



Lebanese Oil & Gas Initiative
المبادرة اللبنانية للنفط والغاز

Transparency & Accountability in Lebanon's Petroleum Legislation

*Review of the legislative
framework within the oil
and gas sector in Lebanon
- September 2017*



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FOREWORD

This report forms part of a project aimed at enhancing transparency and accountability in Lebanon's upstream offshore oil and gas sector carried out by the Lebanese Oil & Gas Initiative ("LOGI" and the "LOGI Project" respectively). The LOGI Project is funded by the Dutch Embassy.

On 13 May 2017, LOGI issued Terms of Reference ("ToR") for an assignment entitled "Legal consultants to identify gaps and red flags on risks of corruption and lack of transparency in Lebanese Oil and Gas laws, and develop high level policy recommendations" (the "Assignment"). The ToR sets out a Scope of Work ("SoW"). The SoW establishes that the legal consultants inter alia shall:

- Based on international petroleum law/best international practices in the petroleum industry, identify transparency gaps in the current and draft oil and gas policies, decrees and laws (listed in item 4.1) to identify existing gaps and red flags on risks of corruption and lack of transparency.
- Based on the gap analysis, develop high level policy recommendations to enhance transparency in the current policies and proposed draft laws.
- Develop a deep dive policy recommendation on beneficial ownership disclosure and a beneficial ownership disclosure mechanism policy proposal.

Based on the ToR, Arntzen de Besche Advokatfirma AS («AdeB»), a law firm based in Oslo, Norway and Al-Jad, a law firm based in Beirut, Lebanon, were asked by LOGI to collaborate on the Assignment. AdeB, as Norwegian lawyers specialised in petroleum law and petroleum contracts, has accepted to carry out certain tasks listed in the ToR that relate to modern international petroleum law/good practices in the international petroleum industry. Al-Jad, as Lebanese lawyers, has accepted to provide assistance to AdeB in these activities, advising on Lebanese law.



DISCLAIMER

AdeB's lawyers are qualified Norwegian lawyers and cannot advise on Lebanese law. AdeB's advice is based on our industry knowledge and practice, experiences from our international practice, our knowledge of modern international petroleum law, international anti-corruption initiatives and requirements within the extractive industries and good practices in the international petroleum industry. AdeB has carried out a review of relevant Lebanese sources based on a set of documents translated from Arabic made available to AdeB by LOGI, listed in item 4.1. As Norwegian lawyers, our interpretation of legal texts may differ from the interpretation that a Lebanese lawyer would have. AdeB does not take responsibility for any errors in translation or for any misinterpretations of Lebanese laws.

Al-Jad, as Lebanese lawyers, has provided assistance to AdeB on Lebanese law based on their knowledge of Lebanese law. Al-Jad has provided input on Lebanese law and quality assured all statements herein related to Lebanese law.

Each of AdeB and Al-Jad is responsible and liable for their own respective work only.







Executive Summary

EXECUTIVE SUMMARY

The Lebanese upstream offshore petroleum industry is nascent. Reportedly, seismic surveys indicate that there may be petroleum resources in Lebanese waters, but petroleum activities are yet to commence and no wells have been drilled.

Much work has been laid down to ensure that a modern legal framework for petroleum activities is in place before petroleum activities commence in Lebanese waters. Our overall impression is that this effort has succeeded. Lebanon has to date a rather comprehensive and modern legal framework specifically drafted for offshore petroleum activities.

Corruption is a complex phenomenon and can take many forms. International experience shows that petroleum resource management is vulnerable to corruption. Legislative measures to counter corrupt behaviour in the petroleum sector include adequate criminal sanctions against corrupt behaviour and ensuring that principles of good governance, including transparency and accountability, are embedded in all the various elements of applicable law for petroleum activities.²

In item 4 of this report, we provide an analysis of whether the Lebanese legal framework for the petroleum sector is deviating from good practices on transparency and accountability in the international petroleum industry and whether transparency is lacking or can be improved.³ The analysis has proven to be a comprehensive and complex task. We have not been able to go into detail on all issues. Rather, we have chosen to focus on selected main issues that either is particularly vulnerable to corruption or that are of particular relevance for the overall level of transparency and accountability in the Lebanese petroleum sector. Moreover, as rules on petroleum activities typically evolve alongside with the development of a domestic petroleum sector and experiences made therefrom,⁴ particular focus has been given to the most imminent activity in the Lebanese petroleum sector; the award of petroleum rights.

Our overall impression is that the level of transparency and accountability in the Lebanese legal framework applicable to petroleum activities is in large parts in line with good international practices. Moreover, in light of recent Lebanese legislative efforts, including the adoption of a legal framework for petroleum activities and of the Right of Access to Information Law,⁵ we note that there appears to be an appreciation of the need to adopt a holistic approach in the prevention of corruption. This impression is further strengthened through the active approach Lebanese authorities have taken in the undertaking to implement the 2016 EITI Standard⁶ – despite the fact that the Lebanese petroleum sector is only nascent.⁷ These are measures that, if implemented, improve the level of transparency and accountability in the Lebanese petroleum sector. However, in light of the reportedly high risk for mismanagement and poor governance in Lebanon,⁸ Lebanese authorities should continue their efforts to counter corrupt behaviour and actively continue to promote and ensure implementation of principles of good governance in and in accordance with its legal framework. Moreover, as pointed out in our recommendations herein, we have identified areas where there either is a need for improvement, or where the Lebanese authorities may wish to consider taking steps that may lead to improvement, of the level of transparency and accountability.⁹ Inter alia, Lebanon must in due course take a number of steps in order to implement the 2016 EITI Standard.¹⁰

Our main observations, recommendations and policy recommendations are summarized in the following tables:

Item 4.2 Award of exploration and production rights

Observations

The concepts behind the regulation of award of petroleum rights as set out in OPRL and PAR is by and large in line with good international practices. However, read in isolation, the rules are brief and in some parts unclear. These rules would benefit from being clarified and elaborated in further detail; whereas the pre-qualification process is regulated in more detail in the Pre-qualification Decree, the Tender Protocol is only applicable to the FOLR. Therefore, for the FOLR, the rules for award are both elaborate and clear. As for subsequent licensing rounds, we understand that the intention is to prepare new, specific tender protocols for each licensing round.

Recommendations

- We recommend that Lebanese authorities in due course consider a revision of the rules on award in the PAR to clarify and elaborate the regulation of award and that such revision includes taking the main rules on award out of specific tender protocols for each licensing round and into a legal instrument of general application, e.g. PAR Chapter 3.
- We recommend that any revision of PAR Chapter 3 as recommended above should be based on the experience gained in FOLR and any subsequent licensing rounds held before a revision is carried out. This means that in a possible revision of the rules in PAR Chapter 3, Lebanese authorities should carefully evaluate how the main rules set out in the Tender Protocol worked during licensing rounds with a view to ensure that the rules that are incorporated into PAR are adequate for the Lebanese context and in line with good international practices.

Topic

Award of petroleum rights: Overall regulation

Legal Instrument

Offshore Petroleum Resources Law (Law no 132 of 2010, "OPRL") and Petroleum Activities Regulations (Decree No 10289 of 2013, "PAR") as supplemented by Decree 9882/2013 dated 16 February, "Pre-qualification Decree" and Tender Protocol for the First Offshore Licensing Round (Decree No 43 dated 19 January 2017, "Tender Protocol")

Ref. to full analysis made in report

Item 4.2.2

Topic

Award of petroleum rights: Overall regulation

Legal**Instrument**

Decree 9882/2013 dated 16 February, "Pre-qualification Decree"

Ref. to full analysis made in report
Item 4.3.2

Observations

The Pre-qualification Decree is in large parts in line with good international practices, but Lebanese authorities should consider amending the Pre-qualification Decree to include some clarifications.

Recommendations

- Article 15 of the OPRL establishes that EPAs may be awarded to "pre-qualified joint stock companies".

Article 3.3 of the Pre-qualification Decree establishes that groups of companies can apply for pre-qualification. In such cases at least one of the companies must prove that it is able to meet the pre-qualification eligibility criteria set forth in the decree.

The Tender Protocol item 12 establishes that groups of companies pre-qualified under Article 3.3 of the Pre-qualification Decree are required to form a joint stock company in order to submit an application in the petroleum licensing round.

We recommend that for clarity, Lebanese authorities should consider including the rule set out in the Tender Protocol item 12 in the Pre-qualification Decree.

- Article 7.4 of the Pre-qualification Decree states that applicants that do not meet the criteria set forth may not be pre-qualified. Article 3.3, however, establishes a rule whereby groups of companies can pre-qualify as a group if at least one of the companies must prove that it is able to meet the pre-qualification eligibility criteria.

We recommend that Lebanese authorities should review the Pre-qualification Decree to assess the changes needed to correct the foregoing discrepancies, taking into consideration item 12 of the Tender Protocol (see more information on this below) and the other recommendations made in this report. Furthermore, until the time when disclosure of beneficial ownership is adequately implemented in Lebanon's petroleum regime (as explained further in this report), we recommend that the participation of group companies qualified based on Article 3.3 would be monitored closely by the LPA and Lebanese civil society to ensure such arrangements are not used inappropriately.

- We recommend that Lebanese authorities consider clearly stating in the Pre-qualification Decree that companies that are not pre-qualified will get a substantiated reason for a rejection in writing.
- We recommend that Lebanese authorities consider amending Article 8 last sentence to codify the current practice by specifying the announcement of the results of the prequalification process shall be made in writing.
- We recommend that Lebanese authorities consider to amend the Pre-qualification Decree to include a provision that establishes that relevant information on the pre-qualification process including the results shall be published.

Observations

The Tender Protocol applies to the FOLR and is in large parts in line with good international practices. For any future licensing rounds we note that there are certain issues that Lebanese authorities should consider to improve the level of transparency.

Recommendations

- We recommend that Lebanese authorities consider, in the rules for any future licensing rounds, to require publication of all questions (anonymously) from applicants and the related answers on a website open to the general public.
- We recommend that Lebanese authorities consider in the rules for any future licensing rounds, whether the level of discretion in carrying out the negotiations can be further limited for instance as suggested in item 4.2.4.
- We recommend that Lebanese authorities consider in the rules for any future licensing rounds, to increase the level of transparency and the possibilities for accountability in the negotiation process, e.g. by introducing mechanisms promoting transparency such as publishing the applications, disclose the ranking and recommendations for applicants including Provisional Winners to the extent possible without compromising a legitimate need to protect business secrets disclose the negotiation results and introduce oversight or verification/audit of the negotiation process.
- We recommend that Lebanese authorities consider to state clearly in the rules for any future petroleum licensing rounds that any such decisions to cease negotiations with an applicant under item 10 in the Tender Protocol are made in writing.
- We recommend that it is being stated clearly in the rules for any future petroleum licensing rounds that the award results are published in writing.
- We recommend that in the rules for any future licensing rounds, the directions for payment of additional multi-client data are clearly stated.

