

THE CHALLENGING PATH OF
REFORMS IN LEBANON

**PUBLIC PROCUREMENT IN
LEBANON: FRAMEWORK
AND IMPEDIMENTS**





This report is part of a series of reports produced by Maharat Foundation to track the progress of reforms highlighted in the Lebanon Reform, Recovery and Reconstruction Framework (3RF) which is part of a comprehensive response to the massive explosion on the Port of Beirut on August 4, 2020, launched by the European Union (EU), the United Nations (UN) and the World Bank Group (WBG).

On April 2023, stakeholders involved in the Reform, Recovery and Reconstruction Framework (3RF), agreed that it should be continued as a platform for inclusive policy dialogue and to make progress on implementing reforms to unlock international support for investments in reconstruction, considering that structural reforms are key to overcome this unprecedented crisis and return to the path of sustainable development. Moreover, the 3RF will not extend its focus on recovery efforts, as there are other coordination structures in Lebanon that are more capable of addressing recovery and humanitarian needs.

Maharat is a member of the Independent Oversight Board (IOB) which is comprised of civil society representatives providing broad oversight on 3RF implementation progress and use of financing.

Reforming Public Procurement: A Fundamental Step towards Recovery and Increased Transparency in Lebanon

According to the OECD, public procurement is one of the government activities most susceptible to corruption. The "volume of transactions and the financial interests at stake" as well as "the complexity of the process, the close interaction between public officials and businesses, and the multitude of stakeholders" are some of the factors that contribute to this.¹ Hence, policy-makers and public administrations should ensure the effective implementation of the new Public Procurement Law which is one of the most important structural reforms to improve financial governance, promote economic recovery and increase accountability and transparency.²

Public Procurement: A Key Sector of the 3RF Reform Agenda

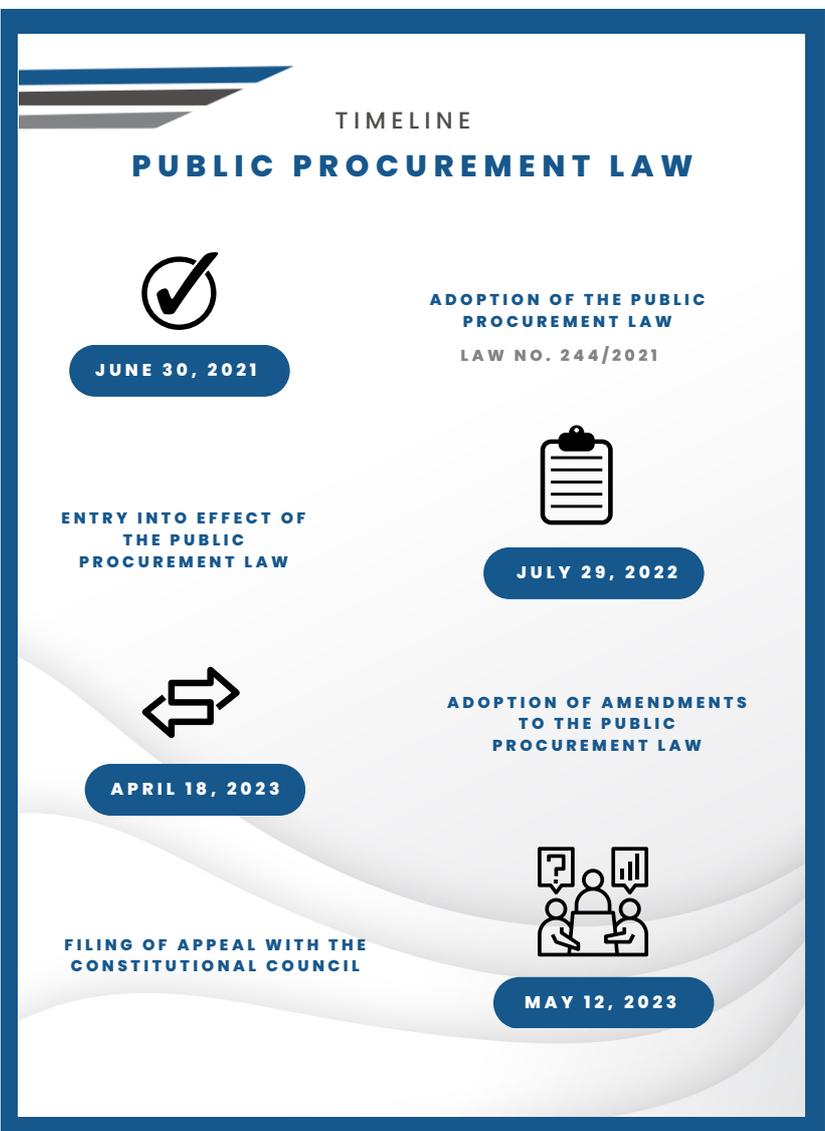
The Public Procurement Law, which was part of the Reform Recovery and Reconstruction framework (3RF) commitments, was adopted on June 30, 2021, with the aim of increasing transparency and accountability. The law came into effect on July 29, 2022, along with the creation of the Public Procurement Authority, as the culmination of a policy process launched in 2019. According to Lamia Moubayed, the director of the Basil Fuleihan Institute, "the law constitutes a popular and societal demand that intersects with international requirements".

