

# PUBLIC PROCUREMENT IN LEBANON: **A GATEWAY TO MALPRACTICE**



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**SIREN**  
ASSOCIATES

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## FOREWORD FROM THE RESEARCHERS

This report is a journey into the legal and political intricacies of public procurement, oversight mechanisms, and complaint systems in Lebanon in relation to procurement. The team has attempted to dissect the laws, procedures and practices around procurement in order to understand why things are not working and why has procurement been a huge source of corruption and public funds squandering contributing to the biggest financial and economic crisis in the country's history.

The exercise has been tedious and complicated as the legal framework is scattered, with different bits and pieces overlapping, contradicting, ambiguous at times, and often hard to find and access. The team had to go through detours and informal channels to obtain financial and internal regulations of various institutions which are not easily shared, and which are supposed to be in the public domain. Getting internal circulars of various institutions has often been a mission impossible. This opacity is in itself a clear symptom of a dysfunctional system in need for a holistic and overhauling reform.

Our institutional mapping exercise has shown that, since the Chehabist era, practices have twisted the laws to the advantage of the powerful and the corrupt in Lebanon. A little remains from the oversight and governance mechanisms and vision of the 50s and the 60s. Exceptions and detours are abundant and are in the open. Nevertheless, the seeds of a strong democratic tradition are still present and they can still be relied upon for a revival of state institutions, and the development of systems and processes that ensure governance, efficiency and effectiveness.

This research has greatly benefitted from the support of the Institut des Finances (IoF) . The collaboration, sharing of knowledge, and critical thinking of the IoF team have been remarkable, and the Siren team is grateful for their support.

The Siren Research Team

# Executive Summary

Public procurement is one of the main sources of public funds squandering in Lebanon. The frail and outdated legal framework, coupled with weakened oversight agencies, has enabled malpractices to emerge and thrive. This report maps the legal and regulatory framework of the public procurement system, and of key stakeholders who intervene in the public procurement process, whether directly or indirectly. This includes but is not limited to the Ministry of Finance, the Court of Accounts, the Central Tender Board, the Central Inspection, the Council of Ministers, and the Parliament. The mapping has enabled the identification of the main gaps, overlaps, inconsistencies and weaknesses in the public procurement landscape, which justifies the urgent need for reform and which may be summarized as follows:

## **The Central Tender Board has limited scope and means.**

The Central Tender Board has numerous limitations, which prohibit it from acting as a central procurement agency. It has limitations regarding the size of procurement, as it only mandatorily reviews bidding documents pertaining to works and goods transactions exceeding LBP 100,000,000 and only conducts the procurement process for the transactions of the same value. The Central Tender Board has also a limited scope, as public institutions, autonomous agencies, municipalities and unions of municipalities have legally bypassed the Tender Regulations through their bylaws. They conduct the procurement process internally. The absence of standard bidding documents also exacerbates the scattered practices and limits the entry of new bidders to the market, given that non-standard bidding documents are sometimes tailored to guarantee the win of a specific bidder.

## **Oversight institutions, such as the Central Inspection and Court of Accounts suffer from limitations, mainly related to their scope.**

The Central Inspection's oversight mandate has limitations. While some institutions are subject to its full oversight, others completely escape its scope, or are subject to financial inspection only. Central Inspection also suffers from lack of specialized human resources and financial means, as it is subordinated to the Presidency of the Council of Ministers.

The Court of Accounts has a wide mandate in theory covering ex-ante and ex-post audit, but limited jurisdiction in practice especially for the ex-post audit. Numerous entities considered as big spenders in procurement are not subject to its oversight such as the Council for Development and Reconstruction, or the Council of the South. The Court of Accounts' ex-ante audit also overlaps with the Ministry of Finance's expenditure control when the transaction exceeds a certain threshold. The laws governing both stakeholders do not substantially draw the difference between the control and/or audit that is being exercised, which causes unnecessary checks and delays.

# Executive Summary

## **Municipalities and Unions of municipalities are governed by a complex legal framework.**

Municipalities and Unions of municipalities are distributed across two legal frameworks. While some are subject to decree no. 5595 (which sets the accounting principles for municipalities and Union of municipalities not subject to the Public Accounting Law), others are subject to the Public Accounting Law. As a result, municipalities' and Unions of municipalities' budgets differ on various levels (such as the structure of the budget, and the necessary documents to implement the budget) which results in unnecessary complications.

## **Loopholes in the Public Accounting Law**

The Public Accounting Law has been subject to amendments over the years. However, no substantial amendments considerably enhancing public procurement have been enacted. Recourse to mutual agreements is poorly regulated, and the pricing method is not in line with international standards, as it does not provide for a secret reserve price set by the procuring entity.

## **The complaint mechanism and appeal system are flawed**

The recourses available to bidders are rather scattered. While the Central Tender Board receives complaints in practice, it does not dispose of any complaint mechanism set out by the legal framework. As to the State Council, it suffers from overload and is unable to fulfill its appellate role for all cases submitted to its review, given that the lower administrative courts have not been created until this day. The State Council may also be subject to governmental interference in the appointments which hinders its independence.



# Executive Summary

## Risks of political interference

The Parliament disposes of legal powers allowing to increase its oversight over the management of public funds, to engage in dialogue with oversight agencies, and to hold ministers accountable. However, its role is weakened by overwhelming political dynamics. As to the Council of Ministers, it has a stronghold over oversight agencies and nominates the heads of these agencies. The Council of Ministers has also the power to reduce recourse to mutual agreements, a mission it has failed to accomplish so far.

## Stakeholder mapping

A stakeholder mapping was conducted, mapping various reform proposals, knowing that a draft law on public procurement presented by the Institut des Finances is being discussed in Parliamentary committee. The positions of the various stakeholders have also been analyzed, together with the political dynamics around the reforms. The model predicts that a strong coalition will build around the draft law based on the decentralization principle while some of the stakeholders will be trying to introduce some enhancements that may not change its essence and principles but challenge the original text.

## Recommendations

Recommendations have been formulated in light of the identified weaknesses of the public procurement system and of key stakeholders. These weaknesses are either structural or related to means and resources. Recommendations also address inconsistencies, overlaps, gaps, ambiguities, and conflicts of interests. While recommendations address the weaknesses of every oversight body, it remains important to consider the reform of oversight institutions through a global approach that takes into consideration the complementarity and continuity among them.

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**LIST OF  
ABBREVIATIONS**

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# List of Abbreviations

**TR:** Tender Regulations

**CoA:** Court of Accounts

**CDR:** Council for Development and  
Reconstruction

**CI:** Central Inspection

**CoM:** Council of Ministers

**CoS:** Council of the South

**CTB:** Central Tender Board

**EDL:** Electricité du Liban

**IoF:** Institut des Finances Basil Fuleihan

**MoIM:** Ministry of Interior and Municipalities

**MoF:** Ministry of Finance

**Municipalities and UoM:** Municipalities and  
Unions of Municipalities

**PAL:** Public Accounting Law

**SC:** State Council

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# ABOUT THIS REPORT

# Objectives and Methodology

## Objectives

- This report **maps** the legal and regulatory framework of the key stakeholders in Lebanon who directly or indirectly intervene in the public procurement system: the Central Inspection (CI), Court of Accounts (CoA), Central Tender Board (CTB), Ministry of Finance (MoF), Ministry of Interior and Municipalities (MoIM), Council of Ministers (CoM), State Council (SC), and Parliament.
- It **identifies** the gaps, overlaps and areas of risk of abuse and threats, ultimately contributing in improving mechanisms to optimize the procurement system.
- It **highlights** the growing need for legislative and institutional reform vis-à-vis public procurement, in line with international standards and under the pressing requests of the international community.

## Methodology

- The mapping was carried out through:
  1. An in-depth **review** of the legal texts governing public procurement in Lebanon (such as the Tender Regulations and the Public Accounting Law), together with the texts governing the stakeholders.
  2. A **SWOT analysis** of every key stakeholder mentioned above.
  3. A **SWOT analysis** of the procurement system in Lebanon in light of the report's findings.
  4. Key informant **interviews** with relevant stakeholders.
  5. A **review** of draft laws submitted to parliament and a **mapping of stakeholders** involved in the discussions around procurement reform,

# .03

## A BRIEF HISTORY

From the creation of various key institutions to the different attempts at procurement reform.

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# From Glorious Times to Reduced Activity

All started with the creation of the Court of Accounts in 1951, the Supreme Audit Institution in the Lebanese Republic. A few years later, the Tender Regulations (1959) established the mechanism by virtue of which the Central Tender Board functions. It was succeeded by the Public Accounting Law (1963), which sets the accounting principles in relation to public financial management, and which also includes provisions on public procurement. The 2019 demonstrations have put public funds squandering at the forefront, which raises numerous issues surrounding public procurement effectiveness and integrity.

**1959**

Creation of the **Central Inspection**, which comprises the **Central Tender Board**, and promulgation of the **Tender Regulations**

**1975**  
**1990**

Reduced activity of oversight agencies during the civil war

**2019**

Ongoing protests bringing an increased public scrutiny on public funds squandering

**1951**

Creation of the **Court of Accounts**

**1963**

Promulgation of the **Public Accounting Law**

**1990**  
**2018**

Several attempts to rehabilitate the public administration and to re-activate oversight agencies



# Try and fail but don't fail to try!

Numerous initiatives have attempted to reform public procurement. While some draft laws advocated for the decentralization of the procurement system, some initiatives pushed for the complete centralization of public procurement under the Central Tender Board. Till today, the Parliament has never been able to pass any law reforming public procurement.

**2010**

Draft decree rendering the bidding documents binding was referred to Council of Ministers by the Ministry of Finance, but was never adopted

**2016**  
**2017**

Draft procurement law studied by parliamentary committee and withdrawn by the Council of Ministers in 2018 before the CEDRE conference

**2020**

- **IoF draft law** (for decentralization of procurement) currently being discussed in parliamentary committee
- **Lebanese Forces** draft law

**2012**

**OMSAR Procurement draft law**, referred to Parliament by decree no. 9506 dated 12/12/2012

**2013**

Preparation of **standard bidding documents** by MOF under WB financing and later in 2017 by OMSAR under EU financing

**2018**

Proposal by Hezbollah in November 2018 for the complete centralization of procurement under CTB (it was not submitted to Parliament)

# .04

## OVERVIEW OF ENTITIES INVOLVED IN PUBLIC PROCUREMENT

Executive, Legislative, and Judicial involvement is extensive and inefficient at the same time.

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# Who's Who in the Procurement Panorama

The procurement panorama comprises multiple actors, each playing a certain role, whether on a financial, planning, inspection, audit, or judicial level.

## Procuring Entities

Ministries, public administrations, public institutions, municipalities, security and military agencies, and any public moral person engaging in public procurement.



## Central Tender Board

Sets annual procurement plan, reviews bidding documents and provides non-binding feedback to procuring entities. Also carries out the procurement on behalf of Public Administrations when over a certain threshold (100 million LBP), which includes the revision of the bidding documents, announcements, receipt of proposals, and opening and evaluation of tenders, until identification of the winning bidder.



## Court of Accounts

Conducts two types of audit (ex-ante and/or ex-post), depending on some criteria which include the procuring entity itself, the subject of the procurement and the threshold.



## Ministry of Finance

Grants approval or refusal for government expenditures. Not all procuring entities are subject to its control.



## Central Inspection

Within its mandate, the CI undertakes financial inspection on ministries, public institutions and municipalities, with some exceptions.



## Council of Ministers

The approval of the COM is mandatory for exceptions in Public Procurement procedures. The COM also appoints General Directors and heads of the independent control agencies, most of which are within its structure.



## Ministry of Interior and Municipalities

Has the role of approving and monitoring public expenditures done by municipalities and union of municipalities.



## State Council

Handles complaints related to public procurement before and after contract signature.

# The Central Tender Board: Central in Theory, Limited in Practice

Pursuant to the Tender Regulations of 1959, the Central Tender Board (CTB) is entrusted with carrying out procurement on behalf of ministries (except Ministry of Defense, Internal Security Forces and General Security) and public institutions (if not contradictory with their own regulations) when the contract value exceeds 100 million LBP. The CTB is supposed to play a key role in public procurement, but its role is often bypassed.

## Role and history

- Established through decree-law 115/1959
- The Tender Regulations set out the framework within which the Central Tender Board functions and determine its role in relation to the procurement process. However, the Tender Regulations apply to public institutions and autonomous agencies insofar as they do not contradict with their internal regulations. In practice, most public institutions conduct their procurement locally and bypass the Central Tender Board. Municipalities and UoM also conduct their procurement internally.
- Mission:
  - Plan:** CTB consolidates yearly plans received from different procuring entities into one general yearly procurement Plan, and publishes it in 5 local newspapers and in the Official Gazette.
  - Advise:** When carrying out procurement on behalf of a procuring entity, the CTB reviews the tender documents and gives feedback on them. However, this feedback is not binding for the procuring entity.
  - Evaluate and manage:** When carrying out procurement on behalf of the procuring entity, for procurements with estimated values exceeding 100 million of LBP, the CTB is responsible for the announcement of the procurement in three local newspapers as in the Official Gazette, and receiving the proposals from bidders. A special tender committee formed by the Head of the CTB is responsible of opening and evaluating the proposals received, as well as identifying the winning bidder. After that, the whole file and results are communicated to the procuring entity for approvals and contract signature.

## Composition and leadership

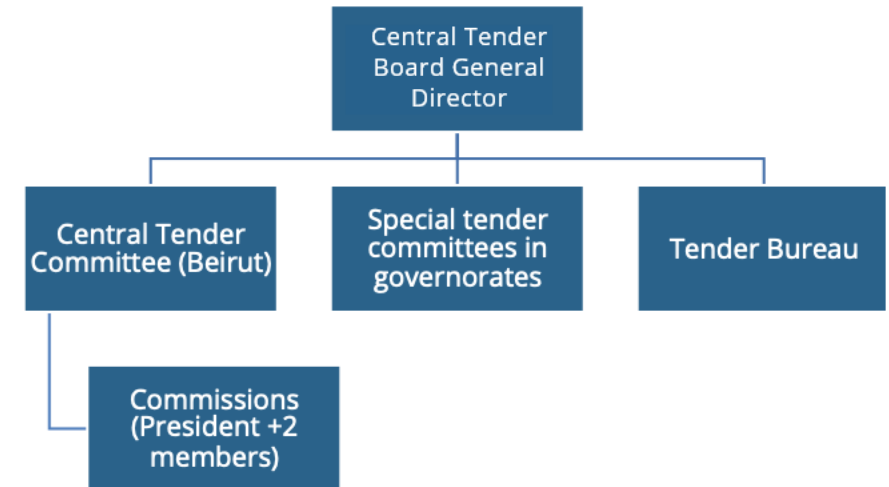
- As per the Tender Regulations of 1959, the CTB General Director has the authority to form tender committees to open and evaluate tenders. Each committee has at least one president and two members, including one rapporteur. In addition, one of the two members is the representative of the Ministry of Finance.

Although the CTB is independent in its decisions regarding Public Procurement, it is administratively attached to the CI.



**Current director general:**  
**Jean Allieh, appointed in 2012**

**Headquarters:**  
**CI Headquarters, Hamra, Beirut**





# The Ministry Of Finance: Cumbersome and Selective Control

The Ministry of Finance (MoF) interferes at many levels in the procurement system, and especially at the level of planning and expenditure control. This cumbersome process applies to all ministries, but not to all public institutions, which expenditures control is done either internally or through a Government commissioner, especially for big spenders like CDR. MoF also manages fiscal policy and public debt which gives it a major role in economic reform.

## Role and history

- The role and functions of the Ministry of Finance are set out in decree no. 2868/1959
- **The MoF also leads the government's economic reform** through the formulation of fiscal policy and by managing public debt in order to foster sustainable economic growth in alignment with national priorities. It is expected to lead by example in transparency, accountability, and good governance and is responsible for sound public financial management to ensure value for money.
- **It is responsible for controlling government expenditures**, and particularly making sure that the expenditure is assigned available funds in the budget, and is in line with laws and regulations. This process is extremely long and cumbersome.
- **Government expenditure control is binding upon ministries.** Expenditures may not be engaged without the prior approval of the Expenditure Controller of the MOF. Many public institutions and autonomous agencies are exempted from this control.