Policy recommendations made on the basis of the observations and recommendations in item 4.2

Based on the experiences made in its first licensing round, Lebanese authorities should in due course consider to review the rules on award in PAR and the Pre-qualification Decree so as to regulate licensing rounds in more detail and fully in line with good international practices. Lebanese authorities should publish signed EPAs.

Topic

Award process

Legal Instrument

Tender Protocol for the First Offshore Licensing Round (Decree No 43 dated 19 January 2017, "Tender Protocol")

Ref. to full analysis made in report

Item 4.3.4

Item 4.3 Transparency in public decision making

Issue and reference to analysis made in report

Item 4.3.2

Evaluation of the relevant Lebanese legal framework

Observations

- Our overall impression is that the allocation of roles and responsibilities between relevant Lebanese authorities involved in petroleum resource management is relatively clear and that their powers and decision-making procedures are relatively clearly set out.
- Our overall impression is that Lebanese law establishes adequate accountability mechanisms. However, in this respect we emphasize that in order to have their desired effects; laws must be implemented and enforced. It remains as of yet to be seen how these rules would be implemented in a given case.
- Our overall impression is that the legal framework establishing rights to access to information appears robust, however, as will be discussed below in item 4.4, there may be a need for additional regulations for EITI implementation purposes.

Recommendations

- We recommend that Lebanese authorities should consider establishing a specific implementation procedure of the Right to Access to Information by the Minister and by the LPA.
- We recommend that Lebanese authorities should put priority on the establishment of an Anti-Corruption Commission as foreseen in the Right to Access to Information Law and the Draft Strengthening of Transparency Law.

Policy recommendations made on the basis of the observations and recommendations in item 4.3

- Lebanese authorities should consider establishing a specific implementation procedure of the Right to Access to Information by the Minister and by the LPA.
- Lebanese authorities should put priority on the establishment of an Anti-Corruption Commission as foreseen in the Right to Access to Information Law and the Draft Strengthening of Transparency Law.

Item 4.4 Broader transparency and public dissemination of petroleum-related information

Observations

Lebanon has undertaken to implement the 2016 EITI Standard and there is a need to establish corresponding disclosure obligations. In the work towards implementation, Lebanese authorities must take both the mandatory requirements of the relevant EITI Requirements as well as the recommendations and encouragements provided therein into consideration.

Recommendations

- We recommend that Lebanese authorities establish a requirement to disclose beneficial ownership, before, or as soon as reasonably practically after, the award of EPAs in 2017.
- We recommend that Lebanese authorities opt for implementation of not only the mandatory requirements, but also all the recommendations in EITI Requirement 2.5.
- We recommend that Lebanese authorities establish a clear and broad definition of “beneficial owners” that inter alia makes it clear that beneficial owners are natural persons, that goes beyond legal ownership and control and captures the individuals who get economic benefits from the companies and who actually exercises control. No thresholds should be set for the disclosure obligation and all beneficial ownership by politically exposed persons should be reported.
- We recommend that Lebanese authorities consider adopting a provision that requires information related to the environment (e.g. environmental and social impact assessments, outcome of public consultations) as well as other information and reports related to petroleum activities to be publicly available.
- We recommend that the Lebanese authorities consider the inclusion of specific provisions addressing the disclosure requirements of the 2016 EITI Standard either by the means of a (a) specific provision(s) in the OPRL or through adoption of a specific transparency law, see the discussion in item 4.6.4.
- We recommend that the Lebanese authorities opt for implementation of the 2016 EITI Standard in the broadest sense to ensure a high level of transparency and enable accountability in the Lebanese petroleum sector. This means that as far as possible, Lebanese authorities/the MSG should implement not only the mandatory EITI Requirements but also as far as possible the recommendations.

Issue and reference to analysis made in report

Item 4.4.2 on implementation of the 2016 EITI Standard in Lebanon

Item 4.4.3 on disclosure of beneficial ownership

Item 4.4.4 on collection of government take

Policy recommendations made on the basis of the observations and recommendations in item 4.4

- Lebanese authorities should establish a requirement to disclose beneficial ownership, before, or as soon as reasonably practically after, the award of EPAs in 2017.
- Lebanese authorities should establish a clear and broad definition of “beneficial owners” that inter alia makes it clear that beneficial owners are natural persons, that goes beyond legal ownership and control and captures the individuals who get economic benefits from the companies and who actually exercises control. No thresholds should be set for the disclosure obligation and all beneficial ownership by politically exposed persons should be reported.
- Lebanese authorities should, as far as possible, opt for implementation of the 2016 EITI Standard in the broadest sense to ensure a high level of transparency and enable accountability in the Lebanese petroleum sector.

Item 4.5 Management of revenue, creation and oversight of funds

Issue and reference to analysis made in report

Item 4.5.2

Evaluation of the relevant Lebanese legal framework

Observations

- Petroleum activities have not yet commenced in Lebanon. As of yet, we expect the only receipts relating to petroleum activities to be limited to the application fee for participation in the FOLR that shall be paid to the Treasury. This should be adequate for the time being.
- Lebanon has undertaken to implement the 2016 EITI Standard, and should take both the requirements of EITI Requirement 5 as well as the encouragements provided therein into consideration. All elements of EITI Requirement 5 should, if possible, be implemented in Lebanon to ensure as much transparency and accountability surrounding the management and expenditure of petroleum revenues as possible. We expect this to be an important measure to promote trust.

Recommendations

- We recommend that Lebanese authorities establish a sovereign fund statute that inter alia ensures transparency and accountability surrounding revenue management and expenditures in good time before major petroleum revenues can be expected.

Policy recommendations made on the basis of the observations and recommendations in item 4.5

- Lebanese authorities should establish a sovereign fund statute that inter alia ensures transparency and accountability surrounding revenue management and expenditures in good time before major petroleum revenues can be expected.

Item 4.6 Comments on certain other transparency and anti-corruption measures specific to the Lebanese petroleum sector

Observations

- There has been, and there still is, much focus and work on integrating transparency, accountability and anti-corruption measures in the legal framework applicable to the Lebanese petroleum industry. Our impression is that these are matters that engage all relevant stakeholders.
- The Draft Strengthening of Transparency Law addresses a number of weaknesses in the Lebanese legal framework for petroleum activities. Adoption of many of its rules would strengthen the level of transparency in the Lebanese petroleum sector. In parts it overlaps and supplements existing legislation. It may be more user-friendly and transparent to, where deemed necessary by Parliament, rather amend the relevant laws and regulations than adopt the draft law as it stands now as one, single law.
- Many of the elements in the Draft Strengthening of Transparency Law are requirements that Lebanon must nevertheless consider as a part of EITI implementation. EITI implementation will take some time. Adopting the draft law could service as an interim alternative.

Recommendations

- We recommend that Lebanese authorities consider to adopt (parts of) the draft law even before full and detailed EITI implementation.

Policy recommendations made on the basis of the observations and recommendations in item 4.6

Lebanese authorities should consider to adopt (parts of) the draft law even before full and detailed EITI implementation.

Issue and reference to analysis made in report

Item 4.6.3 PAR
Article 161

Item 4.6.3 Model
EPA Article 41

Item 4.6.4 Draft
Strengthening
Transparency Law





1. Introduction

1. INTRODUCTION

1.1 *The Lebanese petroleum industry*

The Lebanese upstream offshore petroleum industry is nascent. In 2010, a US Geological Survey (“USGS”) showed promising results. Subsequently, Lebanese authorities have ensured that new seismic data have been acquired.¹¹ Reportedly, there are indications for potential for petroleum resources,¹² but no wells have yet been drilled. There have, however, been recent discoveries in the other countries in the vicinity of Lebanese waters, including Cyprus, Israel and Egypt. This gives hope for commercial discoveries of petroleum in Lebanese waters.¹³ Provided that there is political interest and climate for cooperation, offshore infrastructure developments in neighbouring countries may ease any development projects in Lebanese waters.

Lebanese authorities have taken many steps to prepare the ground for a national upstream offshore petroleum industry. A new regulatory body, the Lebanese Petroleum Administration (“LPA”), was established in December 2012. A rather comprehensive and modern legal framework for offshore petroleum activities has been adopted, including the Offshore Petroleum Resources Law (“OPRL”) in 2010 and the Petroleum Activities Regulations (“PAR”) in 2013.

At the time of writing, the First Offshore Licensing Round (“FOLR”) has recently been revived after a four year long stalemate. Decree number 43 dated 19 January 2017 includes the Tender Protocol (“TP”) and the Model Exploration and Production Agreement (“EPA”). Pre-qualification has been carried out,¹⁴ and the bid deadline is 15 September 2017.

There is thus reason to believe that exploration will commence within the not too distant future. This also means that for the first time, the Lebanese legal framework for offshore petroleum activities will be tried and tested, through implementation, compliance, supervision and enforcement.



1.2 *General comments on development of a legal framework for petroleum activities*

Much work has been laid down to ensure that a modern legal framework for petroleum activities is in place before petroleum activities commence in Lebanese waters. This effort has succeeded. Lebanon has to date a comprehensive legal framework for offshore petroleum activities. It does not; however, yet fully cover everything. We wish to emphasise that this is not necessarily a flaw. Rather the opposite, host countries¹⁵ are well advised to develop their petroleum legal framework based on a step-by-step approach, with particular focus on the most imminent activities to take place.¹⁶ As such, the legal framework can develop and mature in pace with the development of the

domestic petroleum activities and as the host country's experience and knowledge is increased. It is then easier for the host government to identify the need for regulation. Its policies might also have matured.¹⁷

The comments that we make in the following, must be read with the above in mind. This is also the natural explanation for the detailed focus on award of exploration and production rights in item 4.



