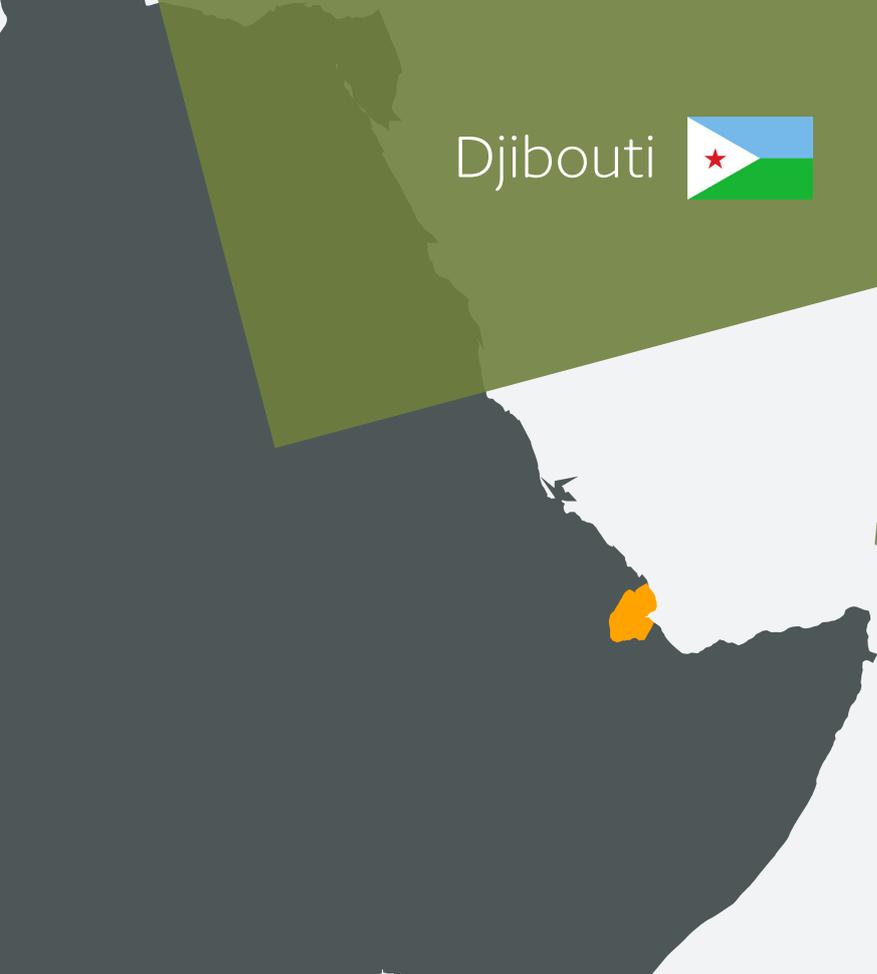


Djibouti



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Population: 957,000 (UN estimate – 2017)

GDP per capita: USD 3,600 (CIA Factbook – 2017)

Average GDP growth over previous 3 years: 6.6% (CIA Factbook – 2015–2017)

Official languages: Arabic and French

Transparency International rating: Ranked 122/180 (2017 Report)

Ease of doing business ranking: Ranked 154/190 (2018 Report)

Type of legal system: Hybrid – French civil law and Islamic law

Signatory to NY Convention: Yes (14 June 1983)

Signatory to ICSID Convention: No

Member of COMESA, OHADA, SADC, EAC, ECOWAS: COMESA

Signed up to OECD Transfer Pricing Guidelines: No

Bilateral investment treaties: 10 BITs with countries including China and Switzerland

Mohamed Abayazid Houmed, Ahmed Abdourahman Cheik and Ayman Said Mohamed look at Djibouti's plans to adopt a modern civil code to improve its business climate

Real Estate

1. Are there restrictions on foreign entities holding interests in land, and if so, how are they expressed?

Land can be acquired by natural or legal persons, whether Djiboutian or foreign. There is no legal restriction or prohibition. Djibouti's constitution guarantees and protects the right of ownership for all persons without distinction, including foreigners legally established in the territory. Access to property is a fundamental and non-discriminatory right.