1- OECD. (2016). Preventing Corruption in Public Procurement. <https://www.oecd.org/gov/ethics/Corruption-Public-Procurement-Brochure.pdf>

2- Moubayed Bissat, L., & Abdul Khalek, B. (2021, November 10). LCPS - Transforming Public Procurement: Lebanon's Path to Efficiency, Social Value, and Transparency. Lebanese Center for Policy Studies. Retrieved May 12, 2023, from: <https://www.lcps-lebanon.org/articles/details/4754/article-%7C-what-is-public-e-procurement-and-are-municipalities-ready-for-it>

Unifying the public procurement legal framework, which was previously spread across numerous legislative decrees and decisions, was one of the law's most essential objectives as the procurement system's effectiveness was being jeopardized by the conflicting interests of various parties.

Following the entry into force of the new Public Procurement Law (law no. 244/2021), The Public Financial Management, Civil Service & Public Administration Reform, Anti-Corruption Working Group defined its initial priorities in public procurement for 2023. These priorities include supporting the establishment of the procurement review board (complaints body), the development of an e-procurement platform, and the training of important civil officials in the transition to a "universal system" for procurement (IMF indicative benchmark 3). It is noteworthy that this working group convened recently in March 2023.



An incomplete institutional framework

Despite the entry into force of the new Public Procurement Law (law no. 244/2021), several obstacles that significantly impede the effective implementation of the law persist, such as the inability to form a Public Procurement Authority whose role is to oversee and regulate the public procurement system, in addition to designing and implementing procurement policies in accordance with the Public Procurement Law. Indeed, Article 74 of this same law provides for the establishment of a Public Procurement Authority in replacement of the Central Tenders Board. According to Article 88 of the law, which governs the transitional period, the Central Tenders Board will be abolished and its staff will be incorporated into the Public Procurement Authority (PPA).



This same article mentions that the Director General of the Central Tenders Board shall serve as the President of the Public Procurement Authority and remain in place until the appointment of the members of the PPA, which has not yet been made. Consequently, at present, the PPA faces a lack of human resources since it is solely composed of the President. Furthermore, the Public Procurement Authority is constrained by a shortage of financial and technical resources, which hinders its ability to carry out its mandate effectively.³

The application of the law is also impeded by the inability to establish a Review and Complaints Authority which is an independent body tasked with dealing with the objections submitted regarding the procedures or decisions issued by the purchasing entity or any of the entities concerned with the procurement process. In fact, the Review and Complaints Authority is composed of a president and three members who are nominated by the Council of Ministers based on a meritocratic recruitment process detailed in the law and upon the recommendation of the prime minister. However, the Prime Minister is still unable to appoint the Review and Complaints Authority as the caretaker government is still in place.

Furthermore, the majority of municipalities in Lebanon face a shortage of administrative resources, which impedes the effective implementation of the new Public Procurement Law. It is also worth noting that municipal employees frequently lack the adequate knowledge and skills related to procurement practices mentioned in the new law in addition to digital literacy skills. Consequently, further training is needed to address these gaps.⁴