1.3 *This report: Overview*

The contents of this report can be summarized as follows:

- In item 2 “Background and the petroleum sector”, we comment on the term “corruption”, on the conditions that facilitate corruption, on transparency and accountability as measures against corruption and risks for corruption in the petroleum industry.
- In item 3 “Legislation as a measure to counter corruption in the petroleum sector” we comment on how domestic legislation can contribute to counter corruption and on how international law and other countries’ domestic laws may assist in countering corruption in Lebanon.
- In item 4 “Lebanon’s legal framework for petroleum activities” we provide an analysis of whether the Lebanese legal framework for the petroleum sector is deviating from good practices on transparency and accountability in the international petroleum industry and whether transparency is lacking or can be improved.
- In item 5 “Brief comments on other Lebanese anti-corruption legislation” we provide brief comments on the relevance of the broader Lebanese legal framework relevant also for countering corruption in the Lebanese petroleum sector.
- In item 6 “Policy recommendations” we summarize the policy recommendations provided in this report.







2. Background: corruption and the petroleum sector

2. BACKGROUND: CORRUPTION AND THE PETROLEUM SECTOR

2.1 What is corruption?

In international law, there is not one uniform definition of the term “corruption”. However, the following is an often-seen attempt to describe the phenomenon: *“Corruption equals “abuse of public or private office for personal gain”*”.¹⁸

Corruption is a complex phenomenon.¹⁹ Corruption can take many forms; bribery, trading-in influence, abuse of functions for the purpose of obtaining an undue advantage, illicit enrichment, embezzlement and misappropriation of property and funds.²⁰ There can be political and bureaucratic corruption and corruption in the private sector. Corruption can be systematic or isolated incidents. As observed in one report: “Defining corruption can be a challenge. It can take many forms, and perpetrators are skilled in developing new ways to be corrupt and cover their tracks”.²¹

It is against this background that key international conventions on corruption, i.e. the Organization for Economic Co-operation and Development (“OECD”) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the “OECD Convention”)²² and the United Nations Convention against Corruption (“UNCAC”),²³ refrain from defining “corruption”. Instead, actions and omissions that can be labelled “corrupt behaviour” are described.

In line with the above approach, Lebanese law does not contain an explicit definition of the term “corruption”. With respect to the public sector, corrupt practices are understood to include, inter alia, any individual offering a bribe (which includes gifts, promise or any other benefit), and any public official unlawfully soliciting or accepting for him- or herself or another a bribe for the performance, delay or non-performance of any act which falls within or breaches the scope of his/her duties. With respect to the private sector, corrupt practices include any individual offering or accepting any advantage for him- or herself or another, directly or indirectly, for disclosing secrets or information detrimental to the business or for performing or non-performing the job with the intent of causing material or moral damage to the employer or the business. Moreover, other forms of corrupt behaviour including trading-in influence, embezzlement, misappropriation or diversion of property and abuse of functions are all types of corruption sanctioned by Lebanese criminal law.

In the present report, the term “corruption” is used in a broad sense, and thus broadly reflecting the various forms of corrupt behaviour as mentioned above, although with a focus on corruption in the public sector.



2.2 Conditions for facilitating corruption

There is a plethora of studies and papers that demonstrates that corruption is detrimental for development.²⁴ Yet, the problem of corruption is widespread throughout the globe; in different jurisdictions with different governance systems and different economic environments. The phenomenon of corruption is complex, and so are its causes. The conditions that facilitate corruption include:²⁵

- Imperatives and incentives that encourage someone to engage in corruption;
- Availability of multiple opportunities for personal enrichment;
- Access to and control over the means of corruption; and
- Limited risks of exposure and punishment.

2.3 Transparency and accountability as measures to counter corruption

From the above list of conditions facilitating corruption, it is clear that merely enacting penal provisions on corrupt behaviour – even when actively enforced - is not sufficient to counter corruption in itself. Rather, the measures to counter corruption should as far as possible also address the remaining facilitating conditions:

“Anti-corruption work is not just about punishing [..], a holistic approach to addressing corruption goes further than criminalization and prosecution, it involves preventing it, by building transparent, accountable systems of

governance and strengthening the capacity of civil society and the media, as well as improving public integrity, strengthening the personal ethics of public and private officials, and perhaps even challenging social norms that encourage corruption.”²⁶

It is against this background that a demand for transparency within the extractive industries has been increasingly voiced over the past years. The term “transparency” typically refers to openness and communication of information in connection with public and corporate governance.²⁷ During the first wave of demand for increased transparency it appeared that it was widely assumed that transparency would be intrinsically interlinked with “accountability”, i.e. democratic control and holding host country governments responsible for relevant actions, decisions, policies, and the implementation thereof. The underlying thought appeared to be that as increased transparency would provide citizens with more information, it would also increase the possibilities for accountability. Thus, transparency was deemed to be an effective measure against corruption, mismanagement and the “Resource Curse”.²⁸ Another often acclaimed benefit of transparency and accountability, in particular in weak democracies, is the potential that dissemination of information may have for increasing trust between host governments and their people.²⁹

Over the past few years, however, there has been a growing recognition that transparency does not automatically lead to accountability. For instance, whereas the publication of payments made by companies and revenues received by governments in host countries under the former Extractive Industries Transparency Initiative (“EITI”) Standard led to increased access to information, it was soon established that it did not necessarily lead to accountability. For transparency to lead to accountability, there is a need for ensuring that the information so provided is understandable and that the information can be verified, e.g. payment and revenue information must be supported with comprehensive information on how the payments are calculated. There is also a need for real possibilities for democratic control through adequate oversight and enforcement mechanisms and a climate that allows for enforcement. In some cases, there may even be a need for a change of culture. Young or weak democracies may lack traditions for holding those in power accountable, e.g. because there is inadequate protection of whistle-blowers or because the citizens may identify more with a specific tribe or a specific sectarian grouping than with the nation as such.

It is against the above background that the LOGI Project - and consequentially this report –puts its emphasis on inter alia principles of good governance, notably on transparency and accountability, and that the policy recommendations summarized in item 6 are made.



2.4 Risk of corruption in petroleum resource management

Petroleum activities carry much potential for increased revenues to, and thus for economic and sustainable development in, host countries. Experience shows that not all host countries that exploit petroleum resources have realized this potential. On the contrary research shows that for many host countries resource wealth has had negative effects such as greater poverty, slower development and low growth – a phenomenon or theory referred to as the “Resource Curse”. On this issue it has been stated that:

“Significant research reveals the paradox that, instead of benefiting countries’ economies and political systems, extractive wealth is far more likely to have the opposite effect – a phenomenon known as the “resource curse.” The negative effects of resource wealth include greater poverty, lower growth, and slower development, with resource-rich countries ranking near the bottom of most measures of human development. Another effect is corruption and weak democracy, with natural resource wealth becoming a powerful incentive for

authoritarian rule. Resource wealth is also a clear contributor to violence and civil wars as the desire to control resources takes its most extreme form”³⁰

This report does not address the wider aspects of the “Resource Curse”. For the present purposes it suffices to state that corruption is deemed a part of this phenomenon.

Corruption in the management of petroleum resources is not uncommon. Again, the causes may be many and include, as observed by one author,³¹ the fact that petroleum activities are often undertaken in:

“[..] resource-rich emerging markets [..] weak in governance [..]”

Moreover, the author notes that

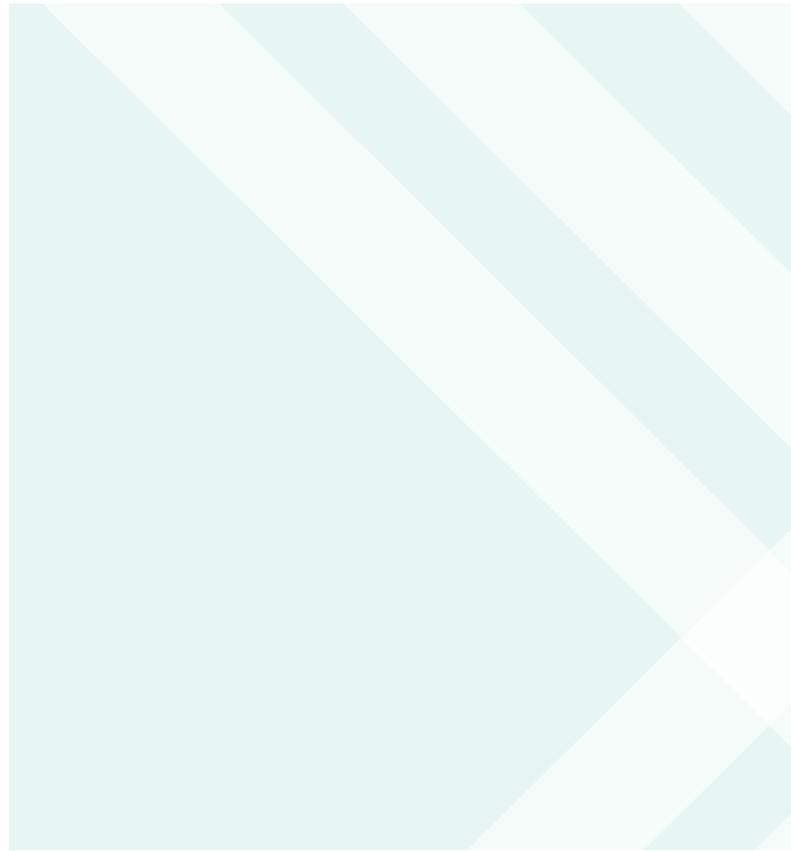
“[..] state-owned and managed resources necessitating frequent dealings with government officials and bureaucratic involvement [provides³²] many opportunities for bribery, the temptation for accepting bribes by these officials compounded by low salaries. Added to these issues is the fact that large sums of money are involved in both the investment aspect of petroleum activities and the

production end, money that is often unaccounted for and inadequately supervised after reception by either the state-owned petroleum corporation or other government ministries entrusted with its safe-keeping and management.”

The quote points at several important elements that may make petroleum resource management vulnerable to corruption. The core issue is the need for good governance in all phases of the petroleum activities. One should also note the emphasis on the need to not only regulate upstream activities, but also the revenue collection and revenue management.³³ One author observes: “In principle, oil or mineral revenues could be handled as any tax or receipt, placed in Treasury accounts, and allocated in accordance with normal budgetary processes”.³⁴ However, we see that many countries choose to adopt revenue management laws.³⁵

Moreover, there is a trend in modern international petroleum law for host countries to take increased control of the management of petroleum resources and petroleum activities. Typically this involves that the host country through its officials/institutions, take key decisions through issuing approvals, consents, permits and carry out supervision and enforcement in all phases of petroleum activities (i.e. opening of new areas for petroleum activities, award for exploration and production rights, exploration, development, production, transportation and decommissioning).