Land ownership is regulated by five pieces of legislation, commonly known as the “*Code Foncier*”, which govern various transactions relating to property and expropriation. None of these laws prohibit a natural person or legal person of foreign nationality from acquiring property (either on built and undeveloped land). Foreign investors (commercial entities) can freely acquire ownership of real estate for commercial, industrial and/or residential purposes, and they enjoy all of the same rights over the land as a Djiboutian national. Three types of tenure systems are identified according to the standing of the tenure holder and/or the nature of the relationship established over the land:

Land belonging to the public domain. All property in Djibouti as part of the public domain, whether or not assigned to public use.

Public domain land can be made available to a national and foreign private entity, either in the form of an emphyteutic lease and/or in the form of a concession, commonly granted in Public Private Partnerships (PPPs). An emphyteutic lease cannot exceed 99 years and a concession cannot exceed 18 years. A foreign investor holding an emphyteutic lease on public or private land can grant a mortgage as security in favour of his creditor.

Land constituting the private domain of the state. This includes unowned and unoccupied land, and land acquired by the state or from donations, inheritances or other legal means. Vacant and unmanaged land, and in general all unregistered or undeveloped land can:

- before being registered in the name of the state, be the subject of a temporary occupation permit, in the case of urban land for construction purposes, or an authorisation to operate in the case of agricultural land; or
- after registration in the name of the state, be sold by mutual agreement or public tender

if it is urban land for construction use; be granted on an interim basis in the case of urban land for industrial or agricultural use or rural land; or be assigned free of charge to public institutions.

Land ownership. Law No. 177/AN/91/2eL of 10 October 1991 governs land ownership. This establishes a so-called land conservation service, which guarantees the title of property owners by registering the ownership of land and buildings. Registration is mandatory and final. Any land registered in the name of a private person may be subject to land transactions such as assignment or donation. These transactions must be prepared, signed and recorded in the land register by a notary.

Employment

2. Are there any conditions placed on the hiring of a foreign worker (e.g. local minimum quotas which must first be met)?

According to the Djiboutian Labour Code, any foreigner may conduct a salaried activity in Djibouti, and no quota is fixed to limit the number of foreign employees that a company can recruit. However it is stipulated that a company can only call on foreign labour if the required competence is unavailable in Djibouti.

An employer wishing to hire a foreign worker must obtain a work permit from the National Agency for Employment and Vocational Training (ANEFIP). An application, enclosing relevant documents to the ANEFIP will be considered within 60 days. If there is no answer within that period, the work permit is deemed granted.

Article 28 of the Labour Code gives the administration the discretion to refuse a work permit. Such decision is subject to appeal to the Djibouti Administrative Court.

If a work permit is granted, the employer must pay a fee, the amount of which varies according to the category of employment involved, and the nationality of the employee.

The terms and conditions for the award of a temporary work permit and residence card are set out in the Labour Code. The duration of the validity of any temporary residence card cannot be greater than one year and cannot exceed the validity of the travel documents.

3. What are the restrictions on redundancies and any applicable compensation?

Under the Labour Code, the employer must give

one month's notice of termination of a contract to general employees and labourers and three months to supervisors, managers and those in similar positions of responsibility. The employer may invoke:

- Personal reasons (e.g. the employee's state of health).
- Economic reasons (including, among other things, the substantial transformation of a position due to technological change (section 48 of the Labour Code), in which case the affected employee must be given priority for reemployment during the first year following his dismissal and is eligible for compensation, which is calculated by the labour inspectorate based on the type of contract, salary, and the employee's seniority).
- Serious misconduct as defined by any of the nine cases clearly stated in article 59 of the Labour Code) or as stipulated in the company's regulations.
- An element of greater flexibility is open to employers, where the company can resort to utilising an option for technical unemployment for a period of three months, renewable once (article 41 of the Labour Code), under which minimal compensation is paid, provided any employees so laid off are given priority for re-employment in the first year following dismissal.