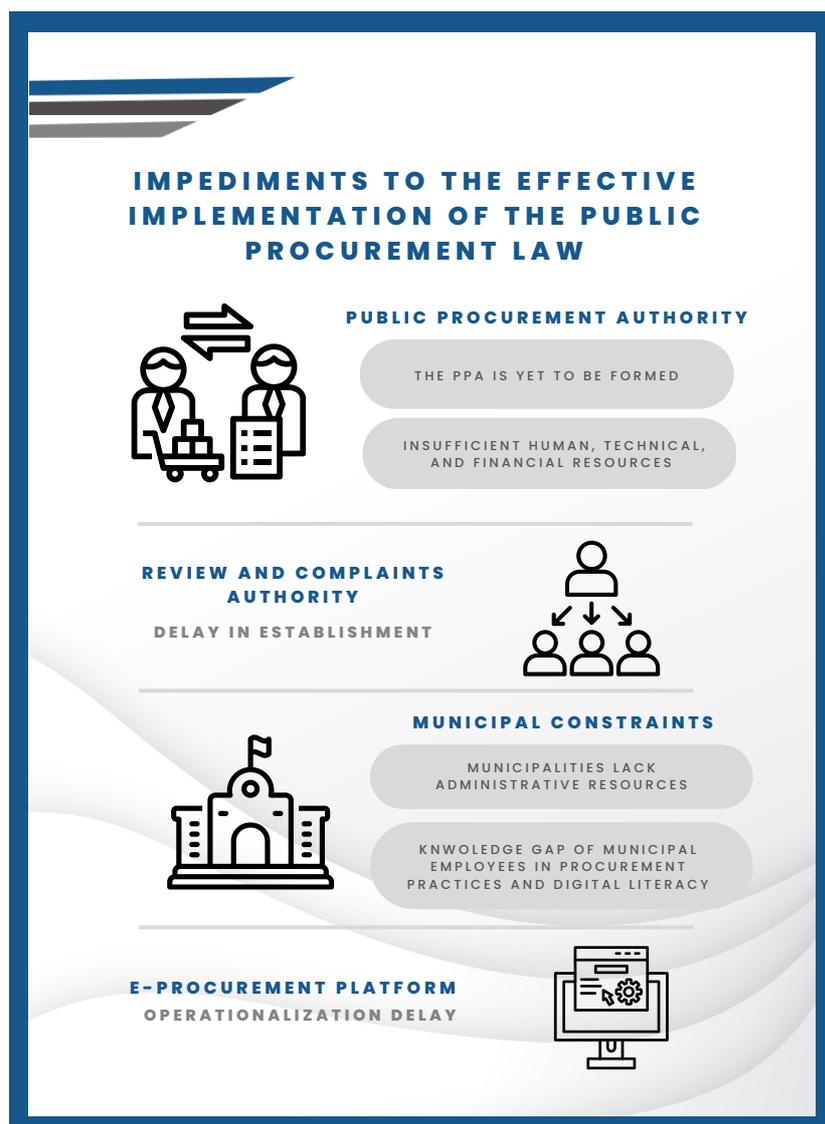
Finally, the E-procurement platform which is a necessary tool to ensure the implementation of the new Public Procurement Law and one of the priorities of the Public Financial Management, Civil Service & Public Administration Reform, Anti-Corruption Working Group is yet to be operationalized.

3- Institut des Finances Basil Fuleihan. (2023). The observations of the Basile Fuleihan Institute for Political and Economic Studies on the proposed amendments to Law No. 244 on Public Procurement dated July 19, 2021. <http://www.institutdesfinances.gov.lb/publication/%d9%85%d9%84%d8%a7%d8%ad%d8%b8%d8%a7%d8%aa-%d9%85%d8%b9%d9%87%d8%af-%d8%a8%d8%a7%d8%b3%d9%84-%d9%81%d9%84%d9%8a%d8%ad%d8%a7%d9%86-%d8%a7%d9%84%d9%85%d8%a7%d9%84%d9%8a-%d9%84-%d9%88%d8%a7%d9%84%d8%a7/>

4- Taha, A. (2022). LCPS- What is Public E-procurement and are Municipalities Ready for It? Lebanese Center for Policy Studies. Retrieved May 12, 2023, from: <https://www.lcps-lebanon.org/articles/details/4754/article-%7C-what-is-public-e-procurement-and-are-municipalities-ready-for-it>

The controversial Beirut airport terminal deal

The absence of a competitive bidding process for a \$122 million contract between Lebanon and private companies to build a new terminal at Beirut's Rafic Hariri International Airport has sparked controversy after critics, including members of Parliament, claimed that it violates the new Public Procurement Law. Furthermore, several civil society organizations declared that this contract opens the door to corruption and nepotism and allows illegal use of public funds. In response, the Minister of Public Works and Transport, Ali Hamieh, stated that the Public Procurement Law of 2021 (law no. 244/2021) does not apply to this deal since this law does not mention awarding proceedings lasting longer than 4 years.



Subsequently, the Basil Fuleihan Institute of Finance published a detailed paper on April 18, 2023 which highlighted that all circulating information stating that the new Public Procurement Law forbids contracts lasting longer than four years is untrue, based on Paragraph 5 of Article 3 of the aforementioned law. The paper also noted that this type of information intends to wrongly suggest that the Public Procurement Law is inadequate to govern joint partnerships between the public and private sectors.