This approach to petroleum resource management is in line with the international public law principle of the host country’s permanent sovereign rights to natural resources and represents a modern approach to petroleum resource management. However, it also entails vulnerability and risk for corruption as it involves a significant degree of dealings between government and company officials and of bureaucratic involvement in petroleum activities. This is especially so where governance is weak, be it due to weak governance systems or due to insufficient capacity and competency in the various institutions in charge of petroleum resource governance. Host countries must therefore take care to base the governance of the petroleum sector and the legal framework for petroleum activities on principles for good governance, including transparency and accountability so as to narrow the room for corrupt behaviour.³⁶



3. Legislation as measure for countering corruption in the petroleum sector

3. LEGISLATION AS MEASURE FOR COUNTERING CORRUPTION IN THE PETROLEUM SECTOR

3.1 Domestic law

Typically, host countries use legislation as a measure to reduce vulnerability to and risk of corruption. International practice and recommendations aimed at countering corruption through legislation can be summarised as follows:

- Host countries should, in their domestic penal statutes, criminalize acts and omissions that constitute corrupt behaviour.
- Host countries should amend their civil statutes and public law statutes so as to narrow the room for corrupt behaviour, through implementing measures that promote good governance in all phases of petroleum activities.

Many host countries have undertaken obligations under international law to criminalize various acts of corrupt behaviour. For instance, UNCAC Chapter III “Criminalization and Law Enforcement” lists various acts and omissions to be criminalized, e.g. bribery of national and foreign officials, embezzlement, trading-in influence, abuse of functions, illicit enrichment et cetera. Moreover, Chapter III stipulates requirements aimed at easing investigation and enforcement of such penal provisions, e.g. concealment, obstruction of justice, liability of legal persons, participation. Lebanon is a signatory to UNCAC and has generally criminalized most corrupt practices listed by UNCAC except the bribery of foreign public officials and officials of public international organizations³⁷ and active trading-in influence.³⁸

This report focuses on the whether principles of good governance is embedded in the specific legal framework for the Lebanese petroleum sector. All relevant legislation should be built on and implement principles for good governance in the national petroleum sector,³⁹ namely:

- Clarity of goals, roles and responsibilities
- Sustainable development for the benefit of future generations
- Enablement to carry out the role assigned to each actor
- Accountability of decision-making and performance
- Transparency and accuracy of information⁴⁰
- The implementation of these principles in Lebanese law is discussed in items 4 and 5 respectively.



3.2 *International law and international initiatives*

In 3.1, we have pointed to how international public law obligations that a host country has undertaken can have a direct impact on the domestic law.

In addition to obligations that a host country might undertake under international treaties or conventions, there are other types of international initiatives aimed at increasing transparency and promoting good governance that a host country may choose to adhere to. The Extractive Industries Transparency Initiative (“EITI”) is the result of cooperation between governments, companies and civil society. At the international level, this multi-stakeholder cooperation has since 2009 mainly taken place through the EITI Association.⁴¹ Pursuant to the EITI Association’s Articles of Association article 2(2), its objective is:

“[...] to make the EITI Principles and the EITI requirements the internationally accepted standard for transparency in the oil, gas and mining sectors, recognising that strengthened transparency of natural resource revenues can reduce corruption, and the revenue from extractive industries can transform economies, reduce poverty, and raise the living standards of entire populations in resource-rich countries.”⁴²

The EITI Association is thus established to further a standard for revenue transparency in the extractive industries commonly referred to as the “EITI Standard”.⁴³ In 2016, the EITI Standard was expanded (the “2016 EITI Standard”) and it now includes a vast number of detailed recommendations and requirements on transparency and public dissemination of information relating to extractive industries – going beyond the mere reporting of the amounts that companies pay and that governments receive, which was the main aim of the original EITI standard.⁴⁴ The 2016 EITI Standard covers most main aspects related

to the elements that make petroleum resource management vulnerable to corruption, see item 2.4. As such, it appears to be an adequate tool for promoting or safe-guarding transparency in the petroleum sector in a rather broad sense.

Lebanon announced in January 2017 that it intends to join the EITI.⁴⁵ Consequently, the country sets out to respect and adhere to the recommendations and requirements of the 2016 EITI Standard. For this purpose, Lebanon will in accordance with EITI Requirement 1 establish a multi-stakeholder group (the “MSG”) that will prepare a work plan to map out how Lebanon will seek compliance with the 2016 EITI Standard over the coming years.

Because Lebanon has already undertaken to implement the 2016 EITI Standard, it will, where relevant in this report, serve as a yardstick for transparency in the legal framework for petroleum activities.



3.3 *Other countries’ domestic laws – impact on the Lebanese petroleum sector?*

The petroleum industry is an international industry. Many oil companies are multinational companies headquartered in industrialized countries whilst operating globally. The involvement of foreign investors means that not only Lebanese laws, but also the laws of the home countries of the companies involved in the Lebanese petroleum industry, are relevant to the manner in which such companies are carrying out their business in Lebanon – and thereby reducing the risk for corrupt behaviour in the Lebanese petroleum sector.

For instance, where a company or its employees are subject to other countries criminal law, and where such other countries have implemented conventions such as UNCAC and the OECD Convention and thus criminalized bribery of foreign officials, then perpetrators can be investigated and convicted in their home country for bribery abroad - including in Lebanon.⁴⁶ In 2014, it was reported that nearly fifty countries had enacted such transnational bribery legislation.⁴⁷ Many of these are countries that are home to some of the biggest companies involved in the international petroleum industry. Although there are variations in scope, jurisdictional reach and enforcement, these types of law have certainly had an impact on the conduct of international business transactions.⁴⁸

Furthermore, mandatory country-by-country reporting is a legal mechanism for increased transparency that may have extraterritorial effects, as it may counter the lack of publication of host country revenues from extractive industries. The term “country-by-country reporting” refers to a legal mechanism embedded in the legislation of the home country of the foreign investor company⁴⁹ requiring companies to report payments made to the governments

of the host countries in which the company (typically including its subsidiaries) conducts extractive activities. The reports are to be submitted to the authorities in the home country. Information so reported will typically be publicly available to the same extent that other financial information reported by companies is publicly available in the home country. As such, country-by-country reporting will have extraterritorial effects by creating partial revenue transparency in host countries.⁵⁰ Thus, even if Lebanon had not undertaken to publish its revenues and implement the 2016 EITI Standard, any company based in the US or in the EU would effectively be obliged to publish its payments made in relation to petroleum activities in Lebanon.



3.4 Compliance

The intense focus on countering corruption over the past years has resulted in a change in the way most companies are carrying out their businesses. There is great focus on compliance, not only on compliance with the domestic laws in the host country, i.e. Lebanon, but also the laws of the companies' home countries and any other applicable law. Most companies have adopted strict anti-corruption guidelines that apply for all staff in all countries in which they operate. Companies have also signed up to international initiatives such as UN Global Compact, the OECD's Guidelines for Multinational Enterprises, and the ILO Convention 169 the Indigenous and Tribal Peoples Convention.⁵¹

This practice, albeit originated from abroad, helps countering corruption in Lebanon, in as far as they participate in Lebanese petroleum activities. Thus, if possible, it would be preferable for Lebanon to attract reputable oil companies from jurisdictions that have criminalized corruption abroad.⁵²





4. Lebanon's legal framework for petroleum activities

4. LEBANON'S LEGAL FRAMEWORK FOR PETROLEUM ACTIVITIES

4.1 Introduction

AdeB and Al-Jad have been asked to review certain applicable and draft Lebanese policies,⁵³ laws and regulations with a view to “[..] identify existing gaps and red flags on risks of corruption and lack of transparency”. For this purpose, AdeB has been provided with copies of the following legislation, translated to English:

- Offshore Petroleum Resources Law, No. 132 of 2010 (“OPRL”);
- Petroleum Activities Regulations Decree, No. 10289 of 2013 (“PAR”);
- Decree number 43 dated 19 January 2017, encompassing the Model Exploration and Production Agreement (the “Model EPA”), with the Tender Protocol (the “Tender Protocol”) as Annex 1;
- Pre-Qualification Package of 2013 including the Pre-Qualification Decree Number 9882/2013 dated 16 February (“Pre-qualification Decree”) and Pre-Qualification Package of 2017 (decision number 1/m of the Minister of Energy and Water of 26 January 2017 regarding the launch of a prequalification process in connection with Lebanon’s First Offshore Licensing Round, both of which are substantially the same (the “Prequalification Packages”));
- Decree number 42 dated 19 January 2017 on the delineation of Blocks;
- An unofficial English translation of Law no. 28 dated 10/2/2017 (“The Right of Access to Information Law”); and
- MP Maalouf’s draft law on Strengthening Transparency in the Petroleum Sector law (“Draft Strengthening Transparency Law”) translated into English.

Of other applicable and draft legislation of particular specific relevance to the petroleum sector, Al-Jad has had access to the Decree No. 7968 of 2012 establishing the Lebanese Petroleum Administration (“LPA”) and a draft petroleum tax law, both in Arabic.

Of particular relevance to this Assignment is that we understand that the LPA is currently working on legislation concerning the petroleum registry. Reportedly, such legislation will also address beneficial ownership. However, as the work is still ongoing, we have not obtained a copy of the draft.⁵⁴

In the following, we provide a summary of an analysis of whether the Lebanese legal framework for the petroleum sector in its main points is deviating from good practices on transparency and accountability in the international petroleum industry and whether transparency is lacking or can be improved.⁵⁵ The analysis is a comprehensive and complex task. We have not been able to go into detail on all issues. It has also been challenging to carry out the evaluations, because there is not always a “one size fits all”-solution in regulating petroleum activities. Host countries are sometimes challenged with having to balance different policy goals, which in turn can compromise optimal levels of transparency. Therefore, with reference to items 2.2 and 2.4, we have chosen to focus on:⁵⁷

- Award of exploration and production rights (item 4.2);
- Public decision-making in petroleum resource management (item 4.3);
- Transparency and public dissemination of petroleum-related information (item 4.4);
- Management of revenue, creation and oversight of funds (item 4.5);
- Anti-corruption measures for the petroleum sector in Lebanon (item 4.6)

In item 4.7 we provide some high level comments on procurement, local content and inspection, monitoring and enforcement.