The damages and interest payable in respect of a termination of contract without just reason can be between two and six months' salary depending on the size of the company. Special conditions apply to employee representatives who may be dismissed without the authorisation of the labour inspectorate. In such cases, the employer must pay 12 months' salary. However, if the ground of dismissal invoked constitutes a real and serious reason, even without observance of the usual forms of notice, a labour tribunal may require the employer to pay compensation, which cannot exceed one month's salary (article 55 of the Labour Code).

Investment and Local Content

4. Are there any general regulations on foreign investment, including any investment requirements for foreign companies to invest in conjunction with local entities or people, and if so, to what effect?

Djiboutian law does not, in principle, provide for any limitation on foreign investment. Article 1 of the Investment Code states that anyone, regardless of their nationality, is free to invest in or undertake

an economic activity in Djibouti. There is also no legal or regulatory requirement for a joint venture with a national for foreign investment. However, certain regulated activities such as banking, insurance, mining, petroleum, medical and pharmaceutical, and the -independent professional services are subject to the prior authorisation of a specific licence or administrative authorisation from a competent administrative authority, which means these activities are, in practice, reserved for Djiboutian nationals.

There is no requirement for a director or manager of a local company to be a national or a resident in Djibouti. However, it is advantageous that some directors reside in Djibouti to facilitate management. There are no minimum qualifications (academic or professional) required to be a director of a Djiboutian trading company except for a company engaged in banking activities.

There is no specific legislation relating to change of control restrictions or the acquisition of shares in Djibouti. However, in strategic sectors such as ports, airports, railways, mining and energy, there is a standard clause in a PPP agreement, that establishes the obligation to notify or obtain prior authorisation of the Djiboutian government, before any change of control.

5. Are there any specific legislative requirements, and if so, what are they?

Under the Djibouti Trade Code, companies are free to contract as they wish. No authorisation is required after the incorporation of a company to enable it to carry on its activities. Local businesses are free to enter into agreements with foreign entities.

6. Are there any restrictions on the importation of goods or raw materials into the country, including requirements that local produce is utilised rather than products bought outside the country?

Djibouti has no discriminatory policy with respect to foreign investment, imports or exports, and there are no restrictions on the importation of goods or raw materials apart from the usual customs declarations. A declaration of goods must be made by their owners, shippers or consignees or by the customs officer.

Import prohibitions are generally governed by the international conventions to which Djibouti is a signatory. The only products whose import is explicitly prohibited are cars with the steering wheel on the right, and non-biodegradable plastic packaging bags. For health reasons, the importation of certain products is subject to approval by the Ministry of Health.

The importation of products, such as explosives or weapons, requires the prior approval of the competent authorities. The importation of khat, as well as its marketing, is regulated. Djibouti does not have any anti-dumping, countervailing or safeguard legislation.

Finance

7. Are there any restrictions on the purposes for which money may be lent?

There are no restrictions on the purposes for which money can be lent. However, money cannot be part of the proceeds of crime and cannot be used for criminal purposes or for purposes related to crime (e.g. terrorism or money laundering), according to Law No.196 of 29 December 2002.

All local entities are free to enter into loan agreements with non-resident entities subject to the prior approval of the board of directors and the approval of the general meeting of shareholders. Loan agreements should, among other things, specify the identity of the parties, the loan amount, interest rate (unless the loan is free of charge) and the repayment schedule.

8. How does the law work in relation to security interests in this jurisdiction, and over which classes of assets may security be granted? Does your jurisdiction recognise the concept of a trust and the role of a Security Trustee?

