of the National committee for combating money laundering and terrorism financing under the supervision of the CBL.

**Who is affected/reporting entities?**

Under article 8 of Law No. 2 of 2005 on Combating Money Laundering the Central Bank of Libya shall determine the maximum amount



of funds that may be brought into the country in cash without having to declare it or disclose its source. Any amounts in excess of this limit shall be subject to the disclosure requirement established by the Central Bank.

Further, according to article 9 of the ML law the Central Bank has established a unit called the Financial Information Unit to combat money-laundering activities. Reports on suspicious transactions shall be sent to the Unit from all concerned financial, commercial, and economic establishments, and information on these transactions may be submitted by any person or entity.

This unit may exchange information and reports on cases suspected of being linked to money-laundering activities with its counterparts in other countries, in accordance with the international agreements to which Libya is a party or with the principle of reciprocity.

Furthermore, all banks operating in Libya shall establish a subsidiary unit called the Subsidiary Unit for Information on Combating

Money Laundering, which shall be responsible for monitoring all activities and transactions carried out by the bank or financial institution

or by those who deal with them, when such activities or transactions are suspected of being linked to money-laundering activities or activities involving the deposit or transfer of funds whose source is unknown.

This subsidiary unit shall be responsible for reporting information or data related to these activities to the Financial Information Unit of the Central Bank of Libya as mentioned above.

These units described in previous paragraphs, after reviewing the case referred to or reported to them, shall inform the Governor concerning the information and reports under their its possession, so that the necessary measures may be taken. (Article 10 of ML Law)



In addition, if the office of the public prosecutor receives a direct report concerning cases of money laundering, it shall take the necessary measures and shall inform the Financial Information Unit of the Central Bank of Libya concerning the contents of the report.

### **Legal requirements for KYC**

#### *Customer due diligence*

The Central Bank of Libya has passed the Publication (resolution) No.2 of year 2007, concerning the due diligence of clients and the necessity to use the forms of customer's identity verification. In addition, CBL has passed the Publication (resolution) No.1 of year 2016, concerning money laundering and terrorism financing policies and the due diligence of clients.

For instance, under the CBL (resolution) No.1 of year 2016, all commercial banks and financial institutions are required to obtain the

following information:

- Client identity: An original document evidencing the client's name (identity card, current signed passport, and the national number) and another document evidencing his address.
- Letter of reference: Letter of reference from a professional source who has known the individual for at least one year (e.g. bank, notary, lawyer, chartered accountant) stating that the individual is considered to be reputable and would not be expected to be involved in trafficking in illicit drugs, organized criminal activity, or terrorism.
- Business background: An establishment of the client's current business background. It must be supported with documents, data or reliable sources of information, for instance: Summary; Extract of commercial registry; Commercial brochures; Annual reports; Board appointment...etc.



- Confirmation of original source of funds (on a case by case basis): The client needs to establish the original source of the money he uses to fund a Company or any other foundation.

#### **Reporting requirements/obligations**

##### *Recordkeeping*

According to the CBL Publication (resolution) No.1 of year 2016, item 4/c all banks and financial entities in Libya shall Maintain a copy of customer documents relating to all processes and customer identity for minimum five years after a completion of the operations.

##### *Tipping off*

Under Libyan laws tipping off refers to a person makes an unlawful disclosure which is likely to prejudice a money laundering investigation. This offence carries a penalty of imprisonment and/or a fine.

Under article 5/2 of ML Law “Anyone who informs a person that his transactions are being monitored or investigated by the competent authorities because of suspicion that they are illegal shall be subject to imprisonment and/or a fine of not more than LD 10,000 and not less than LD 500.”

#### **Whistle-blowing**

The concept of the whistleblowers as persons, often employees or former employees, who report illegal or fraudulent activity by an employer or government is recognized to some extent under Libyan ML law.

Moreover, under article 5 /1 of ML Law “Any official or employee of a financial, commercial, or economic establishment who learns of an act in his establishment related to a crime of money laundering and fails to report it to the competent authority shall be subject to imprisonment and/or a fine of not more than LD 10,000 and not less than LD 1,000.”

#### **Sanctions**



Under article 2 of ML law the following offences are considered money laundering crimes:

- Possessing, owning, using, exploiting, disposing of in any manner, transferring, transporting, depositing, or concealing illegal property in order to disguise its unlawful source.
- Disguising the true nature of illegal property, concealing its location, method of disposal or movement, rights related to it, or its ownership or possession.
- Participating in the above acts in any manner whatsoever.
- Property shall be considered illegal if it was obtained from a crime, including the crimes described in the International Agreement to Combat Organized Crime and the Protocol attached thereto, the International Agreement to Combat Corruption, or other international agreements to which Libya is a party.