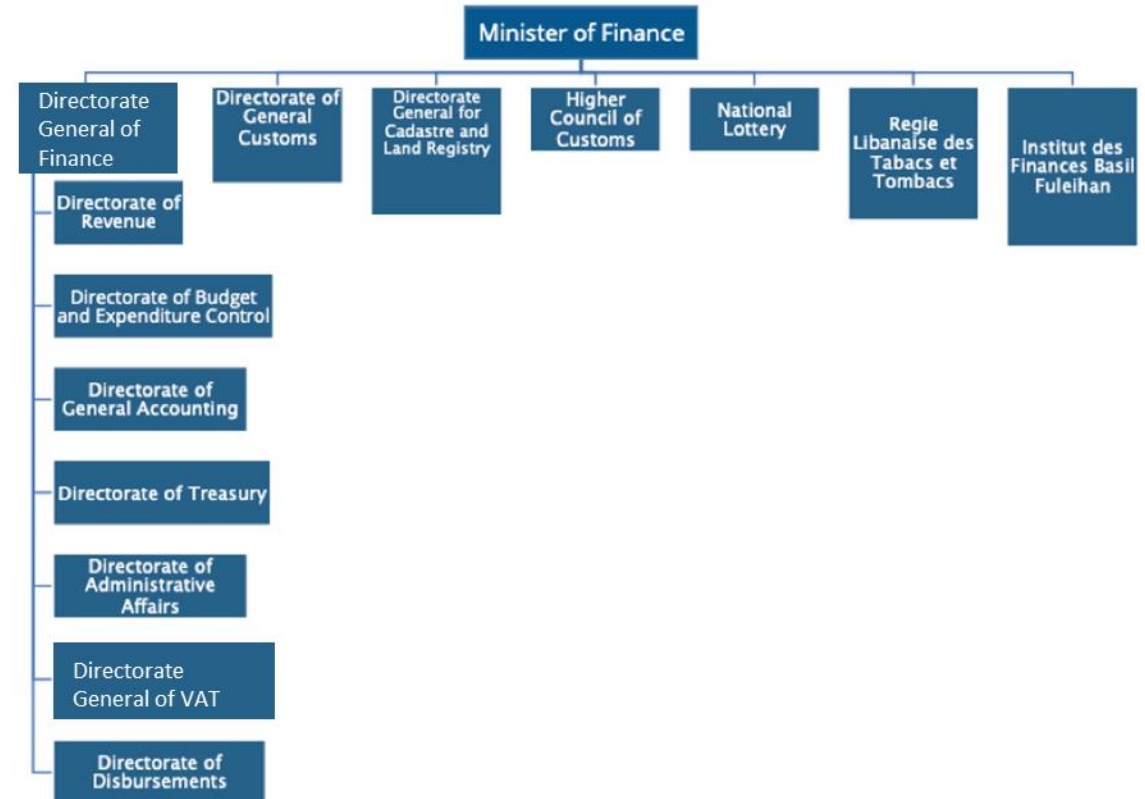
## Composition and leadership

- The Ministry of Finance is composed of many general directorates and other institutions. The General Directorate of Finance plays the key role in Public Procurement. It has an "Expenditure Controller" assigned in each ministry.



**Current minister:**  
**Ghazi Wazni,**  
**appointed in 2020**

**Headquarters:**  
**Riad El Solh, Beirut**



# The Court Of Accounts: Overlapping Audit and Weak Prosecution

Although the Lebanese Constitution provided for its creation in 1926, the Court of Accounts (CoA) was practically created in 1951 as an administrative court entrusted with the mission of overseeing the management of public funds. It performs a compliance audit on public spending prior to contract signature and post contract execution. The CoA audit depends on the nature of the procuring entity, as well as on the amount of the contracts. In practice, things are not that simple with overlaps and limited powers.

## Role and history

- The creation of the Court of Accounts was observed by article 87 of the Lebanese Constitution of 1926, which stipulated that “the final accounts of the government for each financial year must be submitted to Parliament and approved before issuing the budget of the following financial year. A special law shall be issued for the establishment of a Court of Accounts.”
- The Court mission includes **ex-ante audit** on public procurement, i.e. validation of the procurement process before contract signature. This role overlaps with the the role of the MoF in controlling expenditures. CoA mission also includes **ex-post audit**, i.e audit after contract execution. However, this type of audit is limited to a number of transactions, beyond a certain threshold (e.g.transactions of goods and works exceeding LBP 75,000,000). It also **prosecutes** civil servants who have violated procurement laws (excluding ministers). It can impose fines up to 1 year of salary which has a limited impact. The Court can also refer cases to competent Tribunals.

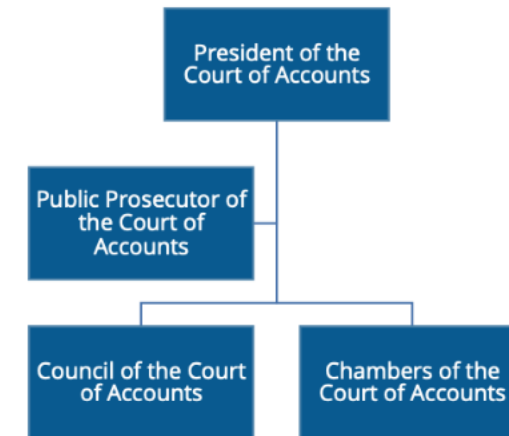
## Composition and leadership

- The Court’s personnel includes the judicial cadre (president of the court, CoA public prosecutor, and judges), the professional cadre (auditors and controllers), and the administrative cadre.



**Current president:**  
**Mohamed Badran,**  
**appointed in 2019**

**Headquarters:**  
**Hamra, Beirut**



# The Central Inspection: High Expertise, Low Resources

Established in 1959 as part of the wide administrative reform launched by President Fouad Chehab, the Central Inspection (CI) was entrusted with the mission of ensuring the inspection function throughout the public service. Today this institution has specialized expertise in various areas that can achieve audit and oversight at a substantive level, but it is understaffed and barely catching up with endemic corruption across the public administration.

## Role and history

- Established in 1959, the CI replaced the previous decentralized system of ministerial inspection that lacked the necessary independence to exercise proper inspections on fellow civil servants in the same ministry. It also replaced the State Inspection Commission that was created in 1953 under President Camille Chamoun as a compromise between a strong and independent central inspection agency and a decentralized inspection system relying on ministerial inspectors.
- Under President Fouad Chehab, the administrative reform, launched in 1959 through the Central Committee for Administrative Reform, focused on strengthening the control mechanisms throughout the public service to ensure efficiency and performance. In this context, the CI was created by virtue of decree-law 115/1959 as a new centralized and stronger inspection system.

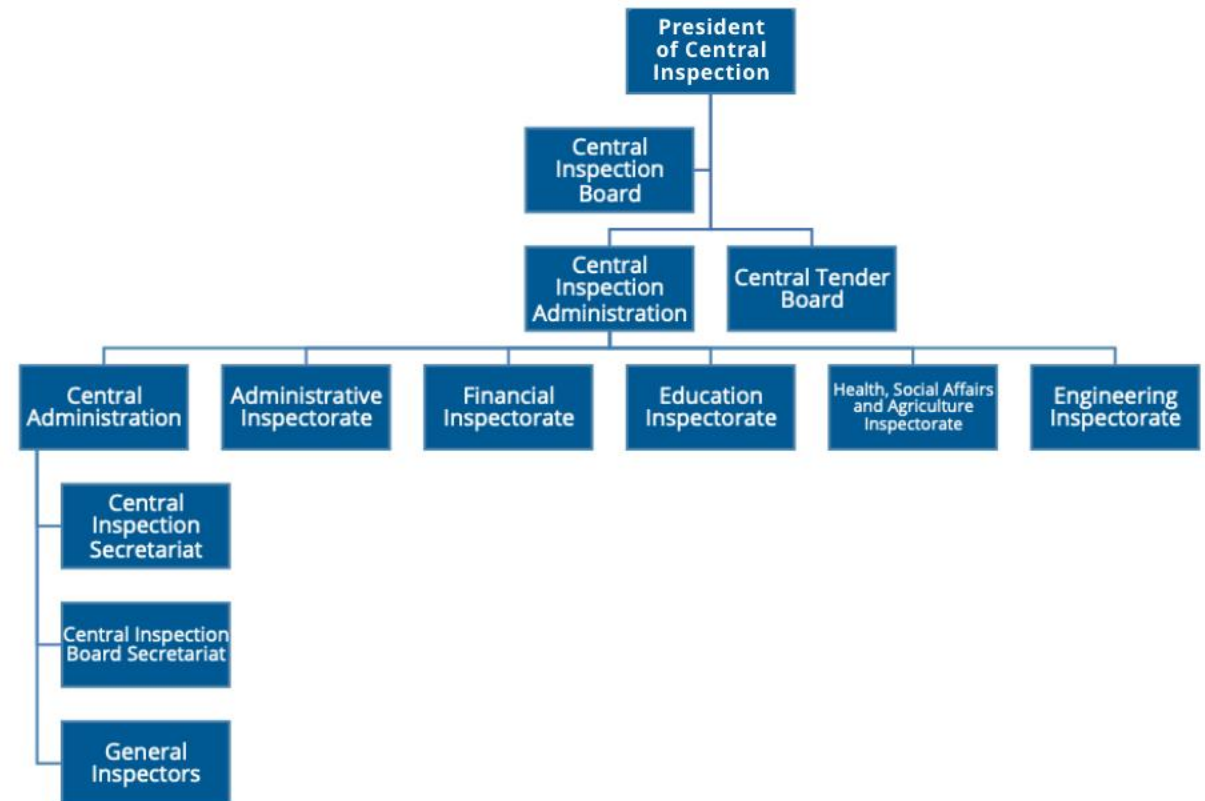
## Composition and leadership

- The CI is composed of five general inspectorates that specialize in various areas related to public administration, and the Central Tender Board that handles issues related to public tenders, in addition to the Central Inspection Board (CIB) which handles all matters related to CI and public administrations and decides on sanctions to impose on offending civil servants.



Current president:  
Georges Attieh, since 2017

Headquarters:  
Hamra, Beirut





# The Ministry of Interior: Regional Leverage

The Ministry of Interior was created in the first post-independence government in 1943. In 2000, it was named the Ministry of Interior and Municipalities (MoIM) by virtue of decree no. 4082/2000. It conducts administrative oversight over the decisions of the municipal council and union of municipalities' council which gives it leverage over municipal procurement.

## Role and history

- The Ministry of Interior and Municipalities is concerned with Lebanon's internal affairs. Its duties range from preparing, coordinating, to implementing, and overseeing the reign of order and security. The ministry supervises the affairs of governorates, districts, municipalities, municipal unions, the independent municipal fund, mukhtar, and other elected or appointed local councils.
- The Minister of Interior and Municipalities approves the general conditions for the sale of municipal assets, and the general conditions regarding transactions of supplies, works and services

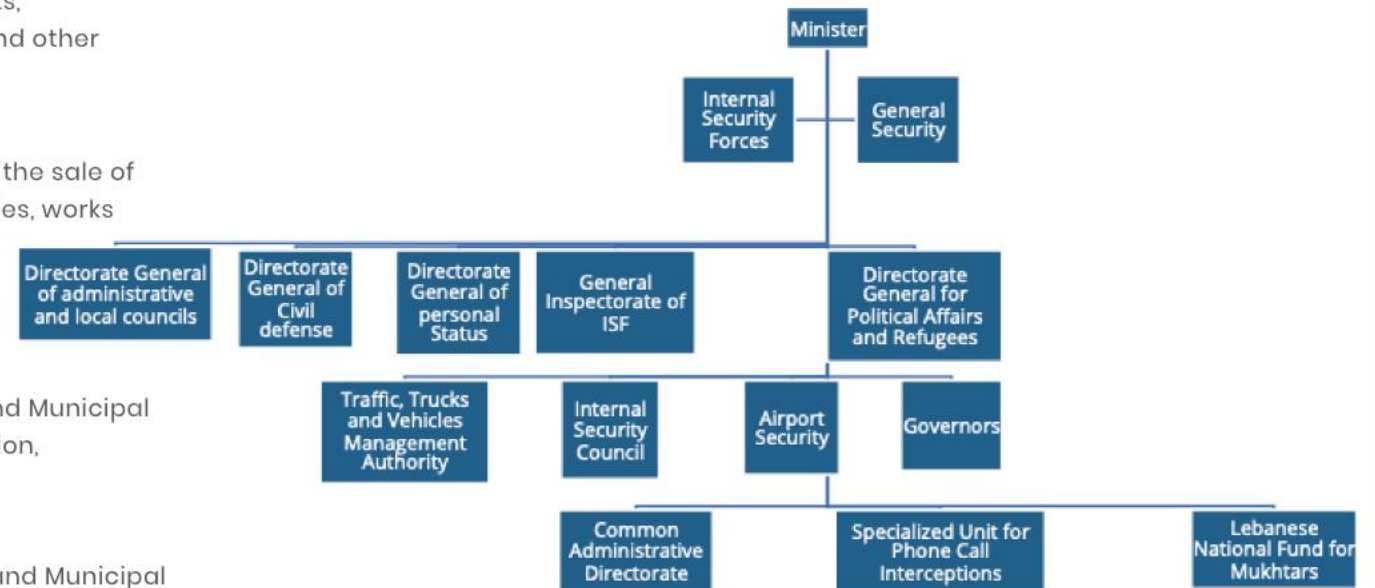
## Composition and leadership

- The MoIM has several directorates, including a General Directorate of Local and Municipal Councils which ensures coordination mainly between the central administration, governorates, and districts.
- A Controller General, who is an employee of the General Directorate of Local and Municipal Councils is in charge of expenditure control over the works of the municipalities and Unions of Municipalities which include expenses related to public procurement contracts.



**Current minister:**  
**Mohamad Fahmi, since**  
**2020**

**Headquarters:**  
**Hamra, Beirut**





# The Council Of Ministers: Diversion and Arbitrary Power

The Council of Ministers (CoM) was created in 1926 when the Constitution of the state of Greater Lebanon was promulgated. However, it was not until the end of the civil war and the ratification of the Taif accord that the role of the council was notably strengthened and listed in the Constitution. The Council of Ministers is the main decision maker with regards to mutual agreements, which provides a big influence over the procurement system.

## Role and history

- Following the end of the civil war and the ratification of the Ta'if accord, the executive power shifted to the President to the Council.
- According to article 65 of the Constitution, the executive power is vested in the Council of Ministers. The Council of Ministers convenes periodically and is presided by the President of the Council of Ministers.
- The legal quorum for its convening is a two-thirds majority of its members to agree on 'basic issues' such as state budget, constitutional amendments, and long term development plans amongst others.
- The approval of the Council of Ministers is needed for ministries to conclude mutual agreements, outside of the cases enumerated by law.
- Oversight agencies are under the umbrella of the Council of Ministers: the Central Inspection (which includes the Central Tender Board), the Court of Accounts, the Higher Disciplinary Council and the Civil Service Board.

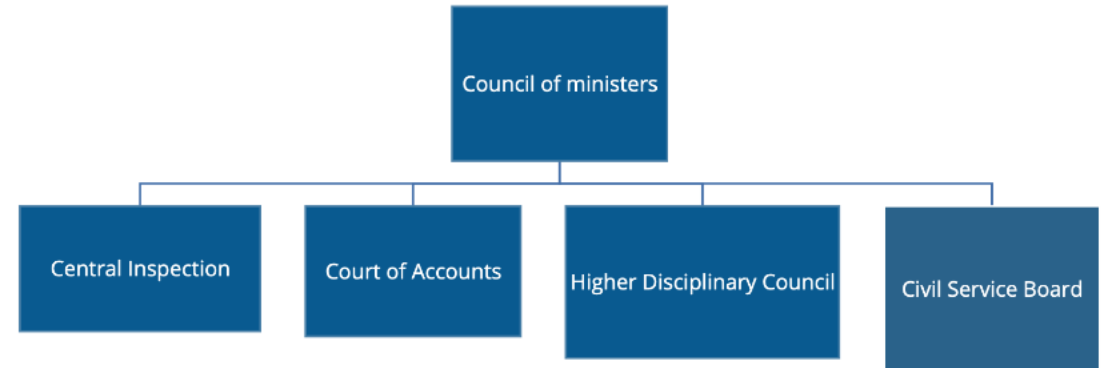
## Composition and leadership

- The Prime Minister presides over the Council of Ministers and is responsible for executing governmental public policies. The Prime Minister convenes the Council of Ministers, and elaborates its agenda.



**Current president:**  
**Hassan Diab,**  
**appointed in 2020**

**Headquarters:**  
**Grand Serail, Beirut**



# Parliamentary Oversight and Investigation: a Rare Commodity

The parliament votes the budget and is the main recipient of the annual reports produced by the Court of Accounts and the Central Inspection which can be used to enforce political accountability of the Cabinet or individual ministers. However, its influence over public procurement is often curbed by political obstacles and widespread public spending outside the regular budget.

## Role and history

- The role and functions of the Parliament are observed in the internal bylaws dated October 1994 and last amended in 2003. Seats in the Parliament are equally distributed between Christians and Muslims, but elected by universal suffrage
- Two ordinary sessions are held every year where the budget is presented, including state expenditures and revenues for the next year. The budget is voted item by item.
- The oversight role of Parliament is also covered in its by-laws which stipulate the creation of special committees to conduct investigations. Nevertheless, there has not been any serious effort to use this prerogative, whether in public procurement or other areas.

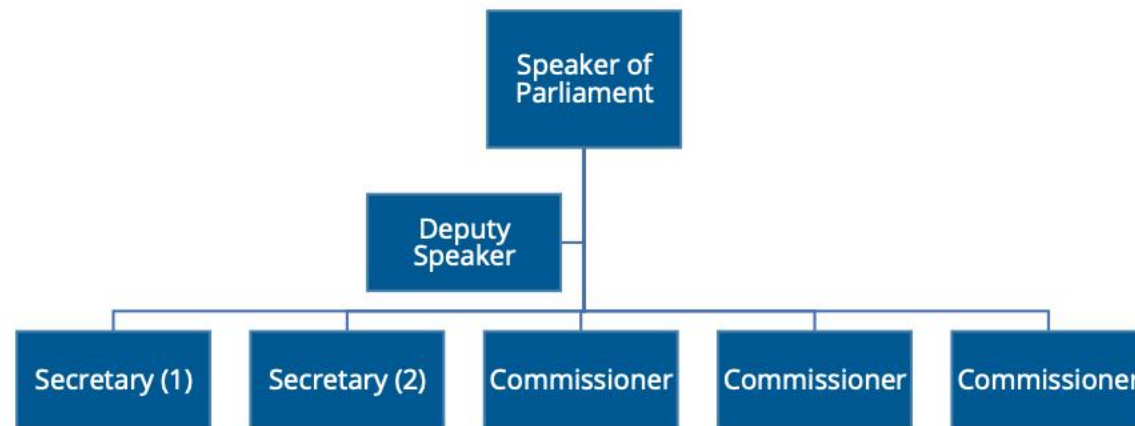
## Composition and leadership

- The Parliament consists of elected representatives whose number and election procedure are determined by the electoral law in effect. Decisions are taken by the majority of votes.
- There are two parliamentary committees which play a key role in oversight and accountability:
  - 1.the **Justice and Administration committee** and
  - 2.the **Finance and Budget committee**.