Djiboutian legislation provides for collateral on a wide range of assets. Security covers all the conventional and legal guarantees taken over the movable and immovable property of a debtor. Personal collateral is when collateral is not taken from a debtor's property, but is provided by individuals, e.g. for a simple deposit or surety bond.

Securities may be of a conventional nature and/or of a judicial nature, and are governed by a mix of Djiboutian and colonial-era French civil law. These include:

- **Personal security**
Bonds and autonomous guarantees.
- **Security interests relating to movable property and/or real estate**
Security can be taken on intangible property (shares of a company, goodwill, debts held on behalf of a debtor, bank accounts and intellectual property of a debtor) and/or on tangible property (professional materials, stocks, commercial assets).

Transferable security interests include possessory liens, guarantees, pledges and non-possessory pledges and liens. Transferable security rights subject to notification must be entered in the Trade and Companies Register. Mortgage deeds must be registered by the property owner.

A creditor may apply to the President of the Court of First Instance to be authorised by a court order to obtain security in the form of a protective seizure and/or a garnishment on the assets and securities of the defaulting debtor, as a guarantee of enforcement of the claim and recovery of the debts.

Procurement/PPPs

9. What laws, regulation and guidance are in place to manage the procurement and management of infrastructure projects (including PPPs) and is this regime overseen by a special unit, division or department (such as a PPP unit) within Government?

The Public Procurement Code governs contracts amounting to more than FDJ DFJ5 million, i.e.. \$USD 28, 200, that are awarded by the state, public administrative establishments, public industrial and commercial establishments, state-owned companies and economic entities in which the state is the majority shareholder (owning 51% or more of the shares). The body of control and regulation of public procurement in Djibouti is the National Commission of Public Procurement (CNMP).

Djibouti has specific regulations for PPP contracts which regulate the legal framework applicable to these contracts. These define and delimit the conditions for the drafting, execution, the award and the execution of the PPP contracts.

The institutional framework of PPPs is under the authority of the President of the Republic and overseen by a National PPP Committee, which is charged with assisting the government in defining its policy and PPP strategies.

This policy is implemented at a national level by an autonomous specialised entity (the "PPP Unit"). The procurement procedure is carried out under the control of the Public Procurement Regulatory Authority. The Finance Ministry is responsible for checking the financial and budgetary sustainability of the projects proposed. The sectoral regulatory authorities remain fully responsible for the activities of companies in their sector.

Competition

10. Is there a merger control regime? If so, what are the thresholds for notification?

There is no specific merger control regime. However, Chapter IV of the Djibouti Commercial Code deals with the applicable rules for mergers and divisions of companies.

11. Is there a competition/anti-trust law that prohibits items such as abuse of a dominant position, cartel behaviour and exclusivity arrangements, and if so, how actively is it enforced?

In 2008, Djibouti adopted a law which prohibits all forms of action between economic operators which tend, *inter alia*, to restrict competition, limit or control production and investment, or result in the abuse of a dominant position.

Excluded from the scope of this law are public enterprises and practices having the effect of ensuring technical progress, without, however, compromising competition for a substantial part of the products in question.

The Directorate of Internal Trade, Competition and Fraud Control is the agency responsible for implementing the Government's policy on the regulation of competition.

As part of COMESA, Djibouti participates in the implementation of the regional competition policy.

Intellectual Property

12. What protections does the local law provide for intellectual property rights?

The Djibouti Office of Industrial and Commercial Property (ODPIC) and the Copyright Office share responsibility for the protection of intellectual property rights. These are public bodies with legal and financial autonomy.

Their missions include (i) the fight against infringement of industrial property rights, including counterfeiting and unfair competition, and (ii) the guarantee and promotion of the protection and use of industrial property in Djibouti.

Measures that can be taken by the courts include, amongst other things, forfeiture of illegally obtained products of copyright infringement, confiscation of counterfeit goods and payment of

damages (compensation for the victims of violations of copyright law).

