

## WEBINAR

# Efficient public procurement complaints mechanism and the role of an independent review body: International good practices and roadmap for Lebanon

### Concept note and agenda

#### Final

**Date:** Wednesday 10<sup>th</sup> and Thursday 11<sup>th</sup> March 2021

**Time:** 15:00 – 17:00 (Beirut Time)

**Partners:** World Bank, OECD-SIGMA

**Participants:** Policy makers in charge of discussing and enacting the new procurement law, national legal and procurement experts involved in the process of law discussions and consultations, representatives of governance civil society organizations and of donors supporting the public procurement reform in Lebanon.

**Language:** English

**Platform:** Zoom

**Registration:** Please register on <https://arcg.is/1vnbDP>. A Zoom link to the webinar will be provided upon registration.

## Purpose

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The Institut des Finances Basil Fuleihan is organizing, in partnership with the World Bank and OECD-SIGMA, a 2-day webinar entitled "**Efficient public procurement complaints mechanism and the role of an independent review body: International good practices and roadmap for Lebanon**".

The webinar is organized at a time when the new procurement draft law is being discussed by the Lebanese Parliament, and national consultations are taking place on the establishment of the procurement review body (PRB) that would ensure an efficient complaints mechanism, knowing that, until date, no consensus among concerned stakeholders has been reached on the status, mandate and governance of this body.

The webinar will help policy makers and stakeholders concerned with the reform of public procurement in Lebanon getting a better understanding of the general requirements and international standards for an efficient complaints and review system in public procurement, as well as the role and governance of an independent review body, in light of several country experiences. **The ultimate objective is to inform the discussions on the PRB in Lebanon and help the parties concerned design consultatively the most suited institutional solutions for the Lebanese PRB.**

## Background

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Lebanon has an outdated and fragmented public procurement system with considerable capacity and technology gaps, resulting in inefficiencies and high risks of corruption. The legal framework is old (1959/1963), fragmented (various laws, decrees, decisions), and does not conform with international standards and guidelines. The institutional framework is weak with overlapping mandates and gaps in stakeholders' roles, leading to inefficiencies.

In 2018, following the CEDRE Conference, the Government of Lebanon, through the Ministry of Finance, committed to reforming public procurement, giving a strong signal of trust to both the private sector and the donor community. The Minister of Finance mandated the Institut des Finances Basil Fuleihan to lead on this exercise.

A full-fledged assessment of the performance of the public procurement system was conducted following the MAPS international methodology, with support of the World bank and the Agence Française de Développement. In parallel, a modern procurement law was drafted, reflecting international standards and good practices for an efficient and transparent public procurement system, in line with the UNCITRAL Model Law (2011), the OECD Recommendations on Public Procurement (2016), and MAPS Recommendations (2020).

The new public procurement draft law has been submitted to the Lebanese Parliament and discussed in a special parliamentary committee since June 2020, with an extensive consultation process in place engaging public sector, private sector and civil society to ensure national ownership. The discussions have reached the level of establishing an independent PRB in Lebanon to handle the complaints submitted in the pre-contractual phase, in a fair, transparent and timely manner.

Transparent and efficient public procurement review systems have been actively promoted by international standards, such as the United Nations Commission for International Trade Law (UNCITRAL) Model Law on Public Procurement, the World Trade Organization Agreement on Government Procurement (WTO-GPA) and the European Union Directives. International instruments advocate assigning complaints review tasks to commercial courts or independent specialized review bodies. A sound and efficient complaints and review system, especially in the pre-contractual phase, aims at enforcing the practical application of public procurement legislation by ensuring that violations of the law and intentional or unintentional mistakes of contracting authorities/entities can be corrected. It also gives the private sector strong positive signals on the competitive framework of the procurement market which enhances investors' trust in the system and encourages competition.