**Current Speaker:**  
**Nabih Berri,**  
**elected in 1992**

**Headquarters:**  
**Downtown, Beirut**



# The State Council: Overload and Underperformance

The State Council (SC), which was established by virtue of law no. 10434 of 14 June 1975, is currently the supreme administrative jurisdiction in Lebanon. The Court is overloaded and has limited impact over procurement complaints and appeals.

## Role and history

- The Lebanese administrative justice system is largely inspired by the French system. It is worth noting that both systems are headed by State Councils, which have both advisory and adjudicative roles.
- The last amendments to the Statute of the State Council, by Act no. 227 of 31 May 2000, provided for the establishment of first level administrative tribunals in each of the six provinces of Lebanon, but this reform has yet to be implemented.
- The State Council looks at administrative contracts which includes public procurement contracts. It can cancel decisions, or grant indemnification in specific circumstances. Summary measures may also be pronounced by the judge of summary proceedings before the contract is awarded.

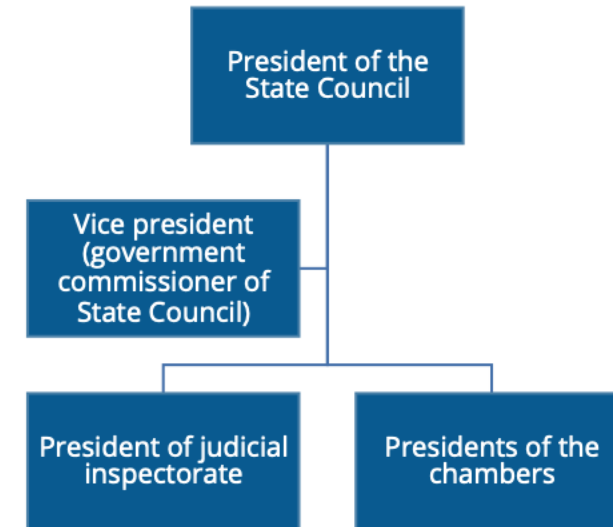
## Composition and leadership

- According to article 34 (3) of the Statute of the State Council, it is divided in seven departments: the Council of cases, followed by six chambers: one administrative chamber and five judicial. The President of the administrative chamber is the President of the State Council; the Presidents of the five judicial chambers are members of the State Council Bureau. The Council of cases is composed of the President of the State Council (as president), the Presidents of the chambers, and three advisors chosen by the President at the beginning of each judicial year.



**Current president:**  
**Fadi Elias, appointed in**  
**2020**

**Headquarters:**  
**Justice Palace, Beirut**



# .05

## **A LIMITED SCOPE AND INEFFECTIVE PROCUREMENT AGENCY**

The Central Tender Board suffers from numerous limitations on more than one level, from scope to standards, means and resources.

# The Central Tender Board Mission

**Pursuant to the Tender Regulations, the Central Tender Board is entrusted with managing public tenders, reviewing bidding documents and providing feedback and comments to the procuring entities.**

- The Tender Regulations set out the framework within which the Central Tender Board functions and determines its role in relation to the procurement process.
- The Central Tender Board publishes an annual procurement plan, which includes the procurement plans of all administrations.
- The Central Tender Board also looks into the bidding documents of bids exceeding LBP 100,000,000 and gives non-binding feedback to the procuring authorities.
- The CTB carries out the procurement on behalf of Public Administrations and over a certain threshold (100 million LBP), which includes the thorough review of the bidding documents, announcements, receipt of proposals and opening and evaluation of tenders, until identification of the winning bidder.
- Within the Central Tender Board, a Central Tender Committee based in Beirut conducts the evaluation of submitted bids through a rotation of weekly commissions and communicates the tender results to the procuring authority.

## **Plan**

CTB unifies yearly procurement plans of administrations and publishes an annual plan.

## **Advise**

CTB conducts an assessment of bidding documents for procurement transactions that exceed LBP 100,000,000 and gives the procuring authority non-binding feedback.

## **Evaluate and Carry Out**

CTB conducts evaluation of bids and sends the result to the procuring entity. CTB conducts the procurement process of transactions pertaining to public administrations, which exceed LBP 100,000,000.



## Limited Scope

The Central Tender Board suffers from numerous limitations on many fronts and a limited scope of work, which results in low performance and biased practices.

- **Limitation over size of procurement**

The Central Tender Board mandatorily assesses bidding documents in relation to transactions exceeding LBP 100,000,000 and conducts the procurement process for those transactions. For the transactions below such amount, the procuring entities are free to refrain from sending their bidding documents to the CTB, which is the current practice. **Bid slicing** to escape CTB control is a major issue. Ministers have been reported to resort to Requests for Proposal, each amounting to less than LBP 100,000,000. Nonetheless, article 123 of the Public Accounting Law prohibits bid slicing. The expenditure controller appointed by the Minister of Finance in relevant ministries must make sure that no bid slicing is occurring. Evidence and metrics are not available given that administrations do not always inform the CTB of the number and types of transactions concluded. In fact, ministers mainly rely on the power granted to them by virtue of the Public Accounting Law, whereby the competent authority in charge of committing expenditures considers that the nature of concerned works, equipment, and services justifies slicing.

- **Limited jurisdiction over institutions**

The provisions of the Tender Regulations are applicable to municipalities, public institutions and autonomous agencies insofar as they do not conflict with the latter's laws and regulations. In practice, municipalities and Unions of Municipalities have their own procurement system provided for in their own regulations.

The same applies to all public institutions which are considered as big spenders, such as the Council for Development and Reconstruction and the Council of the South. As such, **numerous entities' regulations allow them to legally bypass Central Tender Board control .**

# Chacun Pour Soi

Public institutions and autonomous agencies are supposed to conduct their procurement transactions through the Central Tender Board. However, they may escape the Tender Regulations provisions if their own regulations allow them to do so. This is the case for most public institutions and autonomous agencies, such as the Council for Development and Reconstruction, EDL, and the Lebanese University amongst others. The same reasoning applies to municipalities and unions of municipalities. Municipalities Law no. 118/77 derogates from the Tender Regulations provisions, given that it provides for the creation of a bidding commission for each municipality, thus conducting procurement internally. Furthermore, the Tender Regulations clearly state that they are not applicable to the Ministry of National Defense, Security Forces, and General Security Forces.

CENTRAL TENDER BOARD

	Full control	Partial control	Explicit exclusion	No control
Public Administrations		✓		
Public Institutions				✓
Municipalities and UoM				✓
Autonomous agencies				✓
Security and military agencies			✓	

Slicing and workarounds

May escape if their own regulations allow them to do so

Explicit exclusion by Tender Regulations

# Absence of Standards

The absence of unified standard bidding documents further exacerbates the existing scattered practices across procuring entities, and civil servants entrusted with public procurement functions do not always possess qualifications up to the standards.

- **Absence of unified standard bidding documents**

This absence complicates the procurement process, as civil servants across all public administrations and institutions entrusted to prepare these bidding documents have no standard references to which they can resort. This also **threatens competition** and **limits the entry of new service providers** as bidding documents may be tailored to suit the qualifications of a specific bidder. This ultimately increases the risk of collusion and corruption.

- **No requisite criteria for civil servants**

The commissions responsible for evaluating bids are composed of civil servants from different administrations, one of which represents the Ministry of Finance. The Tender Regulations do not provide for a set of professional qualifications that the civil servants must meet, apart from being civil servants of 3rd category at least. Pursuant to the Tender Regulations, the Central Tender Board obtains, from different public administrations, lists of candidates which will form the Central Tender Committee. The Central Tender Board President selects from these lists: (1) presidents of commissions, (2) representatives of the Ministry of Finance, and (3) members of commissions. The final selections are submitted to the Central Inspection Board for approval. As such, there is a risk that those conducting the evaluation of bids **do not possess the necessary qualifications** and/or expertise.



# Non Binding Comments: The Good, the Bad and the Ugly Examples

Following the review of bidding documents by the Central Tender Board, if any violations or absence of necessary information are detected, they are notified to the Central Inspection and returned to the procuring authority. The procuring entity has to inform the Central Tender Board of its decision within a period of 5 days and remains free to disregard the comments. There are many examples in Lebanese recent history where political actors have taken advantage of this weakness, ignoring completely the Central Tender Board's recommendations. Two examples follow.



## • Mechanical Inspection Centers (2015)

In complete contradiction with the Tender Regulations, the Council of Ministers had assigned the Central Tender Board to conduct the tendering process provided that the bidding commission is formed of members appointed by the Traffic Management Organization. This was the first time such measure is taken in the Central Tender Board's history, and is a serious violation of its status. According to the Tender Regulations, bidding commissions are formed by the Director General with the approval of the Central Inspection Board.

The CTB made several propositions to amend the special bidding documents, including the recommendation that the bidding commission be exclusively formed by the lists approved by the CI. The Council of Ministers completely disregarded the CTB's feedback and requested that the Traffic Management Organization proceeds with the procurement. This case illustrates the executive's political grip on procurement, stripping the CTB of its already limited prerogatives provided for by the tender regulations.



## • Electricity Ships Request for Proposal (since 2012):

The development of the case is rather complex but may be summarized as follows. The period for submitting offers was of three weeks, which was deemed too short for a procurement with this complexity. The CTB was only given 48 hours to study the bidding documents. The CTB submitted its review, which included reference to clauses that restricted competition (there was only one bidder) and unreasonable delays to submit offers. However, the CTB comments were not taken into account.

According to media sources, ships have cost the Lebanese state around USD 755,000,000 from 2012 until 2017.

# CTB: Weaknesses and Strengths

To sum up, the Central Tender Board exhibits a number of strengths. But it also has weaknesses and legislative shortcomings which constitute clear symptoms of a failing procurement system. The current system is also flawed by unnecessary checks and delays in relation to various processes and stakeholders.

## Strengths

### Transparency

The Central Tender Board has an accessible website and publishes yearly reports of its activities, in addition to the yearly procurement plan. The CTB's website is: [www.ppma.gov.lb](http://www.ppma.gov.lb). The CTB also publishes procurement notices and award results.

### Works for procurement improvement

The Central Tender Board is active in preparing templates to enhance internal work to the extent possible, such as the Unified General Conditions, Declaration of Integrity, Price Template, Model Special Conditions.

## Opportunities

### Public pressure and support

Demonstrations of October 17 with demands for reform and to fight corruption.

Increased scrutiny on procurement, which is considered by the crushing majority as a source of public funds squandering.

### Political engagement

Political engagement to fight corruption.

The ministerial statement of the current government contains an engagement to empower oversight agencies and to fight corruption.

### International pressure and support

International community pressure to launch reform programs and fight corruption.

International funding to support the CTB (such as the Technical Assistance Project funded by the European Union).

## Weaknesses

### Lack of human resources

The CTB has only 6 civil servants, whereas the law requires 18.

### Absence of unified standard bidding documents

### Limited jurisdiction

Municipalities, Unions of Municipalities, and public institutions do not refer to the CTB.

CTB only mandatorily reviews bidding documents for transactions > LBP 100,000,000, and carries out the procurement on behalf of Public Administrations for such transactions.

### No binding authority

While studying the bidding documents, the CTB only gives non-binding recommendations and the procuring authority remains free to decide on the matter.

### Unspecialized Committees

CTB committees are not chosen upon predetermined and relevant professional qualification

## Threats

### No regulatory authority

Absence of a regulatory authority in Lebanon which unifies the procurement framework and oversees the process. The Lebanese procurement system suffers from a lack of standardization (e.g. no standard unified general conditions).

### Lack of transparency

The administrations do not always publish their annual plans and budgets, which hinders the CTB's work.

### Corruption

Administrations often slice bids to escape CTB oversight and refer to mutual agreements to shortcut the competitive procurement process.

Absence of a unified public procurement law.

# .06

## **PARTIAL AUDIT AND CONTRADICTING LAWS**

This section looks at the limitations on the scope of key oversight institutions.

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# Central Inspection: Full or Partial Oversight

The Central Inspection has a rather wide jurisdiction, covering a large array of public administrations and institutions with some exceptions applying to certain entities. Interpretations of the law have been diverse. Some political actors have stated that CI has no oversight over ministers. The president of CI stated that it does not have political oversight, but has full administrative oversight over ministers who are part of the public administration hierarchy falling under its mandate. Remains however the problem of the institutions that are explicitly excluded from its scope.

According to some newspapers, late Prime Minister Rafic Hariri had sent, while in tenure, a letter to the Central Inspection stating that it was not competent to investigate ministers and oversee their activities and actions, as they are not considered civil servants, which raises questions of accountability given their pivotal role in public procurement.

As for public institutions, some exclude all Central Inspection intervention, while others limit it. For instance, CDR excludes it, whereas OGERO is only subject to financial inspection. On the other hand, the Council of South is subject to full CI oversight.

Regarding municipalities and unions of municipalities, their decision-making and executive powers are not subject to CI oversight. This is the case of procurements less than LBP 30,000,000. Above such amount, the procurements is decided by the qaemmaqam and/or the mohafez depending on the amount.

The judiciary and security and military agencies are subject to a financial inspection only.

CENTRAL INSPECTION OVERSIGHT	Full oversight	Partial oversight*
Public Administrations	✓	
Public Institutions		✓
Municipalities and UoM		✓
Judiciary		✓
Security and military agencies		✓
Civil Servants	✓	

\*By partial oversight, it is meant that CI oversight may be restricted to financial operations and activities, or to another specific area. Partial oversight may also exclude a certain type of activities and decisions (e.g. decision-making and executive powers of municipalities).

# SWOT Analysis: Central Inspection

The CI, which englobes the Financial Inspectorate, is a vital oversight agency that has been considerably weakened throughout the years. Its reinvigoration is crucial in order to properly fulfill its role of overseeing the sound running of administrations. CI has the power of drilling in details through its technical expertise (engineering, administration, health, education and finance) but also can be self activated through risk and threat analysis and assessment.

## Strengths

### Wide jurisdiction

CI's jurisdiction covers public administrations, public institutions, civil servants, municipalities, with entities being subject to partial oversight.

### Complaints mechanism

Complaints may now be submitted online with the IMPACT tool, which is beneficial to bidders to report malpractice.

### Disciplinary powers

The CI pronounces disciplinary measures without the need to refer to the relevant minister (the approval of the administration is not required).

### Expertise

CI inspectors have expertise and skills.

### New tools

New and updated website, which promotes transparency.

## Opportunities

### Public pressure and support

Reinvigoration of CI role under the growing scrutiny of the public following the 17 October demonstrations, and the demands period to empower oversight agencies

### Political engagement

The ministerial statement lists the empowerment of oversight agencies as one of its priorities.

### International pressure

Increasing international community pressure to launch reform programs and fight corruption, together with international donor support for the CI.

## Weaknesses

### Lack of human resources

CI is understaffed, with 190 vacancies according to its latest report of 2018.

### Lack of financial resources

CI does not benefit from the necessary budget to properly carry out its mission

### Legal framework

- Entities falling outside of scope
- Municipal employees performing decisional and executory acts outside of scope

### Insufficient tools

- Lack of audit methodology
- Lack of automated processes

## Threats

### Paralyzing political tensions

Tensions between key figures within CI, each affiliated to a different political party, put a strain on CI efficiency. As such, interferences on a political and confessional level obstruct the CI from performing its mission.

### Confusion of roles and duplication

The oversight and control scheme in Lebanon is not clear, as the borders between the various agencies are blurred. Overlapping functions (between CI and CoA for instance) may create unnecessary checks and delays



# Court of Accounts: Contradictory Laws Again

As to the Court of Accounts, its audit function encompasses a large array of entities, and is divided in two phases: the ex-ante audit, and the ex-post audit. However, not all entities are subject to both the ex-ante and ex-post audit functions. Laws are often contradictory with only arbitrary resolution of these contradictions.

Not all municipalities and unions of municipalities are subject to the Court of Accounts oversight. The ones that are, are determined by virtue of a decree. There is a discrepancy between the texts. The CoA regulations state that the municipalities and unions of municipalities that are under its oversight are nominated by virtue of a decree upon the Prime Minister's proposal, whereas the Municipalities Law states that nomination is done upon the Minister of Interior's proposal. There is therefore a lack of uniformity among municipalities and unions of municipalities that are subject to CoA oversight, contributing to unnecessary confusion.

Numerous institutions are not subject to any kind of oversight by the Court of Accounts, such as the Central Bank (article 13 of the Code of Money and Credit), or the Agricultural, Industrial, and Real Estate Credit Bank (article 10 of law dated 16/7/1954).

Public institutions such as the Council for Development and Reconstruction and the Council of South are only subject to the Court of Accounts' ex-post audit. Their expenditures are therefore neither pre-audited by the court, nor by the MoF.