In practice, the enforcement capacity is very effective and developed in the field of industrial and commercial property, but it is sometimes quite limited for copyright and related rights due to resource constraints, lack of experience of judges and legal practitioners, and lack of public awareness of intellectual property rights.

Tax and Forex

13. What taxes are businesses subject to in this jurisdiction? Please include, for example, corporate tax, VAT, stamp duty, tax on share issues, etc. and the applicable rates. What transfer pricing rules apply, and are any withholding taxes in force in your jurisdiction?

An entity doing business in Djibouti is subject to payment of the following duties and taxes:

- Fees for the registration of deeds: can be fixed, proportional or progressive. Every year the company has to renew its patent and the price of the deeds is calculated according to the volume of activity. Fixed fee amounts range from FDJ 1,000 to FDJ 4,000 (USD 5 to USD 20) depending on the nature of the deeds to be registered. Proportional fees range from 2% to 10%.
- Stamp Duty: mandatory for all civil, judicial and extrajudicial acts and set at FDJ 1,000 per page.
- Income Tax: 25% of the taxable profit payable from the second year of operation, with the possibility of postponement. Adherence to approved management centres and a turnover of less than FDJ 80 million (USD 455,000), exclusive of VAT, entitle you to a 20% reduction. Companies whose profits do not exceed FDJ 120,000 are exempt from income tax.
- Since 2017, foreign companies residing outside Djibouti, but which operate through their branches in Djibouti, must pay tax on any profits indirectly transferred by increasing or decreasing purchase or selling prices, or by any other means (excessive or unwarranted fees, interest-free or low-interest loans, write-offs, etc.). These must be reported in the taxable profit of the entity subject to the ordinary tax.
- Withholding tax: ranges from 2.5% to 10% depending on the type of business. Autonomous public institutions such as EDD, Port and Airport of Djibouti are excluded, as well as banks or financial, insurance, telecommunications and hotel establishments.

- Lump-sum minimum tax: 1% of turnover excluding VAT. All companies approved under the Investment Code are subject to this tax, unless the cost of their licence was less than FDJ 120,000 (approx. USD 600). It is payable when it exceeds the amount of tax calculated on professional profits or in the case of a loss-making year.
- Land tax: rates are 10%, 18% and 25% depending on the value of the taxable base of buildings and non-cultivated land for commercial or industrial use. There is a reduction of 20% for management, insurance, depreciation, maintenance and repair costs. The rate on undeveloped properties is 25%.
- VAT: applies to all transactions except those related to exports and international air, sea, land and passenger transport, payments received under an externally financed public contract and the imports made by the real estate promoters of social habitats, economic habitats as well as the disposal of these dwellings. The standard rate is 10%. However, its method of calculation is complex. The Tax Department has prepared an explanatory note, available on the website of the Ministry of Economy and Finance.
- Tax on goods and services: applies to all natural or legal persons who deliver goods or services whose annual turnover is:
 - for the supply of goods, between FDJ 20 million and FDJ 50 million; and
 - for provision of services, between FDJ 10 million and FDJ 50 million.

This excludes all goods and services exempt from VAT. The rate is set at 7%. It is reduced to 5% for the sale of fruits and vegetables, restoration works and the sale of red meat and fish.

Article 213 of the General Tax Code has been revised by the 2018 Finance Act and has clarified the revenue thresholds for taxation.

- Domestic consumption tax (ICT): applicable to all goods imported and consumed in Djibouti, regardless of their origin, as well as to tobacco and alcohol re-exported by road to neighbouring countries. The three main ICT rates are 8.20% and 33%. In addition to these rates, certain products are subject to the payment of a surcharge, the amount of which varies according to their nature.

14. Are there any foreign exchange rules that control repatriation of funds out of this jurisdiction?

There are no exchange controls in Djibouti, and capital can flow freely. Import and export licences are not required.