We have also carried out a high-level analysis of the Lebanese regulatory framework for petroleum activities against typical red flags for corruption on a phase-by-phase approach. This analysis is summarized in Appendix 2.



4.2 Granting/award of exploration and production rights, including bid/application procedures and related payments

4.2.1 Summary of international recommendations

As observed in legal theory on good practises in the extractive industries: “Transparency is at the core of good practise when it comes to award procedures”.⁵⁸ As a general starting point, the rules on award should also be clearly set out in generally applicable laws and regulations.⁵⁹

There are two basically different methods for award; award by competitive bidding/ tenders and award by direct negotiations/”open door” procedures. Competitive bidding is deemed to be the more transparent of the two methods. Inter alia for that reason, modern international petroleum law and relevant international recommendations underscore the importance of – where possible - awarding exploration and production

rights (i.e. petroleum rights as defined in the OPRL Article 1) through open bidding procedures based on principles of fair competition, incorporating pre-defined and objective criteria, preferably with little room for subsequent negotiations and (unbound) discretion⁶⁰ on the hands of the decision-makers.

Award of exploration and production rights through direct negotiations/”open door” procedures is generally deemed to be more opaque. However, in some cases, such as in little explored areas, high risk frontier areas or other areas where the host government struggle to attract investors, it may not be viable to hold a competitive bidding round. It may therefore be necessary to seek award of exploration and production rights through direct negotiation/ “open door” procedures.⁶¹ Whereas such procedures can be more vulnerable to corruption, this risk may to a certain degree be mitigated. The host government may for instance stick to a procedure where negotiations and award take place based on pre-defined, clear award criteria, where relevant documents (e.g. reports and decisions) are made publicly available, the results are published and where there is oversight of the process by an external body.⁶²

In competitive bidding it is important for transparency purposes that all details relating to the award and the rules for award (pre-qualification criteria, bid criteria and weighting, rules for the tender process, access to data, bid fees and related payment instructions, model license or a model contract, important dates and addresses for the bidding process et cetera) are predetermined and made publicly available. Moreover, where applicable, there should be an open process for applicants to pose questions and for authorities to publish their responses and/or bidders’ conferences where questions may be posed and, where possible, answered. Publication of information on the award or transfer of licenses is a requirement under the 2016 EITI Standard, requirement 2.2.

Although not specifically related to petroleum resource management, this UNCAC Article 9, number 1, first sentence, states that:

Each State Party shall, in accordance with the fundamentals principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption:⁶³

Similarly, it is stated in the Natural Resource Charter:

Well-designed auctions are preferable [..]. Auctions are also inherently more transparent than direct negotiations, helping to mitigate the risk of inappropriate companies or individuals receiving exploration and extraction rights.⁶⁴

There is an increased use of pre-qualification in bidding processes.⁶⁵ Good practice would entail that clear, pre-set pre-qualification criteria are published in advance and that the rules for pre-qualification are established in legislation.⁶⁶ During the pre-qualification process, the evaluator will “screen” the bidders’ technical and financial competence and thereby determine whether the bidders meet the technical and financial criteria that the host country will typically set as an “entrance requirement” to be eligible to bid for exploration and production rights. Evaluation of such matters can take time, as it typically involves a large amount of documents with technical and financial information. Moreover, evaluation of such matters can involve decisions made based on discretion. It is arguably more transparent if these evaluations are made in a pre-qualification process, so that the bidding process itself may take place on a limited amount of objectively defined bid criteria, i.e. on more transparent terms. Pre-qualification results should be published. Ideally, companies that are rejected should get substantiated notifications in writing of why their application was not granted and be given a right to lodge a complaint.

Good practices also entail that pre-qualified bidders compete on the basis of a bid addressing a limited number of clearly specified, objective criteria that leave little room for discretion.⁶⁷ Bid criteria that are numerical in nature, e.g. related to units of work commitment, a minimum expenditure or to an element of the government take such as royalty, are preferable to criteria where the evaluator must use discretion, e.g. HSE performance or compliance records. Where there are several biddable items (“bid criteria”), good practices entail that the bidders should be informed of the relative weight attached to each bid criteria and how the final score shall be calculated. Ideally, the bids themselves should also be public so that awards can be easily assessed by all interested parties.⁶⁸ Such approach should not be controversial if there is a pre-qualification process and objective bid criteria.

It is not uncommon in international practice that bidding processes involve an element of negotiations after the award, which can be argued to reduce transparency and increase risk for corruption. The Natural Resource Charter assumes that given sufficiently clear terms, additional negotiations could be avoided:

(..) the government should try to ensure there is no need to negotiate terms after companies have bid. This is helped by clear and transparent bid terms, and model contracts.⁶⁹

Moreover, the results of the bidding process should be published. Again, those who are not awarded exploration and production rights should be informed of the decision and be given the right to lodge a complaint. As recommended by IMF:

Disclosure of winning bids and contracts is an important element of transparency, although interpretation becomes increasingly complex with the number of bid parameters.⁷⁰

Although it cannot yet be said to be the prevailing practice, a high level of transparency is maintained if the host country, after award, also publishes the entire contract or the license in question. This development towards increased license and contract transparency is inter alia driven by the 2016 EITI Standard, whereby requirement 2.4 now states that

(..) Implementing countries are encouraged to publicly disclose any contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals.

In the following, we provide summaries of our analysis of the rules established for award of petroleum rights in the OPRL and the PAR in item 4.2.2 and those of the Pre-qualification Decree in item 4.2.3. In item 4.2.4, we provide a summary of our analysis of the rules in the Tender Protocol established for the FOLR. In item 4.2.4 we discuss the issue of contract transparency.

4.2.2 Award process - evaluation of the Lebanese general legal framework for award of Petroleum Rights as expressed in OPRL and PAR

4.2.2.1 Summary of analysis

Rules on award of petroleum rights are established in chapter four of the OPRL and in Articles 23-27 of the PAR. The overall impression is that the underlying concepts of the rules are by and large in line with good international practices. However, read in isolation, the rules are brief and in some parts unclear. These rules would benefit from being clarified and elaborated in further detail.⁷¹ Whereas the pre-qualification process is regulated in more detail in the Pre-qualification Decree, the Tender Protocol is only applicable to the FOLR. Therefore, for the FOLR, the rules for award are both elaborate and clear. As for subsequent licensing rounds, we understand that the intention is to prepare new, specific tender protocols for each licensing round. Whereas separate tender protocols should be used for each licensing round, i.a. to establish specific bid criteria and deadlines et cetera, transparency would be enhanced if the main rules for the award procedure, in particular the main rules for the negotiation process, were addressed in more detail in the generally applicable legal framework, e.g in PAR, rather than in specific tender protocols that are established for each licensing round.⁷²

Article 12 of the OPRL establishes that the Council of Ministers may⁷³ award an exclusive petroleum right to carry out petroleum activities in accordance with an EPA “pursuant to this law”. Pursuant to Article 13 of the OPRL it appears that petroleum rights shall, as a main rule and in line with good international practices, be awarded following a tender process (“petroleum licensing round”).⁷⁴ The Council of Ministers decides on the launch of invitations on the basis of a proposal by the Minister based upon the opinion of the LPA. After consultation with the LPA, the Minister launches invitations that may contain special additional conditions for the round or for the area, see Article 18 (2) of the OPRL. The requirements for the content of the invitation are set out in more details in Article 23 of the PAR. It shall inter alia contain information on the areas, data, method, format and deadline for submitting an application, the key criteria for the award of an EPA, terms and conditions for the round, a Model EPA and biddable items.⁷⁵ Petroleum licensing rounds shall be announced by publications in the Official Gazette and in local and international publications and websites selected by the Minister at least six months prior to the application closing date. There is an option of waiving such announcement; such decision is to be taken by the Council of Ministers upon a proposal by the Minister, see Article 13 (4). The wording does not establish any guidance as to the circumstances that may give reason to waive the requirement to waive the announcement. Moreover, it is not clear what this option is meant to entail, i.e. whether it is meant to open for an open door procedure, for a limited competition where specific companies are invited to apply or for both such cases. PAR does not elaborate on these issues.

Article 15 of the OPRL establishes that prequalification is mandatory. This is in line with good international practices. Pre-qualification is not regulated in any further detail in the OPRL or PAR, but in the Pre-qualification Decree. We understand that the Pre-qualification Decree is a legal instrument that is generally applicable, and not specific to each petroleum licensing round. It is not clear from a literary interpretation of the wording of the OPRL and the PAR whether the pre-qualification process is a separate process that shall precede the invitations as mentioned in Article 13 or whether pre-qualification shall be included as a step in such invitations. However, the Pre-qualification Decree Article 2 establishes that pre-qualification processes precede the licencing round and thus presumably the invitations under OPRL Article 13. The Pre-qualification Decree also establishes that the announcement of pre-qualification rounds is announced in the same manner as set out in Article 13 of the OPRL, see the Prequalification Decree Articles 2 and 4. The Prequalification Decree is discussed in more detail in item 4.2.3. Such announcement of the invitation to pre-qualify is in line with good international practices.

Pursuant to Article 16 of the OPRL, application content and fees for submitting an application shall be stipulated by a Council of Ministers Decree. This main rule is further implemented in Articles 24, 25 and 26 of the PAR. Article 26 states that the retrieval of an application is subject to a USD 50.000 payment to the Treasury. For the FOLR, this is further specified in the Tender Protocol item 6.3.1 as “Treasure Account, Ministry of Finance of the Republic of Lebanon”. Receipts will be given, see the Tender Protocol item 6.3.2. This approach, i.e. to clearly stipulate that the monies shall be paid to the Treasury account against receipt, is in line with international good practices.

After the closing date for submission of an application, the LPA shall proceed with an evaluation and propose a short list of applicants to the Minister, see Article 17 of the OPRL. Pursuant to Article 18 (1) and (3) of the OPRL, the Minister shall, with the assistance of the LPA, negotiate with short listed applicants based on the principles and criteria stipulated by the OPRL and the invitation. The Ministry shall base the negotiations on the “principles and criteria” stipulated by the law and by the invitation, see Article 18 (1) of the OPRL. The OPRL and PAR do not elaborate more on the negotiation process, i.e. what can be negotiated and how negotiations shall take place.⁷⁶ Thus, the OPRL appears to give more room for negotiations in the award process and discretion as to how it is to be carried out than what would be optimal for transparency purposes, but see the discussion in item 4.2.4. For the FOLR, more detailed rules on the award procedure, including the negotiation process, are set out in the Tender Protocol.