According to the Public Accounting Law, security and military agencies are subject to Court of Accounts oversight (except for procurement of a secret nature). However, the court does not have access to classified documents, unless approved by the relevant authority (e.g. the chief commander regarding the army).

COURT OF ACCOUNTS OVERSIGHT	Ex-ante	Ex-post	No oversight
Public Administrations	✓	✓	
Public Institutions	✓	✓	
Municipalities and UM	✓	✓	
Judiciary			✓
Security and military agencies	✓	✓	
Central Bank			✓

- ✓ Lack of uniformity in the texts. The checks do not apply to all public institutions and municipalities and UoM unanimously.
- ✓ Not all procurement transactions conducted by public administrations are automatically subject to the Court of Accounts oversight, but only the transactions exceeding a certain threshold.

# SWOT Analysis: Court of Accounts

A SWOT analysis of the CoA reflects its importance in the procurement process. However, its efficiency in overseeing all financial matters, among which public procurement transactions, is mostly compromised by political interference.

## Strengths

### Extensive jurisdiction

The CoA exercises its oversight over 24 ministries, around 40 municipalities and 74 public institutions.

### Diversified personnel

The CoA comprises judges, auditors, controllers, and administrative employees.

### Independence

An independent Public Prosecution forms part of the CoA, which further focalizes the court's investigative and disciplinary power.

### Public procurement oversight

The CoA has a mandatory ex-ante audit over public procurement transactions exceeding a certain threshold (this concerns administrations subject to its ex-ante audit, i.e. ministries). It also has the role of ex-post audit, when competent by virtue of the law.

## Opportunities

### Public pressure and support

The CoA may reinvigorate its activities under the growing scrutiny of the public following the 17 October demonstrations.

### Introduce performance audits

### International pressure and support

Increasing international community pressure to launch reform programs and fight corruption. The CoA should take advantage of existing initiatives by international organizations to re-enforce its role (through digitization, training, support, etc.)

### Political engagement

The ministerial statement lists the empowerment of oversight agencies as one of its priorities. The COM's latest decisions also affirm the will to reinforce the CoA's ex-post audit.

## Weaknesses

### Risk of duplication of functions

- With the CI financial inspectorate regarding ex-post audit
- With the MoF's expenditure control

### Lack of human resources

### Limited jurisdiction

Entities of considerable importance and budgets fall outside of the CoA's jurisdiction (Central Bank, CDR and CoS partially, etc.).

### Lack of Resources

CoA does not benefit from the necessary funding to properly carry out its mission. It also lacks human resources, and does not conduct performance audits.

### Weak disciplinary power

Offending employees are fined from LBP150.000 to LBP1.500.000, in addition to a fine ranging from one month to a year salary, which is not a sufficient deterrent sanction to prevent financial corruption.

## Threats

### Confessional balance shaken, which may cause tensions

The appointment of a shiite CoA President in September 2019, has shaken the confessional balance of the CoA given that the Shiite confession has now a President as well as a Head of Chamber. Although not irrevocably ascertained, this may cause tensions since the Lebanese landscape is plagued by confessional considerations.

# The Untouchables

A major source of malpractice arises from the fact that many public institutions and autonomous agencies escape control and oversight, such as the Council for Development and Reconstruction, EDL, the Lebanese University, the Council of the South, etc. where the practice of conducting expenditure control and approval internally constitutes a risk to violate laws and regulations, which will most likely result in public funds squandering. Lack of transparency is also a problem. For instance, financial regulations of some institutions are not accessible to the public and only insiders may obtain them.

	CoA oversight		CI oversight		Internal Audit	Source of Budget	
	Ex-Ante	Ex-Post	Administrative	Financial		State Budget	Other sources
<b>Council of the South</b>	<b>No</b> Express stipulation in the Law	<b>Partial</b> Limited to the administration of the council's funds and accounts	<b>Yes</b>	<b>Yes</b> Limited efficiency	General financial controller Accountant	<b>Yes</b>	<b>Wide range of auxiliary sources</b> Allocations specified in special texts Aids and donations for spending on the council's goals Treasury advances Miscellaneous resources
<b>Lebanese University</b>	<b>Yes</b>	<b>Yes</b>	<b>No</b> <b>Oversight performed by an internal body</b> The University Council conducts inspection vis-a-vis the administrative and technical staff"	<b>Yes</b> Limited efficiency	Central Accountant Local Accountant in units related to the University	<b>Yes</b>	<b>Wide Range of auxiliary sources</b> Donations, registration fees, income from publications, property income, and various other incomes allocated to the university or those received as per provisions of the law
<b>Public institution for the management of RHUH</b>	<b>No</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b> Limited efficiency	Finance Director Internal Auditor	<b>Yes</b> "Contributions"	<b>Side Revenues</b> Revenues gained in exchange for medical services Any other revenues as stipulated by special laws
<b>Ogero</b>	<b>No</b>	<b>Limited</b> Submitting an annual report of its activities and a statement of its financial investments	<b>No</b>	<b>Yes</b> (Article 11 of the law establishing OGERO subjects it to financial inspection. However, in practice, the financial inspection most likely does not take place)	Financial Manager	<b>Yes</b>	<b>Wide range of auxiliary sources</b> Revenues from its activities, donations and aids, various revenues...



# The Untouchables

Apart from conducting expenditure control internally, most public institutions are not subject to Central Inspection oversight, while some of them are only subject to financial inspection, whereas the General Regulations of Public Institutions state that public institutions are subject to Central Inspection oversight. Escaping this kind of oversight is a threat to transparency and accountability. The ex-ante audit of the CoA is also practically non-existent, with a limited ex-post audit in most instances.

	CoA Oversight		CI Oversight		Internal Audit	Source of budget	
	Ex-Ante	Ex-Post	Administrative	Financial		State Budget	Other sources
<b>EDL</b>	<b>No</b>	<b>Limited</b> Exclusion of tasks conducted by the accountant based on written orders from the Secretary General – Most of cases	<b>Yes</b>	<b>Limited</b> Local auditing by the financial inspectorate	Accountant	<b>Yes</b>	<b>No</b>
<b>Social Security Fund</b>	<b>No</b>	<b>Limited</b> Only activities stipulated by law	<b>No</b>	<b>No</b>	Finance Director + Accountant	<b>Yes</b> “Allocations” within the budget and extraordinary after budget approval	<b>No</b>
<b>Agricultural Scientific Research Body</b>	<b>Inefficient</b> Contracts and deals of a value exceeding LBP 30,000,000 and loans of all natures are excluded	<b>Limited</b> On the general report, accounts and supporting documentations of the prior year	N/A However according to the decree “General by-laws of public institutions”, Public institutions are subject to CI oversight	N/A However according to the decree “General by-laws of public institutions”, Public institutions are subject to CI oversight	N/A However, a controller of expenditure of third category at least is appointed in every public institution to oversee its availability of funds and conformity of activities to laws and regulations	<b>Yes</b> “financial aid” stipulated in the budget of the Ministry of Agriculture	<b>Wide range of auxiliary sources</b> Regular revenues: various grants and aid; revenues of properties, centers, projects and tests; revenues from the sale of publications, costs of analyses and technical activities conducted by the “Maslaha” on behalf of individuals, crops resulting from investing in novel plant or animal types or from discoveries made during research
<b>Port of Beirut</b>	N/A The information is not available.	N/A The information is not available.	N/A The information is not available.	N/A The information is not available.	Financial Oversight	N/A The information is not available.	

## Public Institutions: A Mirror of the Allotment State

The current legal framework is weak enough to allow the distribution of political institutions among various political groups. These institutions have their own internal regulations which often overrule the law allowing lack of transparency and governance. EDL, CDR, Central Fund for the Displaced, Port of Beirut and Rafic Hariri Airport and the Council of the South are a good illustration of this phenomenon. Below some examples for at least the past decade and often beyond.



## Public Institutions: A Mirror of the Allotment State

Broadly speaking, EDL has been under FPM, thus Christian management for many years, whereas the Council for Development and Reconstruction has been more or less under Future Movement, thus Sunni protection. As to the Council of the South, it was created to provide the Lebanese Southern population compensation for the losses caused by the Israeli invasion, and is believed to be allocated to the Shi'a Amal Movement. Hezbollah is renowned to control the port and airport.

**EDL:** Ministers of Energy and Water for the last 11 years have been FPM ministers:

2009–2011: Gebran Bassil

2011–2014: Gebran Bassil

2016–2018: Cesar Abi Khalil

2 Armenian Ministers.

**CDR:** Future Movement members of parliament have opposed the submission of CDR to oversight by the Ministry of Finance. The CDR is under the tutelage of the Council of Ministers, which is a position principally allotted to the Future Movement and their allies:

Rafic Hariri (1992–1998, and 2000–2004)

Fouad Siniora (2005–2009)

Saad Hariri (2009–2011, and 2016–2020)

Tammam Salam (2014–2016)

The CDR board of directors' tenure is expired since 2009.

**Council of South:** The Council of South is presided by Kabalan Kabalan, who is a member of the Amal Movement Presidential Committee. Ali Khreiss, a member of parliament representing the Amal Movement, has publicly refused the proposition to reduce the Council of the South budget in 2009, while speaking on behalf of Nabih Berri.

**Port of Beirut/Rafic Hariri Airport:** Hezbollah has been constantly accused of controlling the port and airport. A crisis emerged in 2008 when the Council of Ministers put pressure to regain control of the airport. This caused a deterioration of the relation with Hezbollah and led to street fights.

# .07

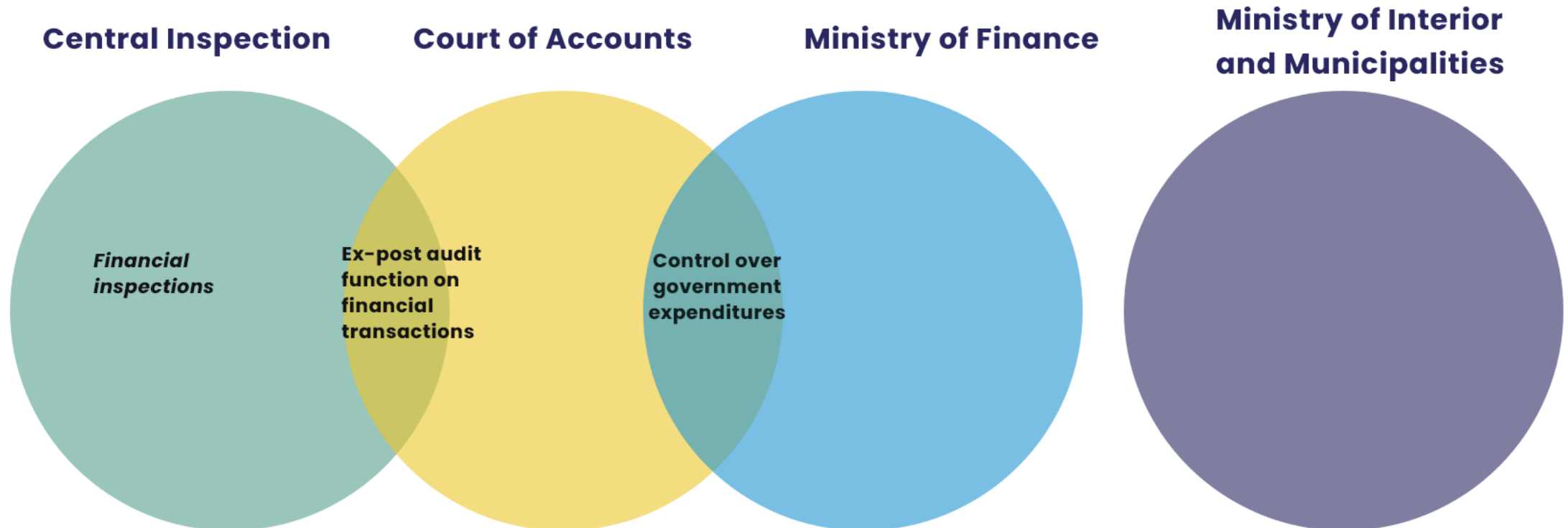
## **OVERLAPS AND RISKS OF UNNECESSARY CHECKS AND DELAYS**

This section looks at the risks of unnecessary checks and delays that are generated by the structure of the procurement system in Lebanon.

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## Gaps, Overlaps, and Organized Chaos

Overlaps are common among stakeholders. The texts are ambiguous as to whether the MoF's and CoA's ex-ante audit functions differ in substance. A risk of duplication also lies within the ex-post audit function, conducted by the Financial Inspectorate within the Central Inspection, and the Court of Accounts. In addition, control over public expenditures is conducted by MoF for most of the public administration entities, except the municipalities whose expenditures are controlled by MoIM.



## MoF-CoA: Overlap in ex-ante audit Function

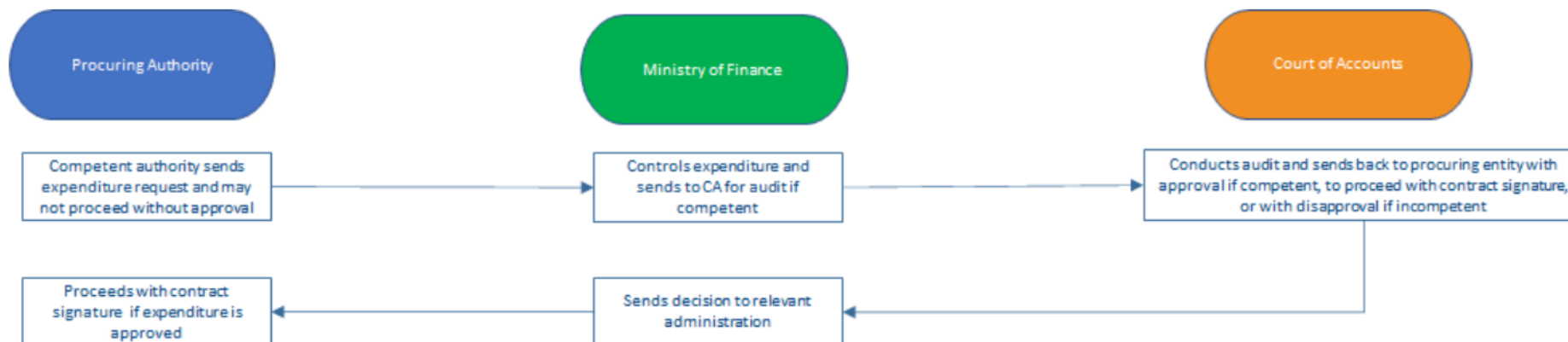
In general, expenditures are subject to a cumbersome prior control by a Ministry of Finance controller. The Court of Accounts also carries out such ex-ante audit function when the procurement exceeds a certain threshold. The texts are ambiguous as to whether the MoF and CoA pre-audit functions differ in substance, hence the risk of overlap of an already cumbersome process, potentially resulting in a duplication of functions and delays. When the MoF controller and Court of Accounts opinions diverge regarding the validity of the expenditure, the matter may be referred by the Minister of Finance to the Council of Ministers which weakens the ex-ante audit role of the CoA even further and increases the risk of conflict of interest.

### Ministry of Finance

- Ex-ante control on government expenditures makes sure that the expenditure is assigned available funds in the budget, and is in line with laws & regulations.
- No expenditure may be effected without the MoF controller's approval.
- This process is very long and cumbersome at a time technology can automate it.

### Court of Accounts

- Ex-ante audit on government expenditures for procurement regarding:
  - Goods and works exceeding LBP 75,000,000;
  - Services exceeding LBP 25,000,000; and
  - Mutual agreements exceeding LBP 50,000,000.
- This process is a duplication of MoF control at a time technology can automate it.





## CI-CoA: Overlap in ex-post audit Function

A risk of duplication also lies within the ex-post audit function, conducted by the Financial Inspectorate within the Central Inspection and the Court of Accounts. Whereas the Financial Inspectorate's audit is sometimes performed on an ad-hoc, risk assessment, or complaint basis, the CoA's ex-post audit, when applicable, is systematic. As such, a real risk of duplication cannot be ruled out.