According to the advisory opinion of the Court of Audit, the contract relating to the construction and operation of a new terminal can fall under the scope of the law governing partnerships between the private and public sectors (47/2017) if the necessary regulations are issued. Furthermore, the new Public Procurement Law can also be applied to the contract, as long as it does not contradict the provisions of the law governing partnerships between the private and public sectors (47/2017). The Court of Audit also stated that the deal constitutes a concession granted to a public facility and must therefore be authorized by law under Article 89 of the Constitution. If this principle is not respected, the contract becomes void. The Council of Audit also provided other legal justifications as to why the airport terminal contract is considered void.

Following heavy criticism in relation to the legal controversy and transparency concerns, the Ministry of Public Works and Transport refrained from proceeding with the contract.



Amendments to the Public Procurement Law (law no. 244/2021): a step backwards?

On the 18th of April 2022, the Lebanese Parliament approved amendments to the Public Procurement Law affecting several articles, namely articles 7, 11, 19, 46, 60, 76, 100 and 101. According to the Basil Fuleihan Institute, such substantial modifications will have harmful consequences in terms of transparency and free competition. Additionally, the institute considered that those amendments reflect a lack of seriousness on the part of the Lebanese government in implementing key structural reforms, sending negative signals to the international community, donors and investors.⁵ On the other hand, some experts considered that those amendments do not undermine the essence of the law, but rather facilitate its implementation in the present context.

5- Institut des Finances Basil Fuleihan. (2023). The observations of the Basil Fuleihan Institute for Political and Economic Studies on the proposed amendments to Law No. 244 on Public Procurement dated July 19, 2021. <http://www.institutdesfinances.gov.lb/publication/%d9%85%d9%84%d8%a7%d8%ad%d8%b8%d8%a7%d8%aa-%d9%85%d8%b9%d9%87%d8%af-%d8%a8%d8%a7%d8%b3%d9%84-%d9%81%d9%84%d9%8a%d8%ad%d8%a7%d9%86-%d8%a7%d9%84%d9%85%d8%a7%d9%84%d9%8a-%d9%84-%d9%88%d8%a7%d9%84%d8%a7/>

Indeed, in relation to the amendment of articles 100 and 101, Ghassan Moukheiber, a lawyer and former MP, stated that "there are 1100 municipalities, 90 public institutions, and multiple entities obligated to enforce the public procurement law. So far, not everyone has been trained. Therefore, the proposed amendment was clever by giving priority to trained individuals. In the absence of trained individuals, non-trained individuals can be appointed to avoid hindering the implementation of the law. In other words, the amendment provided flexibility for the Public Procurement Authority to enforce the law".

PRIORITIES OF THE PUBLIC FINANCIAL MANAGEMENT WG FOR 2023

- 1.Support the establishment of the procurement review board (complaints body).
 - 2.Support the training of key civil servants on the move to a "universal system" for procurement.
 - 3.Support the development of e-procurement platform (IMF indicative benchmark 3).
 - 4.Monitor and support compliance with access to information law across all administrations as required by the law including proactive disclosure and facilitation of demands for information.
 - 5.Support requisite actions to activate the NACC.
 - 6.Develop the technical capacities of NACC in accordance with an integrated plan that enables coordination among different
 - 7.Support OMSAR in its capacity as the technical leader of the implementation mechanism of the national anti-corruption strategy.
 - 8.Discuss and support actions that enable civil society, including youth and women groups, to become better informed and empowered.
 - 9.Support early verification of civil servants as well as census of all government and public enterprises positions, compensations, and description of functions (IMF indicative benchmark 7).
- Support development of Civil Servants rationalization and management plan based on the recommendations of an expenditure review (IMF indicative benchmark 10)

Following the adoption of the amendments, members of Parliament filed an appeal with the Constitutional Council on the 12th of May 2023 to challenge the Public Procurement Law amendment passed by the Parliament on the 18th of April 2023. The appeal focuses on the violations of Articles 57, 19 and 83 of the Constitution.

Furthermore, the appellants argue that the amendments violate constitutional principles of neutrality and equality. The appeal cites previous court decisions and constitutional jurisprudence to support its argument and calls for the law to be suspended until the Constitutional Council can make a final ruling on its constitutionality.

Conclusion:

The path toward reforms in Lebanon is fraught with several challenges as the implementation of laws is often met with obstacles such as resource constraints and delays in forming bodies. In order to pave the way for successful reforms, it is crucial to apply laws without exemptions and ensure mainstream implementation. By fostering a culture of legal compliance, Lebanon will be able to uphold the principles of accountability and transparency, laying the foundation for sustainable development.