Upon conclusion of the negotiations, the Minister shall submit a report to the Council of Ministers containing the results of the negotiations with the selected applicants and a recommendation for signing an EPA, see Article 18 (3) of the OPRL. The final version of the EPA is subject to the approval of the Council of Ministers prior to signature of the Minister, see Article 19 (1) of the OPRL.

The general level of transparency and accountability in the Lebanese legal framework on award of petroleum rights would increase if the main rules for the award process, and in particular for the negotiation process, were embedded in the generally applicable law, e.g. in Chapter 3 of the PAR, rather than in tender protocols specific for each licensing round.⁷⁷ We stress that specific tender protocols should still be prepared, as there will always be a specific requirements for each licensing round, i.a. to establish specific bid criteria and deadlines et cetera. Nevertheless, collecting all the main rules relating to award in a legal instrument of general application would make the entire system more transparent. It may be that Lebanese authorities wish to gather some more experience before such steps are taken. We recommend that the Lebanese authorities, based on the experience gained in FOLR and any subsequent licensing rounds, consider in due course to revise Chapter 3 of the PAR with an aim to regulate the award process, and in particular the negotiation process, in more detail.

4.2.3 Award process - evaluation of the Pre-qualification Decree

4.2.3.1 Summary of analysis

The Pre-qualification Decree implements Article 15 of the OPRL. It sets out the main rules on pre-qualification.⁷⁸ The overall impression is that the Pre-qualification Decree is in large parts in line with good international practices, but that Lebanese authorities should consider clarifying some elements in order to increase the level of transparency.⁷⁹

We pointed out above that pre-qualification is in increased use internationally in the award of exploration and production rights. At the pre-qualification stage, the host government is evaluating whether the interested companies are qualified, e.g. technically and financially, to operate within the domestic petroleum industry. These evaluations may be complex and typically require submission of a range of documents. Pre-qualification may thus facilitate an enhanced level of transparency at the bidding/tender stage because the award process and the bid criteria then can be focused on elements that are easier compared objectively, e.g. rate of royalty or number of exploration wells. Good international practice would entail that clear, pre-set pre-qualification criteria are published in advance of the deadline for application.

The Pre-qualification Packages appear to have been published approximately six weeks before the closing date for the applications. The Pre-qualification Decree sets out rules on the purpose of the pre-qualification, the conditions for applications, the announcement of the pre-qualification round, the submission of applications, the pre-qualification criteria, rules for the LPA's treatment of applications and the results. The criteria for pre-qualification relate to legal, technical, financial and QHSE aspects. The criteria are clearly defined, as are the requirements for documentation of fulfilment of the criteria (Article 6 and Annexes 2, 3, 4 and 5). The Minister decides on pre-qualification upon the recommendation of the LPA. The Minister is obliged to announce the results by the means that he/she finds appropriate. In summary, we find that these rules are by and large in line with good international practices, but Lebanese authorities should consider amending the Pre-qualification Decree to include some clarifications as set out in the following.

First, the rules on the pre-qualification of groups of companies that wish to pre-qualify as Right Holders could benefit from being clarified.⁸⁰ Article 15 of the OPRL establishes that EPAs may be awarded to “pre-qualified joint stock companies” and Article 1 of the OPRL defines a Right Holder as “[..] any joint stock company which is participating in Petroleum Activities pursuant to this law [..]” (in both cases, our underlining). Article 3.3 of the Pre-qualification Decree, last sentence establishes that “The Right Holder may be either one company of a group of companies, at least one of which must prove that it is able to meet the pre-qualification eligibility criteria set forth in the present decree”. The quoted wording implies that when applying as a group, companies that do not meet the pre-qualification criteria i.e. because they are not financially or technically competent, can still be pre-qualified if one of the companies in the group meet all the criteria. Yet, Article 7.4 of the Pre-qualification Decree, which can be said to embody the entire concept behind pre-qualification, establishes that “Any applicant whose qualifications, as evidenced by the information and documents provided by it, do not as a minimum meet the criteria set forth in the Annexes to this decree may not be pre-qualified to participate in the licensing round.” Based on a literal interpretation of Article 7.4, Article 3.3 last sentence appears to be in conflict with Article 7.4. As such, it can be argued that Article 3.3 last sentence may undermine the concept of pre-qualification. We therefore recommend that Lebanese authorities should review the Pre-qualification Decree to assess the changes needed to correct the foregoing discrepancies, taking into consideration item 12 of the Tender Protocol (see more information on this below) and the other recommendations made in this report.

Moreover, one may question whether the pre-qualification of groups is in line with Article 15 of the OPRL which establishes that EPAs may be awarded to “pre-qualified joint stock companies”.⁸¹ However, when one reads Article 3.3 of the Pre-qualification Decree in context with the Tender Protocol item 12 it becomes clear that the arrangement is in line with Article 15: Item 12 establishes that groups of companies that pre-qualify as a group under Article 3.3 of the Pre-qualification Decree are required to form a joint stock company in order to submit an application in the petroleum licensing round. Through the arrangement, any group of companies that wish to apply together as one applicant will be able to determine its qualification before going through a potentially time-consuming and perhaps costly process of incorporation. This new joint stock company will be qualified through the merits of one of the owners, which must hold a controlling interest until the completion of the Minimum Work Commitment and the first Exploration Period, see Tender Protocol item 12.1.1. Where the qualified owner subsequently wishes to sell its ownership shares, any such indirect assignment is subject to the approval of the Council of Ministers, see Article 70 (1) and (2) of the OPRL. We assume that the Council of Ministers may stipulate as a condition for an approval that the new owner holds equal qualifications.

The clarifications and security measures established in the Tender Protocol do not apply in general, they only apply in the FOLR. For clarity, we therefore recommend that Lebanese authorities consider amending the Pre-qualification Decree to include rules similar to those embedded in the Tender Protocol item 12 in the Pre-qualification Decree.

For transparency and accountability purposes, Lebanese authorities can also consider to amend Article 3.3 to clearly state that the authorities shall only consider the qualifications of the relevant company against the pre-qualification criteria in their evaluation of the application. Whereas this follows from Article 6, it could be useful to be clear on the point that no ulterior considerations (e.g. circumstances related to the non-qualified companies) can be taken in the evaluation. Furthermore, until the time when disclosure of beneficial ownership is adequately implemented in Lebanon's petroleum regime (as explained further in this report), we recommend that the participation of group companies qualified based on Article 3.3 would be monitored closely by the LPA and Lebanese civil society to ensure such arrangements are not used inappropriately.

We also note that it is not clear from the Pre-qualification Decree whether the companies that are not pre-qualified will get a substantiated reason for a rejection in writing and whether they can lodge a complaint against such a decision. We understand that where a pre-qualification application has been rejected, the affected company can lodge a complaint before the Administrative Court (Conseil D'Etat). However, unless the rejection of an application is made in writing and is substantiated, lodging a complaint may prove difficult. We recommend that Lebanese authorities consider amending the Pre-qualification Decree so that it is clearly stated that companies that are not pre-qualified will get a substantiated reason for a rejection in writing. Moreover, it could be useful to inform applicants in the Pre-qualification Decree that complaints can be lodged to the Conseil D'Etat.

The Pre-qualification Decree should also specify that all relevant information (list of applicants, key decisions and the results of the prequalification process) shall be made publicly available in writing. We recommend that Lebanese authorities consider to amend the Pre-qualification Decree to include a provision that establishes that relevant information on the pre-qualification process including the results shall be published.

Last, Article 8 states that "The Minister will make an announcement of the results of the pre-qualification process through the means he deems appropriate". We understand that publication of all relevant information and announcement of results are published in writing is done in practice under the current administration,⁸² but we nevertheless recommend that Lebanese authorities consider amending the Pre-qualification Decree so that this is clearly stated in the Pre-qualification Decree.

4.2.3.2 Summary of observations and recommendations:

- The Pre-qualification Decree is in large parts in line with good international practices, but that Lebanese authorities should consider amending the Pre-qualification Decree to provide clarification on some point elements to increase the level of transparency.
- We recommend that Lebanese authorities should consider amending the Pre-qualification Decree to clarify the rules pertaining to pre-qualification as a group as set out in Article 3.3 and 7.4.
- We recommend that Lebanese authorities should consider amending the Pre-qualification Decree so that it is clearly stated therein that companies that are not pre-qualified will get a substantiated reason for a rejection in writing and that complaints can be lodged to the Conseil D'Etat.
- We recommend that Lebanese authorities should consider amending the Pre-qualification Decree to codify the current practice by specifying that relevant information and the announcement of the results of the prequalification process shall be made in writing.

4.2.4 Award process - evaluation of the Tender Protocol for the FOLR

4.2.4.1 Summary of analysis

The Tender Protocol and the Model EPA have been specifically prepared for the FOLR. The Tender Protocol implements the rules of OPRL and PAR on award and sets out detailed rules for the tender, including details on submission of applications and time tables, conditions for participation, instructions to applicants on the submission of applications, the validity of the applications, retrieval fee, clarifications, requirements for the technical and the commercial proposals (i.e. what is often referred to as bid criteria or biddable elements), evaluation and conclusion of the tender. The Tender Protocol is in large parts in line with good international practices, but for future licensing rounds it should be reviewed and amended in some parts where there is room for improvement of the level of transparency.⁸³ This applies in particular in relation to the negotiation process. Moreover, we refer to our recommendation in item 4.2.2 that some of the main rules that pertain to the award process that is only contained in the Tender Protocol for the FORL should, in due course, be considered included in the generally applicable law, i.e. in PAR.

During the period leading up to the application, applicants can submit questions in writing, and the LPA may clarify (Tender Protocol item 6.5). The LPA “may from time to time publish relevant clarifications”. We are not sure what this wording means; it could indicate that the

LPA may publish relevant clarifications to the general public or it could indicate that the LPA may publish relevant clarifications to all bidders. Either way, we stress for the sake of good order that to the extent LPA provides clarifications, they should be shared with all applicants – not only the one that posed a question. This should be done to promote fair competition and transparency. We cannot be sure how this is practiced under the FOLR as we assume that any such clarifications would be shared on the company portal at the LPA website, to which we do not have access. However, we point out that some host governments choose to publish questions (in an anonymous form) and answers on a website open to the general public.⁸⁴ We recommend that Lebanese authorities consider such approach in any future licensing rounds.