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### CI\* Financial Inspection covers:

- The application of financial laws and regulations
- How accounting and protection of public funds are carried out
- How civil servants involved in the implementation of the budget and the management of public funds fulfill their missions
- Inspection is carried out by:
  - Inspection plan and method set in place
  - Upon complaint or special assignment

### Court of Accounts audit covers:

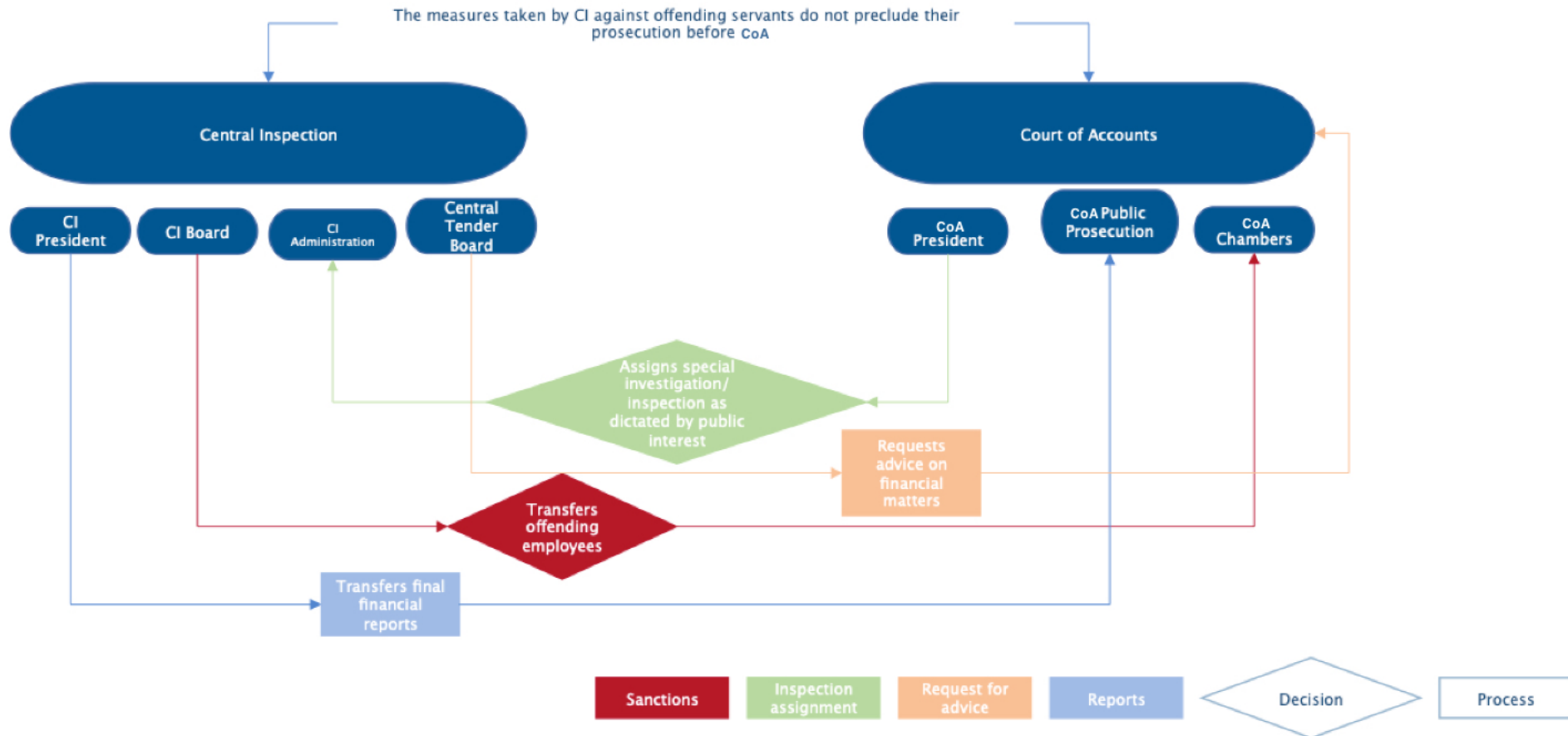
- Contract execution and their results
- Government accounts as well as any others involved in the management of public funds, in order to determine the accuracy of these accounts and the legality of all actions taken in this regard.

*\*The CI ensures public system inspection through administrative, financial, engineering, education, health, social and agricultural divisions. The inspectorates' expertise practically covers most topics of interest in procurement. The CI organizational decree n.2460/1959 recognizes the role of the financial inspectorate to monitor the application of financial rules and regulations as well as the performance of employees concerned with the execution of the budget and the management of public funds. The engineering inspectorate could also play a role as the above-mentioned decree does not clearly limit or define its mandate, it could consequently play a role in the evaluation of procurements on the technical level.*



## CI-CoA: Dialogue of the Deaf?

While the Court of Accounts can request inspections from the Central Inspection, CI, in its turn, sends reports touching on financial matters to the Court of Accounts Public Prosecution to follow up. But then these reports are left at the discretion of the Court of Accounts which, for political or other reasons can leave them hanging for months and years. This has been common practice.



## MoF–MoIM: Who Controls Expenditures?

Control over public expenditures is conducted by MoF for most of the public administration entities, except the municipalities whose expenditures are controlled by MoIM and some public institutions such as the CDR and the Council of the South. MoF's expenditure control over security and military agencies is limited to non secret procurement.

As a general rule, expenditure control is carried out by a MoF controller, which is the case for ministries.

Nevertheless, the expenditures of municipalities and unions of municipalities are controlled by a financial inspector, administratively attached to the MoIM.

In some public institutions, such as the Council for Development and Reconstruction and Council of the South, a government commissioner controls and approves its expenditures.

As for security and military agencies, their expenditures are controlled by their ministries of tutelage for secret procurement, and by MoF for non secret procurement.

### MINISTRY OF FINANCE OVERSIGHT

	MoF expenditure control	No MoF expenditure control
Ministries	✓	
Municipalities and UM		✓
Security and military agencies	✓	
CDR		✓
Council of South		✓

- ✓ Control by a financial inspector administratively attached to the MoIM
- ✓ Control by a government commissioner
- ✓ Partial

## In Focus: Municipalities and the Scattered Regulations

Municipalities and Unions of Municipalities are not all subject to the same accounting principles, which renders the regulatory landscape complex. While the majority of municipalities and UoM are subject to decree no. 5595 (which sets the accounting principles for municipalities and UoM not subject to the Public Accounting Law), some of them are subject to the Public Accounting Law. However, the provisions of both laws are largely similar. As to the Court of Accounts, not all municipalities and unions of municipalities are subject to its oversight, for unclear reasons. This status quo sheds light on the scattered nature of the regulations in place and the complexity of the panorama.

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### Public Accounting Law

40 municipalities appointed by Decree\*

### Court of Accounts

41 municipalities appointed by Decree\*

### Decree no. 5595

Approx. 998 municipalities\*\*

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Municipalities and UoM become subject to the oversight of the Court of Accounts by virtue of a decree. However, an inconsistency exists in the texts:

- Legislative Decree no. 82/83 organizing the Court of Accounts states that municipalities and UoM become subject to its oversight by a CoM decree upon the **President of the Council of Ministers' proposal**.
- Municipalities Law no. 118/77 states that municipalities and UoM become subject to the Court of Accounts' oversight by a CoM decree upon the **Minister of Interior's proposal**.

According to decree no. 5595, municipalities and UoM are subject to the Public Accounting Law and Court of Accounts if their actual revenues exceed one million LBP by virtue of the final account; this is effective as of the beginning of the year following the year in which the final account was approved. Practically this takes place only if a decree is taken in Council of Ministers.

\* Gherbal Initiative, Transparency in the Municipalities and Federations, May 2020, [https://www.lb.undp.org/content/lebanon/en/home/library/democratic\\_governance/trnsmun.html](https://www.lb.undp.org/content/lebanon/en/home/library/democratic_governance/trnsmun.html)

\*\* According to the Ministry of Interior and Municipalities, Lebanon counts 1038 municipalities as of October 2017; *Local Government Resilience Programme for the Middle East and North Africa*, LOGOREP, VNG International, 2017, <https://www.logorep.nl/wp-content/uploads/2018/06/Lebanon-Federation-of-Municipalities-Capacity-Mapping-Study.pdf>. The numbers may have changed within the course of the past 3 years.

# SWOT Analysis: Ministry of Finance

The MoF's role in the procurement process is not strictly limited to expenditure control. With its responsibility of overseeing public finances, the opacity of financial accounts greatly compromises accountability, which subsequently touches on the problem of concluding transactions to the detriment of public funds.

## Strengths

### Transparency

The MoF has an accessible website and publishes:

- All taxation and finance-related legislations, regulations and circulars
- Yearly reports of personnel cost, transfers to EDL, etc
- Procurement transactions and calls for bids (these are however calls for consultants on donor funded projects implemented by MoF, which has no relation with procurement at the central level)

### External expenditure control over ministries

Government expenditure control is binding upon ministries. No expenditure may be committed without prior control. Ministers are personally accountable for not abiding by this obligation.

## Opportunities

### Public pressure and support

October 17 demonstrations with demands of reform and to fight corruption.

### International pressure

International community pressure to launch reform programs and fight corruption.

### Political engagement

The ministerial statement of the most recent government contains an engagement to fight corruption.

## Weaknesses

### Opaque public finances

Financial accounts took around 10 years to be completed:

- Finding documents and comparing numbers is difficult.
- Accountability is therefore blurred.

### Scattered jurisdiction

- Government expenditure control does not encompass all procuring entities.
- CDR, CoS, EDL and OGERO conduct their expenditure control internally, which constitutes an issue on an accountability level and most likely, if not certainly, contributes to public funds squandering.

### Public procurement not integrated in state budget

Public procurement is not integrated in the state budget. Planning at the level of procuring entities is not the foundation of the budget preparation exercise. In addition, some institutions have their own budgets (which is not reflected in the general budget law).

## Threats

### Risks of overlap

There is a risk of unnecessary checks and delays with the expenditure control conducted by the CoA for procurement transactions beyond a certain threshold. It is unclear how the MoF control substantially differs from the CoA's.

### Economic crisis

The economic crisis of Lebanon poses a real challenge to the MoF, who is held accountable (among the political class) by the public opinion for the current state of affairs and hyperinflation.



# SWOT Analysis: Ministry of Interior

The MoIM plays a role in public procurement of municipalities and UoM. However, they suffer from a lack of uniformity on the level of applicable laws and regulations, which renders their procurement process quite obscure.

## Strengths

### Standardization of general conditions

The MoIM, with the approval of the CoA, sets the standard general conditions for open tenders conducted by municipalities and unions of municipalities not subject to the PAL.

### Municipal and UoM oversight

- Administrative oversight by the Ministry of Interior over the bidding documents prepared by the municipality/qaemaqam or mohafez (depending on the amount).
- The Minister of Interior approves the general conditions for the sale of municipal assets, and the general conditions regarding transactions of goods, works and services.
- Financial oversight over municipalities and UoM (which are subject to PAL or CoA provisions) by a general inspector, who is administratively attached to the MoIM.

## Opportunities

### IMPACT platform

The impact platform launched during the COVID19 crisis (a tool developed with MoIM) may serve as a platform to unify the procurement process of municipalities and where all municipal procurement takes place and can be easily traced. The platform will be dedicated to the creation, installation and operation of every phase in the procurement process.

### Public scrutiny

Growing public scrutiny over performance of municipalities, especially amid the recent economic crisis that Lebanon is witnessing.

## Weaknesses

### Lack of uniformity

- Not all municipalities and UoM are subject to the PAL provisions, or to CoA oversight (they become as such by virtue of a decree), which constitutes confusion and discrepancy regarding municipal functioning.
- Discrepancy in the texts: CoA legislation states that municipalities become subject to CoA oversight by decree upon the CoM President's proposal, whereas the Municipalities Law states that municipalities are determined by decree upon the Minister of Interior's proposal.

### Municipal procurement commission

The municipal council in each municipality forms a procurement commission (with the municipal head and vice-municipal head).

- No criteria or professional qualification for appointing members
- No legal quorum clearly provided for by the Municipalities Law

## Threats

### No CTB control

Municipalities and UoM are not subject to any CTB monitoring. The Municipalities Law and Decree no. 5595 (Setting the Accounting Principles for Municipalities not subject to PAL) conflict with the Tender Regulations provisions.

### Compromised CI oversight

The CI does not have oversight over employees who commit violations while performing acts in relation to the decisional and executive powers of the municipality.

# .08

## **THREATS OF ABUSE AND MALPRACTICE**

This section provides examples of notorious abuses and malpractices related to procurement at all levels, political, technical, operational.

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# Loopholes in Public Accounting Law

The Public Accounting Law contains provisions which may enable abuse and malpractice, such as excessive recourse to mutual agreements, bid slicing, as well as an inappropriate pricing method.

## • Mutual agreements

- The Public Accounting Law allows the competent procuring entity to conclude mutual agreements, which is an unusual means of procurement, in specific cases. However, the Council of Ministers may approve the conclusion of a mutual agreement in any event, notwithstanding the set of constraining circumstances. Ministers and administrations **can therefore easily bypass the principle of competitive bidding by concluding mutual agreements** once they get the approval of the Council of Ministers, which has demonstrated to be rather easy.
- The Court of Accounts submitted a special report in 1994, criticizing some of the decisions of the Council of Ministers that allowed certain ministries to grant public works contracts through mutual agreement rather than public bidding. According to the court, such a practice resulted in substantial financial waste. 26 years later, this is still largely the case today.
- Although the Council of Ministers has the legal prerogative to restrict such practice by limiting the approvals to the strict necessary, **political allegiances, coupled with corruption and personal interests, play a role in increasing the recourse to mutual agreements.**
- The Council for Development and Reconstruction does not even require the approval of the Council of Ministers to conclude mutual agreements. Mutual agreements may be simply concluded upon the Board of Director's decision.

## • Risk of bid slicing

The Public Accounting Law allows for bid slicing upon providing justification. Bid slicing is very recurrent in practice, and serves as a means to by-pass the rules of competitive bidding and transparency, as well as Central Tender Board oversight (limited to transactions exceeding LBP 100,000,000).

## • Inappropriate pricing method

Prices are either set by the bidder (the lowest price is chosen by the administration), or by virtue of a proportionate deduction of the price initially set by the administration. In the first scenario, the bidders may set prices that do not reflect reality, to which the administration complies. This **particular situation promotes corruption, where the administration and the bidders may agree to such an unrealistic price**, benefiting both parties to the detriment of public funds. In the vast majority of cases, the lowest bid wins, without considering technical and financial capabilities. This impedes technically sound and sustainable procurement for instance, given that environment-friendly products and services render the price higher. As to the evaluation of the price, the Council of Minister has issued circular no. 28/2013 urging ministries and public institutions to abide by **LIBNOR standards. LIBNOR has developed multiple guidelines but enforcement is lacking. The standards are in principle voluntary, with some being mandatory for public health and safety reasons.**



## PAL: To Reform Or Not To Reform?

Since the promulgation of the Public Accounting Law in 1963, multiple amendments have been made to procurement-related provisions. However, the amendments have not been substantial, in the sense that public procurement legislation is still in need of reform.

- Recourse to mutual agreements remains poorly regulated which still leaves room for the CoM to approve of transactions based on mutual agreements, therefore bypassing the procurement process and the principle of competitive bidding.
- Bid slicing remains a threat. Ministers still have recourse to bid slicing without proper financial or technical justification. Apart from the PAL, EDL regulations allow bid slicing to the competent authority as long as the “nature” of the transactions allows bid slicing. Such poor containment of bid slicing clearly opens the door to abuse.
- The pricing method, when set by the bidder, remains inappropriate. Bidders can easily set prices that do not reflect the reality of the market. The current PAL does not provide for a secret price, which the administration sets, in order to use it as a benchmark for assessing the prices presented by bidders.

### EXAMPLES OF PAL REFORMS ISSUED SO FAR

**Old text:** As a general rule, the price is either set (1) by the bidder, or (2) by the administration, to which a proportionate deduction of the price takes place.

**Amendment:** The price set by the administration is considered to be the maximum price. The administration also declares the minimum price which it may reach (lowest price).

**Old text:** When the price is set by the bidder, the relevant authority places a tentative price which remains secret during and after the bidding.

**Amendment:** Such provision was removed, which is alarming. The authority must assess and place a tentative secret price to measure the opportunity of the prices presented.

**Addition:** Preference of 10% is given to goods manufactured in Lebanon over offers of foreign goods, provided that the national goods and the requisite conditions to benefit from the preference are set by decrees taken in the CoM upon the proposal of the Minister of Economy and Trade.

**Updates:** The prices in LBP were updated to match the reality of the market, since the Lebanese currency has suffered considerable devaluation over the years.

## EDL: Hear No Evil, See No Evil...

EDL, considered one of the biggest spenders of public funds, disposes of a rather weak legal framework. In addition, the successive decision makers have consistently failed in appointing a new board of directors. The case is worth looking at to illustrate further diversions of the law.

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### • Legal Weakness of EDL regulations

- EDL financial regulations set out the procurement process and do not provide for open or restricted tendering. Procurement takes place mainly via requests for proposals, followed by the conclusion of mutual agreements and transactions based on invoices. Requests for proposals are only accepted from pre-qualified bidders, pursuant to a schedule prepared by EDL.
- By virtue of decree no. 13380/1969, the transactions pertaining to works, equipping and installing of electric power generation centers and power transmission stations of EDL were exempted from decree no. 3688/1966, which sets the conditions for participating in public procurement transactions. It therefore appears that EDL is treated as an exception to other public institutions. It is not bound by the general conditions in light of the Public Accounting Law for assessing the qualifications of bidders and establishes its own criteria internally.
- The board of directors has a discretionary power in removing a contractor from the list of pre-qualified bidders, for the sake of “preserving EDL’s interests”. There are no objective and professional criteria for disbaring a contractor, which opens the door for political vendettas.
- The board of directors may reduce the timeframe to submit requests for proposals from 15 days to 2 days, in case the goods are available in Lebanon and if competition is expected between bidders. Such reduction is considered too extreme, and does not promote equality and competition between bidders.

### • Outdated Board of Directors

- Pursuant to EDL’s regulations, the Board of Directors has a 3-year tenure. However, the reality is far from that. In 2002, EDL became managed by a Board composed of three members, whereas EDL’s regulations provide for 7 members. In 2011, law no. 81 on the reform of the electricity sector set the condition to appoint a new board within two months of its promulgation, which has still not taken place. EDL’s board has remained the same for 16 years now.
- In March 2020, the Minister of Energy and Water, has opened applications for Board of Directors membership. The new appointments are still pending.

.09

# FLAWED COMPLAINTS MECHANISM AND APPEAL SYSTEM

This section assesses complaints and appeals made in front of the State Council and other organizations, their effectiveness, mechanisms, and accessibility.

