

THE CHALLENGING PATH OF REFORMS IN
LEBANON

**MORE THAN TWO YEARS AFTER THE
ENACTMENT OF THE PUBLIC PROCUREMENT
LAW: WHERE DO WE STAND?**





1- INTRODUCTION TO THE PUBLIC PROCUREMENT LAW NO. 244/2021


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).

Public Procurement Law 244/2021 is recognized as a fundamental instrument for guaranteeing transparency in the procurement operations carried out by procuring entities, including public institutions and administrations spending public funds. It stands as a pivotal reform under the 3RF, aiming to regulate public procurement processes and attain optimal levels of transparency and efficiency in the allocation of public financial resources. Effectively implementing this law necessitates a thorough comprehension of its intricacies, challenges, and the adoption of best practices.

2- GENERAL OVERVIEW AND PROGRESS OF THE PUBLIC PROCUREMENT REFORM

The Public Procurement Law in Lebanon faces numerous challenges that impede the realization of its fundamental objectives, including the efficient and transparent disbursement of public funds. These hurdles encompass delays in the implementation of key provisions of the law, such as the institutionalization of the Public Procurement Authority (PPA) and the Review and Complaints Authority, administrative corruption plaguing governmental institutions, and the pervasive lack of transparency across various entities. Therefore, it is crucial to address all the challenges that impede the implementation of the law and make the necessary legislative adjustments, with the objective of enhancing public procurement practices and fostering transparency as part of the broader efforts to achieve necessary reforms and comprehensive governance.

The legislative process of the law governing public procurement has progressed through several stages, culminating in the recent amendments enacted during the legislative session on April 18, 2023.




The amendments addressed various aspects, including amendments to bidder participation conditions, the role of the Public Procurement Authority in defining pre-qualification criteria, and the appointment process for both Tender and Acceptance Committees. Notably, they eliminated the requirement to refer back to the Public Procurement Authority for these appointments, among other revisions. Maharat Foundation released an [in-depth analysis](#) of the enacted amendments, incorporating diverse expert perspectives on these revisions.

Recently, the controversy surrounding the application of the Public Procurement Law to the Casino du Liban has sparked extensive discussion. The Court of Audit issued an advisory opinion on October 3, 2023, asserting that the casino falls outside the law's jurisdiction due to the fact that the state does not directly own any shares. Jean Ellieh, President of the Public Procurement Authority, adhered to this decision while highlighting that the issue stems from the law's internal inconsistencies that lead to divergent interpretations. Conversely, the Basil Fuleihan Institute contended that the law effectively delineates the entities subject to its provisions, as outlined in Article 2, and asserts that private companies managing public utilities are also bound by its regulations.

3- CHALLENGES FACING THE LAW

The Public Procurement Law in Lebanon faces numerous challenges that hinder its optimal implementation, which ensures the protection of public funds. Among these challenges are:

- **Delay in nominating the Public Procurement Authority members:** The Public Procurement Authority is considered a cornerstone of this law, being the regulatory and supervisory body for all public procurement operations. However, to date, its members have not been selected yet due to institutional paralysis, as the current government is a caretaker government, leaving the authority restricted to its president, Jean Ellieh.
- **Delay in establishing the Review and Complaints Authority:** The Review and Complaints Authority is tasked with reviewing complaints submitted and making decisions by majority vote. Despite its importance, it has not been established yet, as the caretaker government is still in place.

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- **Appointments based on political affiliation and sectarian quotas:** The existing pattern of appointments in institutions and administrations poses a significant challenge. If the Public Procurement Authority is appointed based on political affiliation and sectarian quotas rather than competence, it will lose its independence and transparency as a monitoring and regulatory body aimed at protecting public funds.
 - **Administrative corruption:** Administrative corruption presents a major obstacle to the enforcement of the law and the functioning of the Public Procurement Authority, as attempts are made to avoid referring to the PPA in public procurement operations under the pretext of urgency and necessity.
 - **Funding shortages:** Due to the economic crisis and the collapse of the Lebanese pound, the state's financial situation has significantly deteriorated, directly and negatively impacting the budget of the Public Procurement Authority, as well as other authorities and administrations. Although the Public Procurement Authority currently receives external technical support allowing for specialized expertise in public procurement, its budget has been affected.
 - **Need for capacity building:** The Institut des Finances continues providing mandatory and specialized training on public procurement to procuring entities. However, the scarce resources have negatively impacted progress in this regard.
 - **Delay in the establishment and operationalization of the E-procurement platform:** The E-procurement platform, which is a necessary tool to ensure the implementation of the new Public Procurement Law, is not fully functional yet, despite being a crucial requirement for improved transparency and integrity.
 - **The divergence of opinions among experts:** The divergence of opinions among experts constitutes one of the challenges, as views differed on several points regarding the Public Procurement Law. These include discrepancies in opinions regarding the amendments made to the law, as detailed by “Maharat-news” in an [investigation](#) they conducted. Additionally, opinions differed on whether the Casino du Liban is subject to the Public Procurement Law or not.

4- RECOMMENDATIONS

In order to overcome the challenges facing the Public Procurement Law and ensure its implementation in a way that protects the public interest and public funds, the report recommends several key points:

1. **Providing suitable conditions for the application of the law:** To ensure the effective implementation of the law, fully functioning state institutions are essential. This requires the appointment of a new government that allows for the formation of the Public Procurement Authority and the Review and Complaints Authority based on competence and specialization.
2. **Enhancing transparency and accountability:** The principle of transparency should be reinforced by obligating public administrations to publish expenditure reports in accordance with the Right to Access Information Law. These institutions should also be subject to accountability mechanisms.
3. **Engaging civil society:** Encouraging the active participation of civil society organizations to monitor the implementation of the law and exert pressure to achieve transparency and enhance accountability in all appointment mechanisms and public procurement processes.
4. **Expediting and improving the legislative process:** Like other laws, the Public Procurement Law will be subject to multiple amendments to align with the public interest, necessitating an effective and expedited legislative response. Additionally, ensuring comprehensive training for all personnel involved in public procurement is essential.
5. **Operationalization of the E-procurement platform as required by the law:** The Public Procurement Authority should establish and operationalize a fully functional central electronic platform which should include an electronic registration mechanism allowing suppliers, contractors, consultants, and service providers to register online for qualification to participate in electronic public procurement.