It is to be noted that in Lebanon, the current public procurement system lacks a specific regulatory and institutional set-up that would allow complaints against contracting authority decisions to be handled in a clear, unified, speedy, independent, unbiased and competent manner. The complaints review mechanism is thus weak and inefficient, with the absence of a review body with proper expertise in procurement matters, specifically established to handle public procurement complaints in the pre-contractual phase. Complaints are rather being addressed in a non-systematic way to either the Central Tender Board, the Court of Accounts or the State Council Judge of urgent matters. The available regulated recourse before the Judge of urgent matters at the level of the State Council is insufficient and mostly unsatisfactory, as it is not aligned with international standards and requirements of speed and quality of reviews and decisions for an efficient public procurement system. The MAPS assessment confirmed that existing regulations for handling public procurement complaints at the preparation and award stages do not ensure timeliness and quality of review and resolution, and analyzed associated inefficiencies and corruption risks. The assessment recommends to review and revise the approach to handling complaints, to ensure timely review and resolution by an independent institution.

It is to be noted that, in the framework of draft law discussions, more than 10 consultation meetings tackling the issue of PRB specifically took place with concerned stakeholders (representatives of the Ministry of Justice, the State Council, CSOs advocating for the legal reform such as the 'Legal Agenda', independent jurists and former head of State Council), but did not lead yet to a common understanding.

Discussions on the PRB come at a time when a reform of the administrative judiciary in Lebanon is being initiated. The administrative court (State Council) in Lebanon is resistant to the establishment of what may be viewed as a « parallel » body, especially that it considers that procurement complaints cases should be handled by the State Council exclusively (currently acting as the first and last instance tribunal for contracts related complaints), and that any other scenario may jeopardize the current role of the State Council.

Challenges of establishing the review body in the new procurement law include deciding on the nature and mandate of this body, modus operandi, governance model, type of decisions that may be taken by this body, as well as guarantees needed for its total independence. This workshop is designed to help untangle the issue and open up the discussion on possible institutional solutions for the Lebanese PRB.

## Tentative agenda

### Day 1: Wednesday 10<sup>th</sup> March 2021

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| <b>15:00 – 15:05</b> | Welcome note<br><i>Institut des Finances Basil Fuleihan</i>  |
| <b>15:05 – 15:15</b> | Purpose and general requirements for an efficient complaints mechanism in public procurement<br><i>Mr. Daniel Ivarsson, International Expert in Public Procurement</i>   |
| <b>15:15 – 15:30</b> | An Independent Review Body: Governance and institutional challenges<br><i>Mr. David S. Bernstein, Lead Public Sector Specialist, World Bank</i>                          |
| <b>15:30 – 15:40</b> | Insights on Lebanon's current practices: Findings and recommendations from the MAPS assessment<br><i>Mr. Daniel Ivarsson, International Expert in Public Procurement</i> |
| <b>15:40 – 15:50</b> | Keynote Address<br><i>Mr. Yassin Jaber, Member of Parliament, Chair of the Parliamentary Committee discussing the Draft Public Procurement Law</i>                       |
| <b>15:50 – 16:10</b> | Experience of the Complaints Board for Public Procurement in Denmark<br><i>Mr. Peter Gjortler, Of Counsel, Advokat at Grayston &amp; Company law firm</i>                |
| <b>16:10 – 16:45</b> | Discussion   |
| <b>16:45 – 17:00</b> | Comments from partner organizations<br>Concluding remarks for Day 1  |

### Day 2: Thursday 11<sup>th</sup> March 2021

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| <b>15:00 – 15:10</b> | Welcome and Summary of Day 1   |
| <b>15:10 – 15:20</b> | Opening remarks<br><i>Mr. Georges Okais, Member of Parliament, Member of Parliamentary Committee discussing the Draft Public Procurement Law</i>   |
| <b>15:20 – 15:45</b> | Experience of the Dispute Resolution Council in Georgia<br><i>Mr. Kakha Demetrashvili, Deputy Chairperson, State Procurement Agency</i><br><i>Mr. Dimitri Gulisashvili, Head of Foreign Relations Department, State Procurement Agency</i> |
| <b>15:45 – 16:10</b> | Experience of the National Council for Solving Complaints in Romania<br><i>Mr. Silviu-Cristian Popa, Senior International Expert, OECD-SIGMA</i>   |
| <b>16:10 – 16:35</b> | Experience of the State Commission for Supervision of Public Procurement Procedure in Croatia<br><i>Mr. Zoran Blazevic, Temporis Consulting Ltd, Croatia</i>   |
| <b>16:35 – 16:50</b> | Discussion   |
| <b>16:50 – 17:00</b> | Summary of Day 2 and closing   |