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# Bidders Access to Oversight Institutions

The recourses available to bidders remain scattered and rather complex. In practice, the Central Tender Board receives complaints in relation to the procurement process, although no mechanism is set out by a legislative or regulatory framework. As such, the Central Tender Board does not officially provide for a complaints mechanism. Other institutions can also be activated at different levels.



## Court of Accounts

Conducts a judicial oversight over accounts of public funds and civil servants which handle public funds. It looks into financial violations, either upon its own initiative, or upon its Public Prosecutor's request. It is therefore not accessible to bidders.



## Central Inspection

Mainly transfers financial reports to the CoA, and may be mandated by the CoA to conduct investigations. It provides for the possibility to submit complaints (recently on its online platform), which makes it accessible to bidders.



## State Council

Settles disputes before or after contract signature, which includes public procurement transactions, unless the contract provides for arbitration. May pronounce summary measures to safeguard the rights of bidders which may be in imminent danger.



## Central Tender Board

Sets annual procurement plan, reviews bidding documents and provides non-binding feedback to the procuring authorities.

## State Council: Nuts and Bolts of the Appeal System

The State Council is Lebanon's supreme administrative court, and is competent to look into administrative contracts, which include public procurement contracts. However, the State Council's appeal system should be enhanced to better serve its purpose.

- According to State Council regulations, Administrative Courts of First Instance are competent to look into “administrative issues in relation to contracts, transactions, obligations or administrative concessions that public administrations or administrative authorities departments or the Parliament have concluded in order to secure public interest”. However, a few roadblocks are identified:
  - **Overload at State Council:** Administrative Courts of First Instance have not been created till this day. All administrative recourses are presented before the State Council, which contributes to swamping the Council, and constitutes a risk of delay in rendering decisions.
  - **Strict conditions:** In case the bidder aims to obtain the annulment of an administrative decision regarding the procurement process (the tender was awarded in violation of mandatory rules for instance), the State Council offers the option of “Recourse for Trespassing Powers”. In order for such recourse to be looked into, the bidder has to prove: a direct, and lawful personal interest in obtaining the annulment of the administrative decision, which are rather strict conditions.
  - **Unsatisfactory measures:** Summary measures, if taken by the State Council, practically rarely suspend the decision which is the subject of the complaint, given that the suspension is decided discretionarily by the judge. As such, the administration's decision is likely to proceed with implementation (e.g. grant the bid to another bidder, who will begin implementation of the contract), while the complaint may still be under review by the State Council. As for the recourse for trespassing powers against a decision taken by an administrative authority, it does not entail indemnification, when triggered, but only the annulment of the decision.
  - **Risky practice of bypassing:** A rather dangerous practice has emerged from a chamber within the State Council, by virtue of which individuals claiming to have performed public works without having signed any contract with the procuring entity are automatically granted compensation, and upon the presentation of proof of very little value. As such, a considerable risk lies in this practice: procuring entities and contractors may agree to by-pass the bidding process altogether, following which the contractor will claim payment before the State Council.
  - **Limited mandate over civil servants:** The State Council is competent to look into disputes in relation to civil servants appointed by a decree, whereas administrative courts look into disputes in relation to civil servants in local authorities. Given the absence of administrative courts, this implies that bidders cannot automatically submit complaints against civil servants before the State Council. The Council looks into disputes in relation to civil servants that have already been subject to disciplinary measures. As such, this is not a complaints mechanism accessible to bidders.

# SWOT Analysis: State Council

The State Council's structure reveals a number of hurdles, such as the absence of a proper appellate role, and the considerable interference of the executive, namely the Minister of Justice, in the judiciary. This interference may greatly compromise the independence of judges in conducting their functions and ensuring that the basic principles of procurement are respected. However, the interference is not solely on an executive level.

## Strengths

### Different types of available recourses

Different types of recourses may be triggered by the bidder.

- Summary measures in case of imminent danger of loss (which includes violation of publicity and competition measures in public procurement).
- Recourse against the administration for an issue arising out of the concluded transaction.
- Recourse for abuse of power against a decision taken by an administrative authority. This recourse does not entail indemnification, just the annulment of the decision.
- Full judicial review in case the bidder suffers damage caused by the administration (this recourse gives way to indemnification). However the recourse cannot be triggered, if it has the same legal basis as the recourse for abuse of power.

## Opportunities

### Yearly reports and consultative role

- The State Council President issues a yearly report, in which the judicial year is exposed and assessed.
- It also makes recommendations on a legislative, regulatory and administrative level.
- It contributes to drafting legislative and regulatory decrees and draft laws.
- Coupled with the increasing public pressure, this may steer the discussion towards reform.

### Public pressure and support for independence of judges

October 17 demonstrations with demands to reform, and increased scrutiny on independence of judges

## Weaknesses

### No proper appellate role

Administrative Courts have never been created. All recourses are presented before the State Council, compromising its "appellate role" and contributing to overcrowding before the council.

### Recourse for Trespassing Powers

Recourse to obtain annulment of administrative decision has strict conditions: direct and lawful interest of the bidder in obtaining the annulment of the decision to be proven.

### Lack of suspensive effect for summary measures

Summary measures do not suspend the decision, which is the subject of complaint. The administration's decision is likely to receive implementation (e.g. grant the bid to another bidder, who will begin performance of the contract), while the complaint may still be under review by the State Council.

## Threats

### Dangerous practices

Individuals claiming to have performed public works without having signed a contract with the procuring entity are granted compensation, and upon the presentation of proof of very little value.

### Executive stronghold

The Minister of Justice significantly interferes, as it:

- Determines the number of trainee judges for appointment and requests to organize a competition.
- Requests investigations of misconduct and decides to refer to disciplinary board.
- Nominates by decree, upon minister proposal, the trainee judges as tenured judges, president and government commissioner, etc.



# 10

## **RISKS OF POLITICAL INTERFERENCE**

Parliament and Council of Ministers are major political players to be examined closely to understand the political dynamics and the risks of interference.

## Parliamentary Role: The Sound of Silence

Within this context, it is important that the Parliament uses its powers and oversight competences in order to bring accountability to the forefront. However, parliamentary work and reform are considerably difficult, given that political will is not very adamant on drastically changing the Lebanese landscape, since many decision-makers personally benefit from the current state of affairs, which includes the procurement system.

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- **Prerogatives.** The Parliament is granted powers which, if properly and regularly exercised, may highly contribute in putting accountability to the forefront, and enhance the procurement system, and considerably limit corruption:
  - Members of Parliament are granted the power to question ministers over their actions/decisions. The question may also be turned into an investigation.
  - The Parliament may decide to conduct parliamentary investigations concerning a given topic. An appointed committee conducts the investigation and drafts a report with its findings.
  - The Parliament can convene for government confidence vote.
  - At the end of each year, the Court of Accounts drafts an annual report containing the results of its oversight and the proposed legal reform to all laws and regulations whose application result in financial repercussions. Apart from being sent to the President of the Republic, the annual report is also sent to the Parliament (along with the Central Inspection and Civil Service Board), with the concerned administrations' answers to the comments made by the Court of Accounts.
  - The Finance and Budget committee may listen to the CoA President or whomever he appoints, and to the public administrations' representatives when necessary, for clarification purposes.

# SWOT Analysis: Parliament

Effective legislative work is further compromised by overwhelming confessional and political considerations, and lack of transparency, resulting in the loss of public trust in members of Parliament.

## Strengths

### Legislative power

The Parliament has the ultimate power to remedy public procurement malfunction, by using its most important prerogative: passing laws (e.g. whistleblower law, establishment of anti-corruption committee, right of access to information law), public procurement law.

### Questioning powers

The CoM is accountable before the Parliament:

- Members of Parliament are granted the power to question ministers over their actions/decisions. The question may also be turned into an investigation.
- The Parliament may decide to conduct parliamentary investigations concerning a topic.
- The parliament can convene and decide on a government confidence vote.

## Opportunities

### Public pressure

- Parliamentary activity is subject to growing public scrutiny after the October 2019 demonstrations and is urged to fight corruption.
- Parliament may regain public trust by passing legislative reform, such as the public procurement draft law.

### Oversight over public accounts

- The Parliament receives an annual report from the CoA, with the results of its oversight and the proposed legal reform to all laws and regulations whose application result in financial repercussions.
- The Finance and Budget Committee and all relevant committees may request clarifications from CoA President and public administration representatives when necessary.

## Weaknesses

### Lack of transparency

- Parliamentary commissions are secret unless provided otherwise.
- Even though parliamentary sessions should be public – unless decided otherwise – most of the sessions, especially the ones entailing important laws to pass, are made secret. As such, voters do not always know how members voted.

## Threats

### Draft law amendment

- Once the bill reaches the voting stage, it may substantially be amended, which may undermine reform.

### Overwhelming confessional and political considerations

- Political blocks are largely based on confessional, political as well as local interests, which interferes in parliamentary work.
- Political representation is exclusively among confessional lines, which results in a state-client relationship.
- Risk of confession prevailing over competence, hindering legislative work.

# Council of Ministers: One For All

The Council of Ministers is equipped with the necessary prerogatives that could either enhance, or paralyze the public procurement system, depending on how these prerogatives are put to use. For instance, the Council of Ministers nominates the heads of the oversight agencies, who directly play a role in public procurement oversight.

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- **Appointments**

- The Council of Ministers nominates, by virtue of a decree, the heads of oversight agencies in Lebanon: the Central Inspection President, the Central Tender Board Director, the Civil Service Board President, the State Council President and government commissioner. The Court of Accounts President and Public Prosecutor of the Court of Accounts are also appointed by decree taken in the Council of Ministers, upon the Prime Minister's proposal. The Higher Disciplinary Council is composed of a President and two members (in addition to two other alternate members), who are all appointed by decree taken by the Council of Ministers.

- **Executive Stronghold**

- Oversight agencies in Lebanon are all under the Presidency of the Council of Ministers: the Central Inspection (which includes the Central Tender Board), the Civil Service Board, the Court of Accounts, and the Higher Disciplinary Council.

- **Mutual agreements**

- Mutual agreements concluded by ministries are only allowed in limited instances (eleven, to be exact). However, the Council of Ministers may allow ministries to conclude mutual agreements outside of the limited instances, which is a prerogative with a high risk of corruption, where personal interests prevail over public interest. The same applies to mutual agreements concluded by the Council of South and EDL.
- However, the Council for Development and Reconstruction's financial regulations have even bypassed the Council of Ministers. The Board of Directors may, outside of the limited instances, decide to conclude mutual agreements without external oversight.

# SWOT Analysis: : Council of Ministers

The CoM, paralyzed by political interests and interferences, has not been able to regulate the excessive recourse to mutual agreements. Coupled with the structural weakness of ministries and the weakened oversight agencies, this generates a considerable number of issues in the procurement system. The absence of a unified complaints mechanism and accessible appeals system further exacerbates the problem.

## Strengths

### Restrict recourse to mutual agreements

The CoM's approval is needed for ministries to conclude mutual agreements, outside of the cases enumerated by law. With the right political will, the CoM may therefore restrict this practice to the strict minimum period

### Executive stronghold

- CI (which includes the CTB)
- CoA
- Civil Service Board
- Higher Disciplinary Council

## Opportunities

### Public Pressure

October 17 demonstrations with demands to reform, and increased scrutiny on procurement and corruption in general.

### Political engagement

- The ministerial statement of the most recent government contains an engagement to empower oversight agencies and to fight corruption.
- The recent government financial recovery plan observes reforms in public procurement system.

### International pressure

The current CoM is being closely watched by the international community and potential donors. The CoM will have to abide by its commitment to reform to earn international community trust

## Weaknesses

### Structural weakness of ministries

- Outdated organizational structures that do not meet development requirements
- Obsolete legislations and work processes that date back to the 1950s
- Shortage of staff in various important positions  
Shortage of management and modern technology skills
- ICT (information and communication technology) infrastructure that falls behind other countries

### Financial affairs at an all time low

The Lebanese State is practically bankrupt, which makes reform and economic recovery particularly difficult.

## Threats

### Political interests

Political allegiances and interests may push ministers to approve to conclude mutual agreements.

### Political and confessional interference

- Lebanon has experienced numerous deadlocks with no cabinet formed for months on end.
- The importance granted to confessions risks overshadowing competence.
- The role of the opposition is compromised: the cabinet almost always groups all political parties and interests, which also leads to a deadlock within the CoM itself.



# SWOT Analysis: Lebanese Public Procurement System

In conclusion, the public procurement system is in great need of reform. The absence of a centralized procurement agency, outdated legal framework, weakened oversight agencies and political interference, have put an immense strain on the system.

## Strengths

### Active and Transparent CTB

- Active CTB exhibiting a will to enhance the procurement system and fight corruption.
- The CTB is also transparent with an accessible website and regularly published reports and annual procurement plans.

### Parliamentary powers

The ministers, who are responsible for public procurement transactions in their ministries, are responsible towards the Parliament, who:

- Questions and/or interrogates ministers.
- Receives CoA annual report and takes the necessary steps in light of its findings.

## Opportunities

### Draft law submitted by IoF

Provided the draft law does not receive massive amendments, its provisions will enhance the public procurement system and bring it up to date with international norms.

### Political engagement

The ministerial statement of the most recent government contains an engagement to empower oversight agencies. The government financial recovery plan provides for a reform of public procurement law period.

### Public pressure and support

October 17 demonstrations with demands to reform, and increased scrutiny on procurement and corruption in general.

## Weaknesses

### Scattered practices

The procurement system is plagued by a lack of standardization (e.g. no standard general conditions) and scattered practices, where procuring entities often conduct their procurement transactions pursuant to different standards and regulations.

### Outdated legal framework

PAL contains provision that compromise public procurement, such as the poorly regulated recourse to mutual agreements.

### No uniform complaints mechanism

The lack of a uniform complaints mechanism leads to uncertainty and lack of judicial security among bidders.

### Public institutions barely subject to external oversight

Absence of ex-ante audit or expenditure control for certain public institutions such as CDR and CoS.

### Risks of checks and delays

Stakeholders suffer from unclearly defined roles, such as the expenditure control by MoF and the ex-ante audit of the Court of Accounts, where functions do not seem to substantially differ in their respective regulations.

## Threats

### Mutual agreements

Excessive recourse to mutual agreements with the approval of the CoM contributes to bypassing the principle of competitive bidding.

### Oversight agencies needing legal reform

In addition, the Court of Accounts suffers (among other limitations) from the absence of a performance audit. The system as a whole also suffers from gaps and overlaps, such as the one between the MoF and the CoA with regards to expenditure control.



# 11

## STAKEHOLDER MAPPING

This section maps various reform proposals, stakeholder positions over these proposals, and assesses the political dynamics around the reform.

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# The IOF Proposal Submitted to Parliament: a new vision that goes beyond partial changes

The draft procurement law that was prepared by the Institut des Finances and submitted to Parliament is currently under discussion in a special parliamentary committee. This proposal is a complete overhaul and professionalization of the procurement system with the creation of a Public Procurement Directorate (PPD). Previous drafts were attempted but never submitted to parliament. A good example is the LF proposal which refers to existing documents and proposes some changes on top, while creating the Public Transaction Authority (PTA).

## Methodology

Largely inspired by international standards OECD -SIGMA & MAPS guidelines, reviewed by World Bank, OECD and local Legal experts.

\*Makes reference to the PAL in many areas \*takes into account: int'l standards (w/o precisng references) + Lebanese legal environment.

## Scope

Both draft Laws seem to apply to all procuring entities / public institutions and administrations and for all types of procurement / transactions.

## Glossary

Glossary has been developed in this Draft Law and includes 40 definitions which are used in the text. IoF uses the term **Procurement**.

No Glossary included in the Law Proposal LF use the term **Transactions**.

## Planning

Contracting authorities shall adopt a mandatory publication policy whereby they **announce their plans and the details of its execution**.

Transactions concluded in accordance with this law must be preceded by the issuance of an announcement of the general program aimed at informing the public.

## Professionalization

Public procurement unit shall be created in the organizational structure of the procuring entity, formed of **specialists and skilled personnel...**" (Art 73.2)

(Art 6) stipulates that in every administration / there should be a senior **"supply" officer** (Category 2) seconded by one or more junior

LF Draft Law does not recognize procurement as a profession.

○ IoF ○ LF

# PPD or PTA?

The Institute of Finance Basil Fuleihan proposes a PPD which is a regulatory body, while the LF propose a PTA with decision and executive powers. One addresses procurement per se, and the other includes other types of transactions. One cannot help but notice obvious differences between the two bodies mainly in regards to methods of procurement, governance, and complaints mechanisms.

## Procurement (IoF) Transactions (LF) Methods

• Open tender • Two-stage tendering  
• Request for quotations  
• Request for proposals for consulting services  
• Direct contracting  
• Shopping (or by invoice).

Besides the multiple Transactions Methods that the LF Proposal includes, it also introduces **OUTSOURCING & Contracting State Revenues & Selling and Managing its Movable and Immovable**

## Framework Agreement

Framework Agreement is introduced by both Draft Laws but treated somewhat in a different manner by each Draft Law.

## Complaints / Challenges / Appeals

One full chapter - Chap. 7 incl. 6 articles detailing the mechanism and principles regulating the complaints by the bidders and challenges to the decisions of the procuring authority.

One (Art 114) is dedicated to the issue of complaints and appeals giving the possibility for a bidder to challenge decisions of procuring authority and could be subject to appeal before Administrative Court.

## Governance

PPD has more of a regulatory, arbitral and a broad administrative role.