Further, article 3 of ML law provides that “Without prejudice to non-criminal punishments imposed by any other law, financial, commercial, and economic entities in Libya shall be held legally responsible for any crime of money laundering committed in their name

or on their behalf, and they shall be subject to the punishments described in Article 4, paragraph 2 of this law.”

Under article 4/2 an entity in whose name or on whose behalf a crime is committed shall be subject to a fine equal to twice the value of the illegal property, which shall be confiscated. In case of a repeated offense, the entity shall be closed down and its license revoked.

In addition, article 5 of the ML law provides for punishments for crimes related to money laundering as following:

- “Any official or employee of a financial, commercial, or economic establishment who learns of an act in his establishment related to a





crime of money laundering and fails to report it to the competent authority shall be subject to imprisonment and/or a fine of not more than LD 10,000 and not less than LD 1,000.

- Anyone who informs a person that his transactions are being monitored or investigated by the competent authorities because of suspicion that they are illegal shall be subject to imprisonment and/or a fine of not more than LD 10,000 and not less than LD 500.
- Anyone who fails to comply with the provisions of Article 8 of this law shall be subject to a fine of not more than LD 10,000 and not less than LD 500. The property in question shall be held until the public prosecutor orders its release upon proof that it is not related to another crime.
- Anyone who reports a crime of money laundering to the competent authorities, in bad faith and in order to harm another party, so that legal action may be taken to discover the truth, even if the report is with an unknown signature or using a false name, shall be subject to imprisonment for a period of not less than one year.
- Anyone who fails to comply with any other provision of this law or with the regulations, decrees, and circulars issued in conjunction with it, shall be subject to imprisonment and/or a fine of not more than LD 10,000 and not less than LD 500.”

### **International conventions**

#### *CTF –Countering terrorist finance*

Libya continued to work on establishing a functioning framework of laws in all areas of governance, but does not have a comprehensive counter terrorism law. However, Title 2, Section 1, Chapter 1, Article 170 and Title 2, Chapter 2, Article 207 of the Libyan penal code provides for crimes or offenses prejudicial to state security, and for felonies to the state including terrorism, the promotion of terrorist acts, and the handling of money in support of such acts.



Libya has ratified the Organization of African Unity's Convention on the Prevention and Combating of Terrorism, which requires states to criminalize terrorist acts under their national laws.

In 2013, Libya adopted two laws (Nos. 27 and 53) as part of a security plan to disband all non-state militia groups, including through their integration as individual members into the State's official institutions. Implementation continues to prove challenging, although some progress has been made, in particular in Tripoli.

Libyan law enforcement personnel demonstrated a limited capacity to detect, deter, and respond to terrorist incidents. Law enforcement agencies and officers do not have adequate training – particularly in the area of collecting and managing evidence, do not have delineated roles, lack coordination, and are fearful of retribution.

Prosecution of terrorism-related crimes was nearly non-existent, with poorly-trained prosecutors and judges often afraid to pursue cases. Although the government has successfully assumed control over a large number of previously militia-controlled prisons, several remain outside of the government's aegis.

Libya is a member of the Middle East and North Africa Financial Action Task Force and has committed to the implementation of

a national identification database to improve transparency in government salary and programs. Libya has asked for IMF technical assistance for its anti-money laundering/countering the financing of terrorism (AML/CFT) regime.

As mentioned previously Libya's Central Bank has established a Financial Information Unit (FIU) as an independent body directly reporting to the Central Bank Governor. Additionally, Libya has had discussions with international donors to provide technical assistance to the FIU and other



government entities in combating money laundering, terrorist financing, and other financial crimes;

and reorganizing law enforcement and financial entities to help better detect, investigate, and prosecute complex international financial crimes. Libya is also looking to become a member in the Egmont Group's network of FIUs that are supporting governments in the fight against money laundering, terrorism financing, and other financial crimes.

### **Anti-bribery and corruption laws**

In general, Libyan public officials, including governmental employees, civil servants and military personnel, are prohibited under various anti-bribery statutes from accepting certain gifts, hospitality, and other benefits which relate to their positions. While most of these

obligations and restrictions apply directly to public officials, certain anti-corruption provisions apply to the person giving the gift or other benefit/advantage.

The crime of bribery shall be considered committed, regardless of the value of the gift, if it is the intention of the giver to make the

public officer perform or refrain from performing his job. However, giving minor gifts shall not constitute a bribe as long as the provider's intention is not to make the public officer perform or refrain from performing his job.

The following laws are the most relevant anti-bribery and anti-corruption laws in Libya:

- Libyan Penal Code;
- Law no. (2) of 1979 concerning the Economic Crimes;
- Law no. (22) of 1985 regarding the Fighting of Misuse of Profession;
- Law no. 12 of 2011 regarding the Employment Relationships.