In line with good international practices the bid criteria, i.e. the technical and commercial proposals, are pre-determined, clear, objective and give in most parts little room for discretion. The technical proposal relates to minimum work commitments (geophysical survey, other G&G activities, exploration wells) in the first and second exploration periods, stated in units and indicative minimum work commitment amounts. However, it also entails an account of a “general approach and concept of the Exploration program”, Tender Protocol item 9.3 and Annex 6 paragraph 1.⁸⁵ The commercial proposal relates to cost petroleum sharing and profit petroleum sharing formulas.

The evaluation shall take place based on a final score determined by a system of metrics and weighting that is described in detail (Tender Protocol item 9.6). However, the “general approach and concept of the Exploration program” and the indicative minimum work commitment amounts shall not be subject to a grade. The general approach will be “taken into account [...]” in the negotiation process discussed below to “make a general assessment of the other technical criteria that are graded and to determine the consistency of the numbers provided”. We assume that the reference to “numbers provided” means the number of square kilometres seismic and number of wells et cetera. The indicative minimum work commitment amounts shall also be “taken into account” during these discussions where the parties should attempt to agree on the final number (Tender Protocol item 9.6.1). We would expect this latter element to generally be of less importance; as a starting point a host country should be more focussed on the work a Right Holder undertakes to do than how much that work costs.⁸⁶

Ideally, for optimal transparency, all bid criteria should be objective (i.e. criteria that can be evaluated without using discretion) and subject to a grade. Nevertheless, criteria such as “general approach and concept of the Exploration program” are in use in many countries and carry merit; the host country wishes to know more about the strategies the applicant/bidder plans to make use of as well as their preliminary assessment of the relevant block before selecting the winning applicant. This may be of particular importance for the first licensing round.

Moreover, and again in ideal cases for optimal transparency, one could possibly have had argued that the number of bid criteria should be limited even further and that those chosen should leave less room for discretion. We have seen examples in international practice where there is only one biddable criterion. However, as this is Lebanon's first licensing round, the approach chosen appears sensible to attract investors to Lebanon in its first licensing round – it might be necessary to test the waters as to how far companies are willing to stretch to invest in Lebanon in order for Lebanon to get the best deal. Lebanese authorities may nevertheless wish to consider cutting down on the number of bid criteria in any future petroleum licensing rounds. We stress, however, that this is a complex evaluation that must be based on the prevailing circumstances at the time immediately before such launch, including the experience from the FOLR, the market conditions and the prospective of the relevant blocks. Any such evaluation must be taken with due consideration to other policy goals. We assume that such considerations includes take the assumed interest in the market to bid for EPAs in Lebanon into consideration.

Based on the bid criteria, the LPA shall prepare a ranking list and a recommendation to the Minister (Tender Protocol item 9.7). The report shall be submitted to the Council of Ministers but it shall not be disclosed to third parties other than the Minister and the Council of Ministers. We struggle to see the rationale for this, especially when considering the rather transparent rules for submission of applications and of weighting of the proposal as described above as well as the fact that the technical and commercial proposals are not confidential, see Tender Protocol item 6.7.⁸⁷ Transparency would be greatly enhanced by making the report with the evaluations and recommendations publicly available.⁸⁸ We recommend that Lebanese authorities consider including to amend this rule so that the report is published in any subsequent licensing rounds.

Moreover, following the approval of the Council of Ministers, the Minister shall invite the first ranking applicant (“Provisional Winner”) to a final negotiation stage (Tender Protocol items 10.1 and 10.2). This negotiation stage is anticipated in the OPRL, as discussed above, but it is not regulated in further in PAR. The topics of negotiation, though limited to certain aspects related to the improvement/adjustment of technical proposal, see Tender Protocol item 10.1, are broadly indicated. The Minister may require the Provisional Winner to improve its technical proposal or to adjust it where the Minister upon the recommendation of the LPA considers the technical proposal to be “unrealistic or suboptimal” (Tender Protocol item 10.2.2). Where the Provisional Winner and the Minister reach an agreement, the Minister will submit a recommendation to enter into an EPA in accordance with the OPRL to the Council of Ministers based on the definitive Model EPA (Tender Protocol items 10.2.4 and 8). If not, there are procedures for initiating negotiations with a Second Ranking Applicant (Tender Protocol items 10.2.5-10-2.7).

Above, we noted that negotiations are more vulnerable to corrupt behaviour. Thus, and although the use of negotiations are foreseen in the OPRL, it is unfortunate that the award process that up until this point is by and large in line with good practices introduces negotiations after submission of applications. However, we note that there are differing

views on such approach, presumably because there may from time-to-time be a need for the host country to balance policy goals. Some authors argue that it might even be beneficial for the host country to allow for some discretion at this stage:

(..) In practice, this use of discretion in making the final award can be valuable for the host state since it may allow the state to choose an investor that is more likely to fit the government's social, industrial or environmental policies”⁸⁹

On the other hand, other commentators remain firm that negotiations should be avoided:

(..) the government should try to ensure there is no need to negotiate terms after companies have bid. This is helped by clear and transparent bid terms, and model contracts.⁹⁰

As this present licensing round is Lebanon's first, it should be appreciated that negotiations could even be beneficial to ensure that exploration commences in an optimal manner. Nevertheless, there is risk for corruption at this stage. We do not see that there will be any oversight of an external body during the negotiations and the Minister appears to have much unbound discretion in the process. Moreover, as the report containing the ranking list and LPA's recommendation to the Minister is confidential and there is no requirement in the Tender Protocol to publish the report to be submitted from the Minister to the Council of Ministers containing the results of the negotiations, the process is at this stage opaque.⁹¹

We recommend that Lebanese authorities considers, in the rules for any future licensing rounds, to further limit the scope of any negotiations and the level of discretion in carrying out the negotiations.⁹² The latter could for instance be done by considering to include rules that establishes that (if relevant) negotiations shall only concern the part of the Technical Proposal that is not subject to evaluation marks, that any proposal made by the Minister for improving the Technical Proposal shall be reasonable, that any proposal made by the Minister shall not exceed the terms provided by other applicants (or the Second Ranking Applicant) by a certain percentage and that the Minister cannot agree on terms with the Second Ranking Applicant that are less advantageous than the terms provided by the Provisional Winner or agreed by the Provisional Winner during negotiation.

We recommend further that in the rules for any future licensing rounds, the level of transparency and the possibilities for accountability in the negotiation process is increased, e.g. by introducing mechanisms promoting transparency such as publishing the above mentioned reports, publishing the applications, to the extent possible without compromising a legitimate need to protect business secrets disclose negotiation results and introduce oversight or verification/audit over the negotiation process. Such body can be governmental; for instance in Norway, the National Audit Office has the power to audit the performance of administrative entities. In 2010, it carried out an extensive audit of the award practices applied by the relevant authorities for the award of production licenses.⁹³

There is no provision in the Tender Protocol requiring the Minister to inform the Provisional Winner in writing of its decision to initiate negotiation with the Second Ranking Applicant and, preferably, the reasons thereof. Again, we understand that an affected company may contest administrative decisions made during this process before the Administrative Court (Conseil D'Etat). This may be near impossible if the negotiation process and the decision to initiate negotiation with the Second Ranking Applicant is not documented. We recommend that it is being stated clearly in the rules for any future petroleum licensing rounds that any such decisions are made in writing so as to enable such judicial review process to be initiated properly.

The award decision should be published. We have not seen that there is a requirement for publication of whom EPAs are awarded to, but we assume that such results will be published in the same manner as the LPA is publishing pre-qualification results today. Should, for some reason, the results not be published, then the Right to Access to Information Law applies. Moreover, pursuant to Article 52 of the OPRL, petroleum rights register shall be established. It appears that the register is intended as a kind of assets register, inter alia for registration of debt, but we assume it could also be used to promote transparency on EPAs and related information as well. The LPA is currently working on a decree for further regulation of Article 52, which was not at the time of writing ready to be shared. We cannot therefore be sure what type of information the register will contain but it is common that such registers contain information on the identity of the Right Holders, their participating interest shares at all and any times et cetera. In some instances the entire contracts are accessible to the public through a petroleum registry. We recommend

that it is being stated clearly in the rules for any future petroleum licensing rounds that the award results are published in writing.

We mentioned above in item 4.2.2 that the PAR and the Tender Protocol provided good guidance as to the payment of the application fee. The Tender Protocol also anticipates that interested companies can buy additional seismic information (3D multi-client seismic data) for an additional USD 50 000, see items 4.2 and 5 (4) (ii).⁹⁴ It is unclear how and to whom this sum should be paid; the wording of item 4.2 and the website of LPA⁹⁵ appear to indicate that licenses for such data it is be purchased directly from the seismic companies, but this should have been stated clearly in the Tender Protocol. We recommend that there is clarity on this issue in future licensing rounds.

4.2.4.2 Summary of observations and recommendations:

- The Tender Protocol is in large parts in line with good international practices, but there is room for improvement of the level of transparency in particular in relation to the negotiation process.
- We recommend that in the rules for any future licensing rounds Lebanese authorities consider publishing all questions (anonymously) from applicants and the related answers on a website open to the general public.
- We recommend that in the rules for any future licensing rounds, the level of discretion in carrying out the negotiations is further limited.
- We recommend further that in the rules for any future licensing rounds, the level of transparency and the possibilities for accountability in the negotiation process is increased, e.g. by introducing mechanisms promoting transparency such as publishing the applications, disclose the ranking and recommendations for Provisional Winners, disclose the negotiation results and introduce oversight or verification/audit in the negotiation process.
- We recommend that it is being stated clearly in the rules for any future petroleum licensing rounds that any such decisions to cease negotiations with an applicant under item 10 in the Tender Protocol are made in writing.
- We recommend that it is being stated clearly in the rules for any future petroleum licensing rounds that the award results are published in writing.
- We recommend that in the rules for any future licensing rounds, the directions for payment of additional multi-client data are clearly stated.