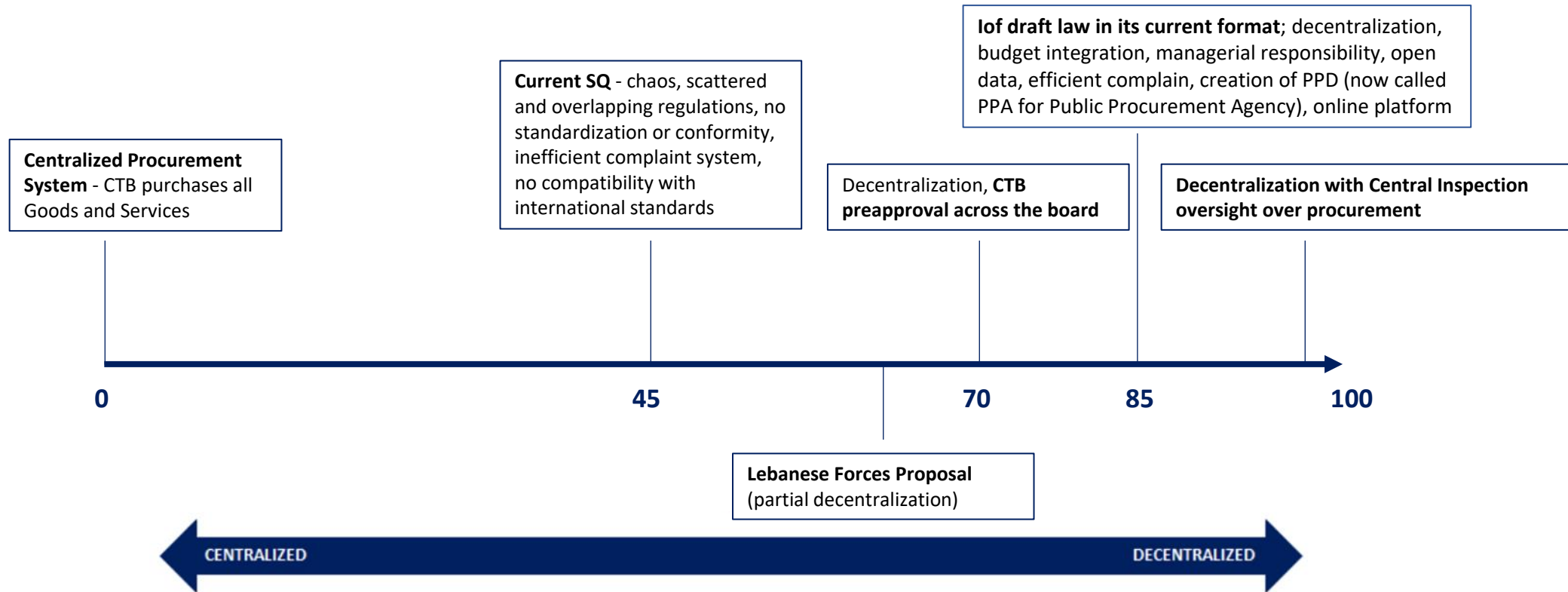
PTA (unlike the existing CTB) enjoys, under the provisions of many articles and references in the LF draft Law, decisional and executive powers.

○ IoF ○ LF

Challenge proceedings start with submission of an application: for reconsideration to the procuring entity or for review to the Review and complaints committee or to appeal the decision of the Review and complaints committee before the State Council.

## A Wide Range of Solutions on the Table

The procurement reform can take many faces. To facilitate stakeholders mapping, it can be summarized on a continuum ranging from high centralization to a decentralized and professionalized system. The below scale captures the different options. On the left is the centralized procurement under the CTB proposal made by Hezbollah. At the center, is the actual system, followed by the Lebanese Forces proposal which was not presented to Parliament. The latter puts some order in procurement but does not constitute a drastic reform. Then come different options on the other side with some variations on the PP draft law prepared by the Institut des Finances. These variations range from decentralization with central Tender Board preapproval across the board, to decentralization with no CI oversight over PPD, to decentralization with explicit CI oversight over PPD and procurement process.





## Stakeholder Statements

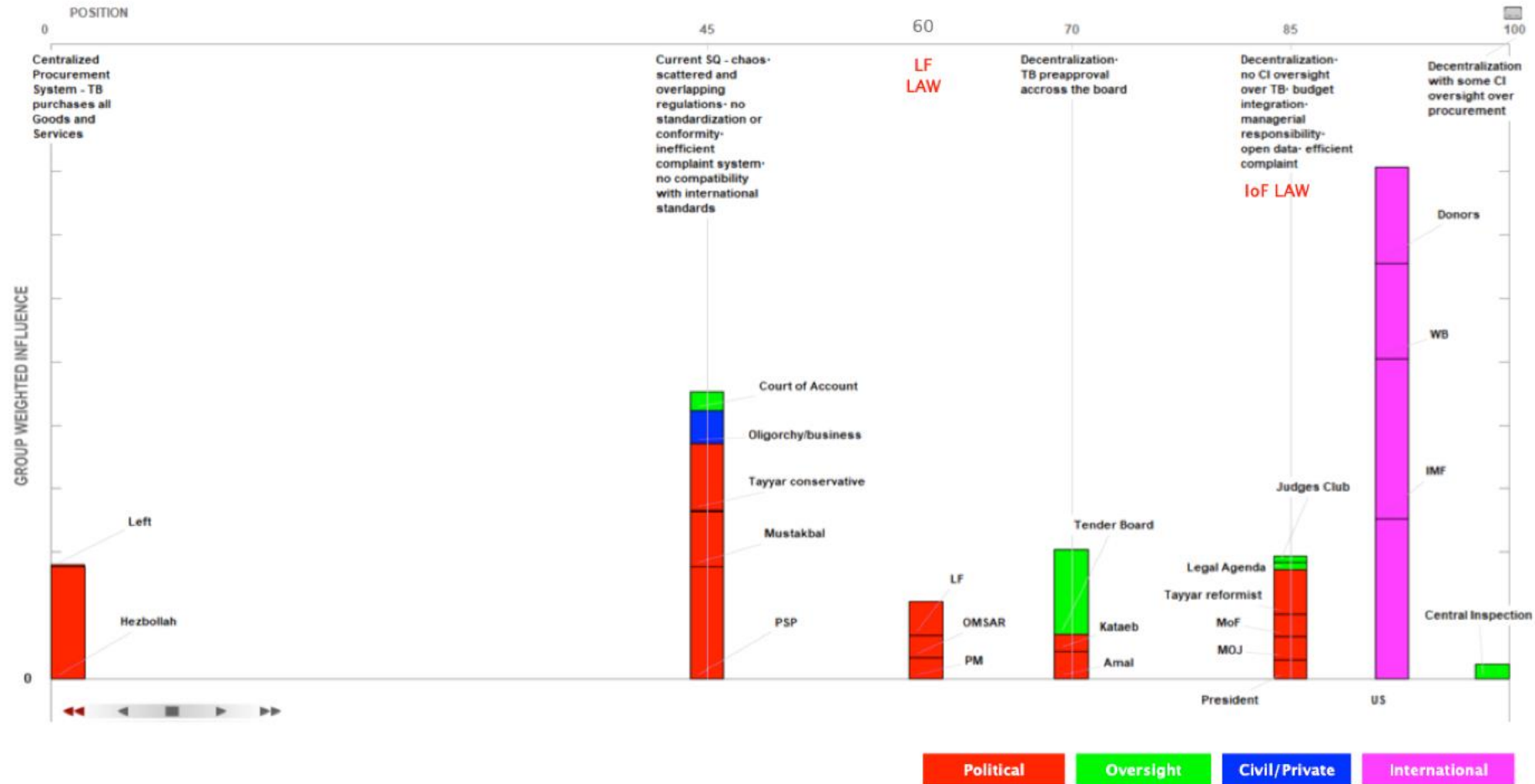
The main parties on the political arena have taken different stances regarding public procurement. In some instances, statements appear to be somewhat contradictory.

- **Future:** The Economical Plan issued in 2018 and supported by the Future promotes the promulgation of a new public procurement draft law by virtue of which all transactions are subject to CTB oversight.
- **PSP:** In January 2020, the PSP proposed a draft law to Parliament aiming to support Lebanese industry in all transactions by securing that a minimum of 50% of all contracts will consist of Lebanese locally made material, goods, machines and merchandise.
- **Resistance Bloc:** A draft law aiming to completely centralize procurement under CTB was circulated in late 2018, but was not submitted.
- **Amal:** Yassine Jaber (Amal Movement), is heading the parliamentary committee studying the IoF draft law presented by member of parliament Michel Moussa (Amal Movement) which aims to decentralize procurement. Jaber has publicly encouraged the unification of procurement systems and standards.
- **Director General:** Position has been fluctuating, starting by linking up with the Hezbollah proposal, then supporting the IoF draft law and requesting complete independence from Central Inspection. Lately there are signs that he has contributed to the LF new law proposal.
- **Lebanese Forces :** In a press release in 2019, Samir Geagea (Head of LF) stated that all procurement transactions must be subject to CTB oversight. This statement was followed by the draft proposal prepared by LF, which advocates for the creation of a Public Transactions Authority that supervises all matters related to public transactions in all the administrations, institutions, municipalities and unions of municipalities.
- Clearly **private actors** benefiting from the current procurement system and making deals in a closed club of favorite partners will stand against reform and challenge the change to the status quo.
- Two ministries are closely involved in the reform: **MoJ and OMSAR**, together with legal experts and the Budget and Finance parliamentary commission which formed a sub commission to study the previously proposed laws.



# Stakeholder Mapping

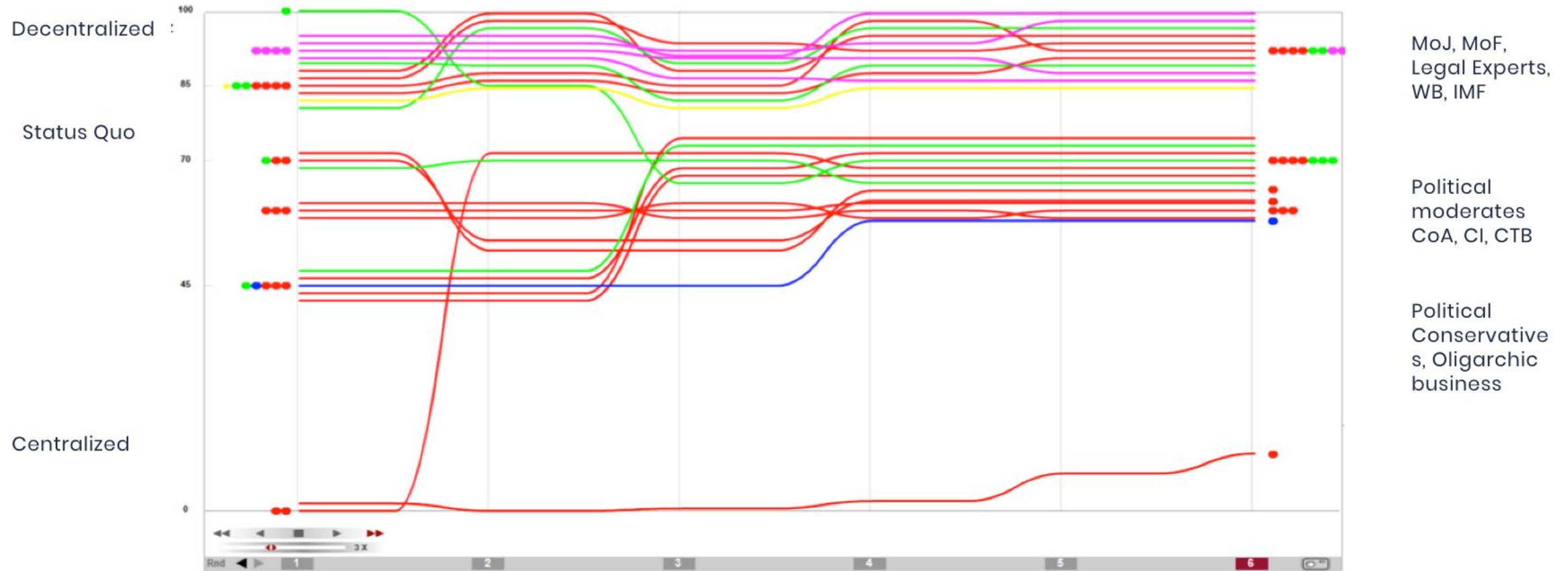
Stakeholders are scattered along the continuum with, on one side the Hezbollah in favor of a centralized law, and on the other pro-reform stakeholders with a slight variation on their position related to the power of the Central Tender Board and the oversight of the Central Inspection.





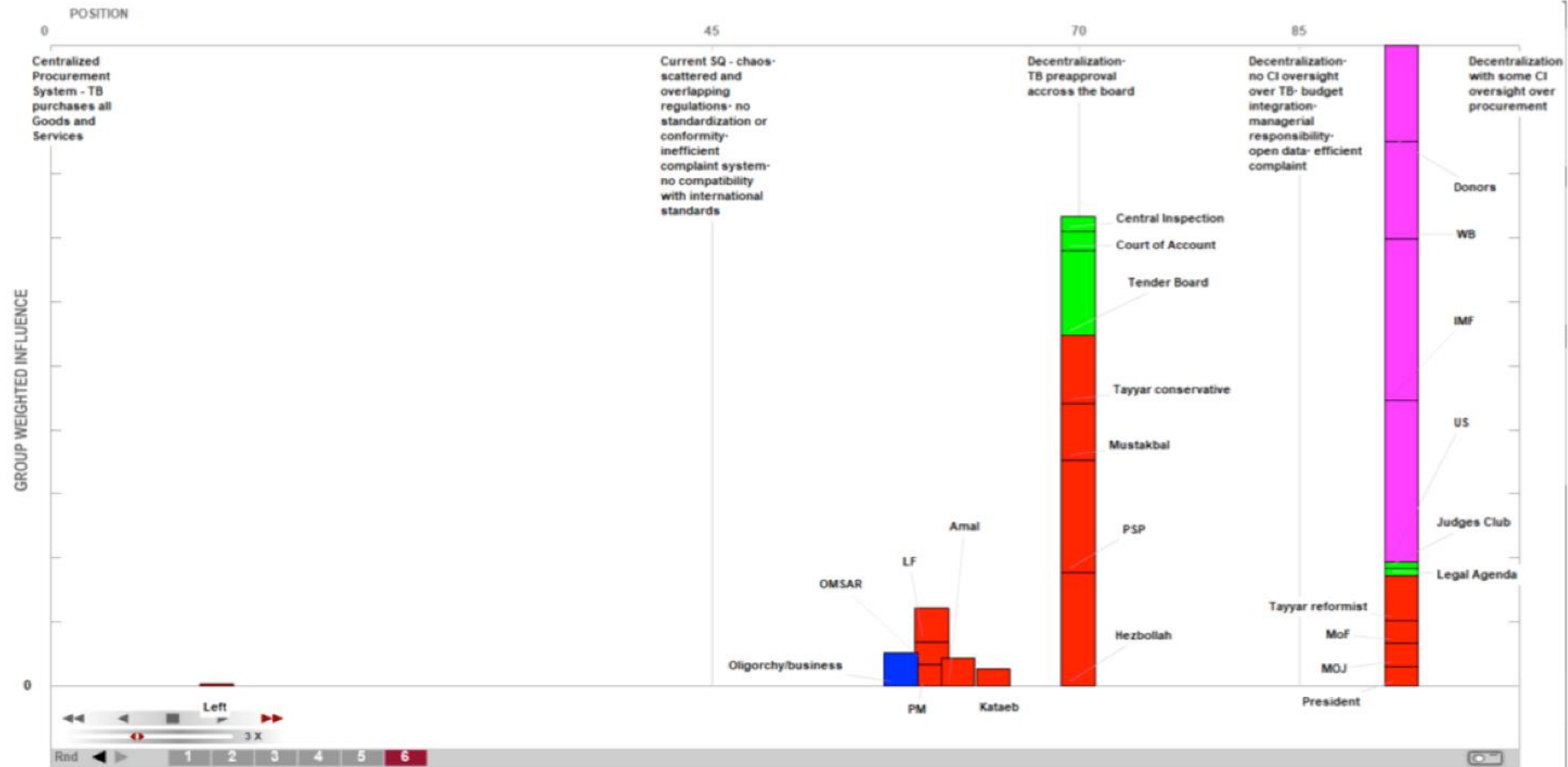
## Simulation and Forecasted Outcome

A game theoretic simulation of 6 bargaining rounds among various stakeholders shows a convergence by MoJ, MoF, and International Community around 92 (a variation of the current IoF law with some oversight over the PPD). However, this outcome will be resisted by the Central Tender Board, Central Inspection, and Court of Account which converge at 70 where they are joined by the other resisting political actors.



# Way Forward

The final landscape reflects a certain bipolarity between almost two groups. One that is closer to the IoF draft law and another that seems to prefer the LF proposal. The only way to shake this situation on the longer term is to reshuffle the cards, through tradeoffs with other reforms or packages. This could mean that the discussions around the reform of the law can last till a new package deal is put on the table.



# 12

## BACK TO THE FUTURE

This section provides a list of recommendations that aims to bring back the role of Oversight and Control Institutions

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## Central Inspection: Back in the Game

If the Public Procurement Directorate will be regulating all contracting authorities and procurement processes, it remains necessary, as per international standards and sound business principles, that audit role be clearly defined and entrusted to independent entities. Consequently, given that Central Inspection's mandate already covers most contracting entities as well as the large array of expertise and capacities it has developed over the years, it would only make sense that this independent government agency be in charge of those inspections. Central Inspection can derive risk assessment from the database that is to be created within the PPD and proceed with effective inspections by relying on its sectoral expertise. Yet, many other reforms shall be implemented for CI to play this role efficiently.