*Libyan Penal Code*



The Crime of Bribery is covered in the Libyan Penal Code under Articles 226, 227, 228 and 229.

Article 226 stipulates that any public officer may be sentenced to imprisonment if he requested, accepted or took a gift or a promise, for his own account or for another person, to get something he does not deserve, whether in cash or any other interest, in order to stop taking an action which is required or which he mistakenly understood to be required or part of his official duties, even if he was

intending not to take such action, or to breach his duties, or to continue an action which is required or which he mistakenly understood to be required or part of his official duties, or to do something that is part of his duties. The same penalty shall apply to the briber and any intermediary between a briber and a recipient of a bribe.

Article 227 determines the acts which are considered to be bribery, and states that it would be viewed as bribery, and sentenced with the penalties mentioned in the previous article, for any public officer to request, accept or take, for his own account or for another person, a gift or a promise to get something he does not deserve, whether in cash or any other kind, in exchange for using any real or fake influence to obtain or try to obtain, from any public authority or any other authority subject thereto, any kind of works, concession, contracting work, supply agreement, franchise, orders, decrees, rules, job, service, position, medals, or any remuneration or benefit of whatsoever.

If the purpose of the bribe were to commit an action which is punishable under the Law with a penalty stronger than the penalty provided for the bribery crime, the person committing the crime would be sentenced with both the penalty stipulated for committing that action and the fine provided for the bribery crime as well.



Article 228 contains an exemption from penalty providing that the briber/intermediary would be exempted from the said penalty if he notified the concerned authorities before the crime occurred, or, if he notified after the crime occurred and this led to the conviction of

other criminals.

If a public officer refuses to accept a bribe, such refusal will not exempt the briber or the intermediary from penalty under article 229, as a punishment of prison applies to everyone who offers to a public officer a gift or a promise to get something he does not deserve, whether in cash or any other kind, in order to take an action which is one of his official duties, or to cease or delay such action, or to take an action in violation thereof, even if the public officer does not accept the offer.

Further, penalty shall also extend to an intermediary who conveys a bribe from the briber to the recipient, as Article 229 (repeated-a)

states that: “any person who takes or accepts the gift or benefit to deliver such [gift or benefit] to someone else, being aware of the reason thereof, shall be imprisoned for a period of time which does not exceed one year and shall be fined between 20 Dinars and 100 Dinars even if he did not [complete the act of] intermediate[ing] in the bribery crime.”

As provided under Article 229 (repeated-b), the punishment of prison applies to every employee who asked, accepted, was promised,

or took a gift, for his own account or on behalf of others, without his superiors’ awareness or consent, in order to perform or cease to perform some action for which he is responsible.

*Law No. 2 of 1979 regarding economic crimes*

According to Article 21, the punishment of prison applies to every public officer who, for his own account or on behalf of others, accepts, takes a gift or is promised to be given something he does



not deserve, whether in cash or any other benefit, in order to refrain from taking an action which his job requires or that he mistakenly understands or believes to be a part thereof, or to breach the job's duties, even if he was intending as such; or to continue taking an action or not breach his job's duties; or accepts a gift for doing something which he did as part of his duties.

The same penalty shall apply to the briber and the intermediary between the briber and the recipient. Further, under Article 22, a punishment of prison applies to everyone who offers to a public officer a gift or a promise to get something he does not deserve, whether in cash or any other kind, in order to take an action which one of his official duties, to take an action in violation thereof, or to cease or delay his duties, even if the officer did not accept the offer.

Meanwhile, Article (23) states that, if the purpose of the bribe was to commit an action which is punished under the Law with a penalty stronger than the penalty provided for the bribery crime, such person who commits the crime would be sentenced with both the penalty stipulated for committing that illegal action and the fine provided for the bribery crime as well.

A briber/intermediary would be exempted from the penalty if he notified the concerned authorities of the crime before taking any steps related thereto (Article 24).

Any person who took or accepted the gift or benefit, for delivery to someone else, with knowledge of the reason thereof, shall be imprisoned for a period of time not less than one year and also shall pay a fine less than 3000 Dinars even if he did not [complete the act of] intermediate[ing] in the bribery crime.

*Law no. 12 of 2010 regarding Employment Relationships (Libyan Labour Law)*

As per article (12) of the Libyan Labour Law; a labourer or employee is not permitted directly or indirectly to do any work prohibited by laws, rules or prevailing systems; or to accept gifts or other benefits by any means for performing his duties; or to do any act of brokerage or to exploit his function to obtain benefit directly or indirectly for himself or others.



### **Money transmitters**

A money transmitter or money transfer service as a business entity that provides money transfer services or payment instruments are not yet regulated under the Libyan legal system.

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Complaints Procedure

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