Dispute Resolution

15. What is the courts' approach to enforcement of foreign judgments or arbitral awards?

The Republic of Djibouti is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

In order to be enforceable in Djibouti, foreign judgments and foreign arbitral awards must be granted an exequatur order from the Court of First Instance of Djibouti. The exequatur is granted by the President of the Djibouti Court of First Instance on receipt of a petition made in accordance with the following conditions:

- the foreign judgment or arbitral award, was rendered by a competent court in accordance with the rules on conflicts of laws, as accepted in Djibouti;
- the foreign judgment or the arbitral award has the force of *res judicata* and is enforceable in the jurisdiction where it was rendered; and
- the parties have been duly convened, represented or declared in default; and the judgment does not contravene public order within the meaning of Djiboutian law and is not contrary to any decision of Djiboutian justice having *res judicata* authority.

A party wishing to obtain an exequatur order must submit to the President of the Djibouti Court of First Instance a copy of a certified French translation of the foreign judgment or, in the case of arbitration, a copy of the certified French translation of the arbitral award and the arbitration agreement.

16. Are the local courts generally supportive of arbitration proceedings (for example, in granting interim relief in support of such arbitrations)?

In Djibouti, the courts are generally in favour of arbitration. When there is an arbitration clause in a contract, a local court will declare that it is not competent to deal with the case and will invite the parties to go to arbitration. The President of the Court of First Instance of Djibouti may grant interim measures notwithstanding the existence of an arbitration clause.

Indeed, before the referral of the case to the arbitrator, and in exceptional circumstances, thereafter, in cases where the urgency of the interim and conservatory measures requested would not allow the arbitrator to take a decision in time, the parties may request such measures (including provisional seizures on the property

of a debtor located in Djibouti on the date of the request) should be taken by the competent judicial authority.

The courts of Djibouti generally recognise domestic arbitral awards on the condition that they have been rendered in accordance with the applicable rules. However, the arbitral award may be the subject of an action for annulment before a competent local court if:

- the award was made in the absence of an arbitration agreement or on a null or expired agreement;
- the arbitral tribunal has been irregularly constituted or the sole arbitrator irregularly appointed;
- the arbitral tribunal has ruled without complying with the mission entrusted to it;
- the principle of contradiction has not been respected or where the rights of the defence have been infringed;
- the relief awarded is contrary to international public policy; or
- the arbitration award is not reasoned.

General

17. In order for a foreign company to sign a document under local law, are there any signing procedures that must be followed?

In principle, there are no specific procedures to follow with regard to general contract law. They must respect the basic provisions as to contract law

(as for all contracts) such as lawfulness, consent in writing, absence of unfair terms, or be subject to specific rules, such as company contracts, guarantee contracts, or terms specific to regulated contracts.

18. Are there any current legislative or policy developments that companies investing in this jurisdiction should be aware of?

As part of its strategy to improve the business climate, the Djiboutian government has entrusted to an expert committee the project of redrafting two old Napoleonic codes: the Civil Code and the Code of Civil Procedure, which date before independence, and are now obsolete.

The government wants to adopt a modern Civil Code and Code of Civil Procedure, better adapted to economic realities and offering adequate security to investors. The drafting of the codes is in its final phase and according to the Ministry of Justice, experts will submit the drafts to the government for validation in 2018. Once validated, the Government will send them to the National Assembly for discussion and adoption, hopefully before the end of 2018. These projects are part of flagship reforms that will undoubtedly be marked in the history of Djibouti's legal and judicial system. ■

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Abayazid and Abdourahman (SCP. CAA Law Firm) is an important Djiboutian structure composed of young and dynamic lawyers and collaborators with diverse skill in the field of law. It offers advice and assistance services to its customers thanks to the solid experiences of its members, who have in-depth knowledge at national, regional and international level. CAA Law Firm also supports its clients beyond the Djiboutian market, thanks to partnerships with law firms, particularly in Somalia, Ethiopia, Rwanda, Uganda and South Africa.

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