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### Recommendations

#### Structural

- Amend article 1 of legislative decree no. 115/1959 creating the Central Inspection to expressly provide for the moral, financial, and administrative independence of the Central Inspection.
- Amend article 6 of decree no. 2460/1959 organizing the Central Inspection to expressly provide for the communication of the central inspection report to Parliament at the end of the month of March, and to also expressly provide that periodic reports be sent to Parliament.
- Let periodic report be produced quarterly (currently there is only an annual report).
- Provide CI adequate resources with an independent and minimal budget.
- Restore immunity against possible arbitrary transfers of the members of the Central Inspection Board.
- Limit the term of office of CI Presidency to a non-renewable 6 years mandate.
- Amend article 3 (4) of legislative decree no. 115/1959 establishing Central Inspection to include all General Inspectors as members of the CI Board, as opposed to solely the Financial General Inspector and the Education General Inspector.
- Decision making within the CI Board shall take place by the majority of votes to avoid blockage.

## Central Inspection: Back in the Game

The Scope of CI's audit shall have no exception, and there should be no work around it's oversight. CI shall also be provided the means to accomplish its mission effectively.

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### Recommendations

- |                      |  |
|----------------------|--|
| <b>Scope</b>         | <ul style="list-style-type: none"><li>• Grant the CI the prerogative to refer a minister to the Parliament for investigation for misconduct. The Parliament may then refer the minister to the Higher Court for the prosecution of Presidents and Ministers.</li><li>• Subject the decision-making authority and executive authority of municipalities and UoM to CI, including Municipal Council members and Presidents.</li><li>• Subject to CI oversight all administrations, public institutions, autonomous institutions, municipalities and Unions of Municipalities, and all other bodies having a financial relationship with the state through participation, assistance or credit advance, as well as all companies whose capital consists of at least 40% of state participation, etc.</li><li>• Grant the Financial Inspectorate the express prerogative to conduct audits in relation to procurement systems and processes.</li></ul>                           |
| <b>Human Capital</b> | <ul style="list-style-type: none"><li>• Develop a Code of Conduct for CI employees as well as a detailed competency framework for inspectors.</li><li>• Implement a competitive salary scale for different functions within CI, in order to incentivize employees and to prevent bribes and corruption.</li><li>• Establish a KPI system for all CI employees along with a career path or career development programme.</li></ul>  |
| <b>Means</b>         | <ul style="list-style-type: none"><li>• Establish a quality control system for performed and delivered works, goods and services, provided that quality-control is conducted throughout all stages of implementation, and not only upon handover.</li><li>• Implement a transparent process allowing CI to assess the effectiveness of the sanctions it has issued.</li><li>• Create a research and analysis unit within CI responsible for research and development, data analysis, internal and external communication.</li><li>• Create a Risk Management unit staffed by risk professionals.</li><li>• Establish a Procurement Inspection Unit at CI with edge expertise in procurement oversight, with full access to analytics, and wide prerogatives to investigate procurement cases.</li><li>• Establish a Municipal Inspection Unit at CI with expertise in municipal services and procedures, and a regional office or focal point in each governorate.</li></ul> |

## Court of Accounts: The Power of Ex-Post Audit

There are several unnecessary overlaps among oversight institutions. The ex-ante financial control done by the Court of Accounts and MoF is one of them. This complicated procedure can be automated thereby eliminating the unjustified delays by MoF controllers in what should be a straightforward reconciliation of accounts. The CoA can also focus on the ex-post audit of government accounts and its jurisdiction in this respect can be extended to include all public and autonomous agencies. Its scope limitations shall be removed, its independence reinvigorated, and its relation with the parliament reinforced.

### Recommendations

- Structural**
  - Amend article 1 of legislative decree no. 82/83 organizing the Court of Accounts to expressly provide for the independence of the Court of Accounts.
  - Guarantee the financial and administrative independence of the CoA through the implementation of a budget plan that is independent from the executive power.
  - Set the term of office of the President of the Court of Accounts to a non-renewable 6 years mandate.
  - Consider the nomination of the President of the Court of Accounts by a majority of votes of the Parliamentary Committee on Finance and Budget.
  - CoA decisions shall be binding and cannot be overruled by the Council of Ministers.
- Scope**
  - CoA shall focus on ex-post rather than ex-ante control.
  - Include a CoA representative in the finance and budget parliamentary committee to make sure that CoA's remarks and recommendations are taken into consideration.
  - CoA shall actively assist members of Parliament in addressing questions to ministers and questioning them upon violations with regards to public finance.
  - Enlarge the scope of CoA to include all concerned parties in management of public funds without exception (i.e. all public institutions, autonomous agencies, municipalities and unions of municipalities).
  - Transfer financial controllers that are within the Ministry of Interior and Municipalities to the Court of Accounts for retraining, and determining powers and roles, in order to avoid duplication of control.
  - Introduce both compliance and performance audits on procurement operations, and grant the CoA all needed resources to fulfill these functions.
  - All projects funded by loans and donations to the benefit of different administrations, public institutions and municipalities shall be subject to the audit of the CoA.



## Court of Accounts: The Power of Ex-Post Audit

The Court of Accounts needs to implement effective auditing leading to firm measures against violation of procurement rules and regulations. Highly qualified human capital is required, which can be achieved by establishing an employment unit providing training on financial issues and auditing procedures in light of international auditing standards. The Court of Accounts' financial resources shall also be revisited in order to allow the personnel to perform duties.

### Recommendations

#### Human Capital

- Find the adequate balance between legal expertise, judges, financial and accounting experts and subject matter experts in the Cadre of the Court of Accounts.
- Establish an employment unit which provides training regarding financial expertise and auditing procedures in line with international standards.

#### Means

- Develop and promote a computer-assisted auditing system.
- Streamline audit preparation, performance, quality review and publication procedures.
- Enhance reporting and dissemination of results in order to allow all stakeholders – citizen, auditee, parliament, or any other interested party - to consult recommendations, and their impact online. The concerned administration is instructed to review the results of the report and pledges to implement recommendations, and to submit before the Court of Accounts' Bureau a receipt of notification of the report.
- Introduce and implement performance audit on procurement operations.
- Amend article 60 of legislative decree no. 82/83 to review the penalties incurred by offending employees which have become insignificant.
- Extend the statute of limitations from 5 to 10 years provided for article 65 of legislative decree no. 82/83 organizing the Court of Accounts, as it often led to deliberate delays and failure to prosecute cases.
- Amend article 32 of legislative decree no. 82/83 organizing the Court of Accounts to include in detail the nature of the audit conducted, and to include the planning and objectives of the transaction.

## State Council: The Way Forward

Judicial independence, a strong rule of law, public trust in the judicial system, and a proper implementation of the Statute of the State Council promulgated by Act No. 227 of 31 May 2000, among others, are indispensable factors to effectively create the right conditions for access to justice and ultimately hold the government accountable for its decisions. In order to overcome the roadblocks previously identified and allow the State Council to achieve its objectives, reforms should be adopted to reinforce the independence and impartiality of the administrative courts once established.

### Recommendations

- Structural**
  - Establish first level administrative tribunals within the State Council. The most recent amendments to the State Council Statute that took place in 2000 provide for the establishment of first level administrative tribunals in each of the Lebanese six provinces which would significantly decrease the overcrowding before the State Council, and allow it to fulfil the appellate role for which it was designed, all while accelerating the process of rendering decisions.
  - Limit executive intervention. The role of the Minister of Justice in the appointment process should be completely rescinded and transparent procedures need to be set at every level in the selection and appointment process of judicial positions, such as the President and the Government-Commissioner at the State Council, and others, as well as clear and objective criteria in accordance with international standards.
- Means**
  - In order to reinforce judicial independence, it is essential to divest the President of the Council of certain powers namely organizational ones pertaining to appointments, transfers, re-assignments, allocation of tasks between Chambers, enforcement of disciplinary measures. According to the Constitutional Council, such practices are unconstitutional and contradict a key principle of collegial decision-making.
  - Enhance transparency by publishing State Council Bureau's decisions to ensure compliance with Access to Information Law and agenda.
  - Create a website for the State Council and publish electronically all relevant decisions and information, making them accessible to the public.
  - Final decisions made by the State Council require immediate and effective execution. This could be done by enforcing the financial penalties provided for in article 93 of the State Council Statute to ensure that each moral public person required to execute a decision issued by the State Council would do so within a reasonable amount of time.
  - Encourage the judges at all levels to take decisions on procurement cases within the deadlines permitted by the law.
  - Work on specializing the judges of the State Council, i.e appoint specific judges to look into procurement cases to ensure cumulative expertise and efficiency.

## Municipalities and Unions of Municipalities : One for All

Municipalities and Unions of Municipalities mainly suffer from a lack of coordination in their legal framework, which is reflected through differences in municipal budgets. There is also a cumbersome pre-approval procedure by the Ministry of Interior and Municipalities which, coupled with the lack of automation processes in most municipalities and UoM, contributes to a great delay in the implementation of projects.

### Recommendations

- Scope**
- Unify and consolidate the legal framework governing municipalities and unions of municipalities. Today some municipalities and UoM are subject to the decree setting the accounting principles for municipalities and UoM that are not subject to the Public Accounting Law, while a minority of municipalities and UoM remains subject to the Public Accounting Law. As a result, budgets of municipalities and UoM differ.
  - Address the legal inconsistencies in the texts concerning the municipalities and UoM which shall be subject to the Court of Accounts oversight (Article 90 of Municipalities Law no 118/77 and article 2 of Legislative Decree no. 82/83 organizing the Court of Accounts).
  - Amend article 48 of decree no. 5595/1982 setting the accounting principles for municipalities and UoM, which are not subject to the Public Accounting Law, to include the creation of a technical body within the MoIM responsible for setting the standard bidding documents for open tenders, which can be subsequently approved by the Minister of Interior and the Court of Accounts.
  - Remove paragraphs 7 and 8 from article 60 and paragraphs (1) and (2) from article 61 of the Municipalities Law no. 118/1977 to exclude cumbersome pre-approvals by the “qaemaqam” and “mohafez” over transactions.
  - Implement amendments provided for in decree no. 4082/2000 regarding the creation of the Municipal Observatory within the General Directorate of Local Administrations and Councils in order to, among others, manage (identify, implement, review and update) municipal performance indicators.
  - Subject all municipalities and UoM to the audit of the Court of Accounts.

## Municipalities and Unions of Municipalities : One for All

Given the number of municipalities and the potential for decentralization, standardization and automation are a cornerstone of municipal procurement reform. But Municipalities should also get equitable and direct access to their funds in order to undertake procurement projects in their regions.

### Recommendations

#### Structural

- Amend article 53 of Municipalities Law no. 118/1977 regarding the creation of municipal bidding commissions to include clearly outlined criteria for professional qualification, together with a clear legal quorum and majority for decisions taken by the municipal bidding commissions. (Alternative: Preparing all members of the municipal council, at the beginning of their mandate by involving them in binding training courses that will help them during their duties during the next six years)
- Establish appropriate criteria for the distribution of funds from the Independent Municipal Funds (IMF) to municipalities and UoM, in order to increase their ability to undertake procurement projects to the benefit of their respective territories, which eventually leads to development and growth. The distribution formula by virtue of which the IMF operates (number of registered residents and average of last two years of direct revenues) does not reflect reality:
  - In some areas, registered residents are far less than actual residents, while other municipalities and UoM have more registered numbers than actual residents, which contributes to an improper allocation of resources.
  - Direct revenue in urban municipalities and UoM (which benefit from rental value fees for instance) is considerably less than rural regions.

#### Tools

- Consolidate Independent Municipal Funds. For transparency and accountability purposes, all IMF accounts detailing all revenues and expenditures (taxes, fees, deductions and withdrawals from the account of every municipality or union of municipalities), are to be consolidated into one document. This account should be audited by the Court of Accounts to ensure legality and accuracy. In addition, said accounts should be made publicly available by publishing annual reports. The reports are submitted to Parliament at the end of each financial year.
- Establish an e-procurement platform with full traceability, where all municipal procurement takes place and can be easily traced. The platform will be dedicated to the creation, installation and operation of every phase in the procurement process.
- Digitize and grant free access to the Official Gazette to allow all suppliers to participate in all public procurement.
- Implement automated systems for municipalities and UoM who rely on manual procedures for their financial activities, including expenditure requests and control.
- Train, certify and select public procurement officers to run the municipal procurement system.

## Ministry of Finance: FMIS and TSA

The Ministry of Finance is a vital player in public service financial control. Its role is not limited to merely ensuring compliance of government expenditures vis-à-vis budget requirements, but also includes overseeing public finances as a whole. However, numerous procuring entities carry out their expenditure control internally which hinders accountability and transparency.

### Recommendations

- Scope**
  - Address legal inconsistencies in the Public Accounting Law (article 65) and Court of Accounts regulations (article 32 of legislative decree no. 82/83 organizing the Court of Accounts) which do not substantially differentiate between the expenditure control and ex-ante audit. Both articles do not provide for a substantial difference between both functions, and only mention that the transaction's conformity is assessed in light of the budget and laws and regulations in force. Expenditure control in itself does not need to be eliminated per se, but needs to be clearly differentiated from the Court of Accounts' mission of ex-post auditing.
  - External expenditure control is crucial in order to enhance good governance and a sound management of public funds. As such, all public institutions and autonomous agencies conducting their expenditure control internally, must instead conduct it via the Ministry of Finance's controller. This includes by way of example but is not limited to the CDR, the Council of the South, EDL, the Lebanese University, OGERO.
- Tools**
  - Implement Financial Management Information Systems (FMIS). In order to remedy to the opacity of public finance and scattering of financial documents, the exchange of electronic data with proper security measures will ensure speed and accuracy of information exchanged between the procuring entities and the MoF and would ultimately result in establishing a sustainable structure of cooperation and a standardized database. As such, operations such as request for expenditures, and subsequently their control can be automated and would replace traditional, manual control which often is the main reason for delays. This includes linking expenditure controllers placed within ministries to the Ministry of Finance to ensure efficient control and speedy liaison. This will enhance accountability and will facilitate review of each ministry's expenditures and their validity at the end of each year.
  - Enhance Treasury Single Account System (TSA). Lebanon disposes of a TSA. However, pursuant to IMF literature, the TSA structure is decentralized and fragmented. The accounts pertaining to public sector entities are not reconciled on a regular basis. Most public institutions, such as the CDR, have separate bank accounts and some public institutions such as the EDL and NSSF are an exception, and have accounts in commercial banks, which is in contradiction with article 243 of the Public Accounting Law. Commercial banks also hold accounts for donations, used for funding government expenditure. The TSA also facilitates reconciliation between accounting and banking data, i.e. the process of matching the balances in an entity's accounting records for a cash account to the corresponding information on a bank statement. For effective public funds management, the TSA should at least cover all government entities. It is also recommended that the TSA covers public institutions and autonomous government entities, loans, grants and donations from institutions, and extra-budgetary funds. All governmental bodies, public institutions, autonomous agencies, and extra-budgetary funds should dispose of bank accounts within the Central Bank and linked to the main account. The balances should be automatically swept at the end of each day to the main account, and the Central Bank must effectively consolidate the balances in all the government accounts. As such, the government banking arrangement should be unified, and the Ministry of Finance should be entrusted with oversight alone.
  - Introduce the Internal audit function at the level of all procuring entities and harmonize it with Public Financial Management reforms/improvements.



## Parliament: Return of the Jedi

Parliamentary collaboration with oversight agencies is vital for a sound public procurement and for the management of public funds in general. The dialogue between Parliament and oversight agencies such as the Court of Accounts and the Central Inspection should be enhanced, and institutionalized.

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### Recommendations

- Means**
- The Court of Accounts (and eventually the Central Inspection) can be placed under the administrative authority of the Parliament, which is the case for financial oversight agencies in several other countries. This helps avoid potential conflicts of interest arising out of the Court of Accounts being linked with the executive and which may impede the Court of Accounts from fulfilling its mission independently.
- Tools**
- Strengthen communication processes between Parliament and oversight agencies (particularly the Court of Accounts and the Central Inspection). This will enable the Parliament to access transparent and reliable information.
    1. Oversight agencies shall draft periodic reports of activities in order to enable the Parliament to take the necessary measures or conduct the necessary investigations. Asking oversight agencies to submit and publish the periodic reports, write explanations of proceedings and abide by requests for information, grants the parliament the means to enhance governance and transparency.
      - The reports must be made accessible to the public in order to increase transparency, along with the comments made by members of Parliament, heads of the concerned oversight agency, as well as the concerned public administration or institution.
  - Strengthen governmental accountability. Each ministry must draft a report of its financial activities and submit its financial statements within three months of the end of the financial year (*i.e.* 31 December).
  - The budget and finance parliamentary committee shall audit oversight agency reports and report to Parliament with its findings. It shall also audit reports of each ministry's activity. The report must be followed by a formal response from the government within 3 months. The report is published on the Parliament's platform and is accessible to all citizens.
  - Heads of oversight agencies must be ensured a guaranteed term or office. Tenure must therefore be guaranteed, and immunity must be granted to heads of oversight agencies in order to enable them to operate without threats of being removed.

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