4.2.5 Awarded EPAs - contract transparency

4.2.5.1 Summary of analysis

The EPA is an integral part of the Lebanese legal framework for petroleum activities, along with the OPRL, PAR and other applicable law. An increasing number of countries choose to publish upstream petroleum contracts such as EPAs. In cases where the bid criteria contain commercial elements, publication of signed contracts like the EPAs is vital in order to determine inter alia whether the payments made from companies and revenues received by host governments are correct. It also enables interested parties to evaluate whether the award of petroleum rights has been made in accordance with the applicable law and the tender rules and, during the contract period, to monitor compliance.⁹⁶

Nevertheless, pursuant to the Model EPA, Right Holders are obliged to hold the EPAs confidential. Article 35 (1) of the Model EPA reads in relevant parts: “Without prejudice to the provisions of Article 154 of the decree no 10289/2013,⁹⁷ this EPA [...] shall be kept confidential and not be disclosed or communicated by the Right Holder to any third party without the prior written consent of the Minister upon the recommendation of the Petroleum Administration, except [...]”. (our underlining).

We struggle to see the rationale for this. The main body of an EPA is already made public as it will be based on the Model EPA, which is publicly available. The main body of an EPA forms an integral part of Lebanon's regulatory framework for Petroleum Activities. The Tender Protocol, establishing the bid criteria, is also public. In the FOLR the bid criteria constitute the Technical Proposal (Minimum Work Commitment) and Commercial Proposals (Cost Petroleum ceiling and Profit Petroleum sharing formula), see the Tender Protocol Annexes 6 and 7. The Technical and Commercial Proposals are explicitly excluded from the scope of information that must be maintained confidential, see the Tender Protocol item 6.7. Thus, there appears to be no reason as to why the main bodies of EPAs shall be kept confidential.

In any event, it appears that the corresponding confidentiality obligation on the part of the State is limited to commercial secrets, see the Model EPA Article 35. 2. As is apparent from the discussion above, there are no commercial secrets in the main bodies of the EPAs. Thus we are of the opinion that the State is free to publish the main bodies of the signed EPA should it wish to do so.⁹⁸ We recommend that Lebanese authorities publish the EPAs when signed for instance on the LPA web site⁹⁹ and that a requirement to publish signed EPAs should be embedded in applicable law.¹⁰⁰

If Lebanese authorities do not publish the signed EPAs after the FOLR, the MSG should – for the same reasons as stated above - work towards contract transparency in the course of the implementation the 2016 EITI Standard. As a part of the 2016 EITI Standard, implementing countries are encouraged to disclose contracts (EITI Requirement 2.4 (a)). Although not a requirement as such, contract transparency must be considered by the MSG. Although contract transparency is a relatively novel concept, it is a developing practice globally and increasingly common amongst EITI implementing countries.¹⁰¹

Implementing contract transparency in Lebanon should be fairly uncontroversial. As pointed out above, as Lebanon is using a system of competitive bidding of petroleum rights based on a Model EPA, and as such most of the information in the main body of an EPA is already public. It is submitted that implementing contract transparency in Lebanon would greatly enhance the level of transparency in the Lebanese petroleum sector. We assume, based on the wording of EPA Art 35 (3)(v), that if Lebanon opts for implementing contract transparency as a part of EITI implementation, then also EPAs already entered into at that time can be subject to a subsequently enacted publication requirement. Therefore, implementation of contract transparency could somewhat mitigate the opaqueness in the last steps of the award process in the FOLR as commented on above in item 4.2.3. We recommend that the MSG work towards implementing contract transparency.

4.2.5.2 Summary of observations and recommendations:

- The EPA is an integral part of the Lebanese legal framework for petroleum activities, along with the OPRL, PAR and other applicable law. The Model EPA does not impose a contractual obligation on the State to keep signed EPAs confidential.
- We recommend that Lebanese authorities publish the EPAs when signed, for instance on the LPA web site and that a requirement to publish signed EPAs should be embedded in applicable law, or, alternatively
- We recommend that the MSG work towards implementing contract transparency.

4.2.6 Policy recommendations

Based on our analysis and recommendations in this item 4.2, we have the following policy recommendations:

Policy recommendation: Based on the experiences made in its first licensing round, Lebanese authorities should review the rules on award in PAR and the Pre-qualification Decree so as to regulate licensing rounds in more detail and fully in line with good international practices. Any necessary amendments should be adopted before the next licensing round is launched.

Policy recommendation: Lebanon should publish signed EPAs.



4.3 Transparency and accountability in public decision-making

4.3.1 Summary of international recommendations

Transparency and accountability in public decision-making goes to the core of good governance¹⁰² and should be inherent in all decision-making processes within petroleum resource management.¹⁰³ Getting there, however, can be a many-faceted and comprehensive task.

Transparency in public decision-making entails inter alia the regular and systematic use of public consultation of relevant draft laws and regulations. It requires that laws and regulations clearly set out the roles and areas of responsibilities of the different institutions involved in petroleum resource management.¹⁰⁴ It also requires clear, transparent decision-making processes, adequate processes for holding decision-makers accountable¹⁰⁵ and for public access to information on decisions so taken.¹⁰⁶ The latter is particularly important given the trend that host governments take increased control of resource management and of how petroleum activities are carried out. This typically entails that a host country through its institutions/officials is actively involved in all phases of petroleum activities through the issuance of approvals, consents, permits and through carrying out supervision and enforcement activities.¹⁰⁷ Such decision-making often entails that the institution/official exercises (a degree of) discretionary power.¹⁰⁸ Although laws and regulations typically set limitations on the exercise of discretionary powers,¹⁰⁹ the exercise of discretionary powers may nevertheless entail a risk of facilitating corruption. Embedding adequate mechanisms for transparency and accountability in the applicable law may reduce this risk.

International recommendations emphasize the points raised above. For instance, empowerment of the people through public consultations of draft laws and regulations is listed by the World Bank as one of the ways to combat corruption because it:

*“create(s) pathways that give citizens relevant tools to engage and participate in their governments – identify priorities, problems and find solutions”.*¹¹⁰

In order for consultation requirements to work, consultation must be carried out before a decision is made and the consultation-maker should be obliged to take the responses received into consideration.¹¹¹ The issue of public consultations will not be discussed in further detail here, but will be addressed in a separate policy note from LOGI.

Transparency in public administration (i.e. roles and responsibilities, decision-making processes and access to information) is considered vital to preventing corruption. UNCAC Article 10 reads:

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration (..) Such measures may include, inter alia:

a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;¹¹²

The Natural Resource Charter emphasizes the link between sustained prosperity, accountability and transparency:

Where resource wealth is managed on behalf of citizens, it can lead to sustained prosperity only if the government is publicly accountable. (..) An essential prerequisite for accountability is transparency. The government should disclose information about the whole chain of decisions, with a complete, complementary set of information.¹¹³

Further, the 2016 EITI Standard requirement 2 establishes that:

EITI requires disclosures of information related to the rules for how the extractive sector is managed, enabling stakeholders to understand the laws and procedures for the award of exploration and production rights, the legal, regulatory and contractual framework that apply to the extractive sector, and the institutional responsibilities of the State in managing the sector

When it comes to incorporation of transparency and accountability in all decision-making processes, we note that there is often a synergy between the specific rules embedded in the petroleum legislation and general legislation aimed at promoting and ensuring good governance such as laws relating to public servants, administrative decision-making in the public sector (including both impartiality issues and case handling issues) and general access to information laws. As is demonstrated below, this is also the case in Lebanon.

4.3.2 Evaluation of the relevant Lebanese legal framework

4.3.2.1 Roles and responsibilities

The OPRL establishes the powers of the government in chapter 2:

The Council of Ministers sets out the general Petroleum policy and petroleum resource management policy. It shall settle differences between the concerned stakeholders. It shall authorise the Minister to sign EPAs awarded under the OPRL on its behalf, see Article 8 (1) of the OPRL.

Moreover, it shall stipulate by a Council of Ministers' Decree (on the basis of a proposal of the Minister upon the opinion of the LPA) conditions for invitations to participate in license rounds, terms of reference and conditions for the EPA and certain agreements between companies, see Article 8.2 of the OPRL.

- **The Minister** (of Energy and Water, the “Minister”) shall in cases of emergency ensure implementation of the petroleum policy and the OPRL for granting petroleum rights, he shall endeavour to enhance the State petroleum capabilities, be responsible for monitoring and supervising petroleum activities, and take necessary measures for protecting water, health, property and environment from pollution, see Article 9 of the OPRL.
- **The LPA** shall be responsible for, inter alia, conducting studies to promote the Lebanese petroleum potential, reporting to the Minister on pre-qualification and applications for petroleum rights, draft invitations for applications, conditions for application, model EPAs and appurtenant licenses and agreements in accordance with the OPRL, assisting the Minister in negotiating EPAs and submitting reports on the results of the negotiations to the Minister to enable the Council of Ministers to take its final decision, managing, monitoring and supervising petroleum activities and the proper implementation of licenses and agreements and reporting to the Minister quarterly on the same (Minister shall approve the report), evaluating plans for development, transportation and decommissioning, managing data and keeping and managing the petroleum register, see Article 10 of the OPRL.

Although organisation of the State’s management of petroleum resources is ultimately a national affair, often intrinsically interlinked with its constitution, we note that the above division of roles and responsibilities is fairly typical.

The general rules on roles and responsibilities of the Council of Ministers, the Minister and the LPA respectively are further detailed and implemented in specific provisions in the OPRL, the PAR, the EPA and the Pre-qualification Decree and the Tender Protocol respectively.

We note that in many instances, the legal framework requires the above-mentioned authorities to interact in reaching decisions; e.g. Article 6 (2) of the OPRL establishes that the Council of Ministers may decide to establish a national oil company on the basis of a proposal by the Minister based upon the opinion of the LPA. This wording, and wordings similar to that,¹¹⁴ is used frequently and has the potential to create some confusion as to the roles and responsibilities of the various authorities. E.g. one may question whether the powers of the Council of Ministers as responsible to “set forth” the general Petroleum policy, see Article 8 (i) of the OPRL, is somewhat weakened by its decision apparently being conditional on a proposal being set forth by the Minister. Moreover, the wording does not state that the Minister shall follow the opinion expressed by the LPA, merely that the proposal shall be based on it.¹¹⁵ It appears therefore that the Minister is empowered to make proposals that go against the technical opinions of the LPA at his/her own discretion. To our knowledge, these rules have not given rise to problems in practice. We assume that, should problems arise, they will probably find their solution based on Lebanese constitutional and administrative law.

In conclusion, our overall impression is that the allocation of roles and responsibilities of the Lebanese authorities involved in petroleum resource management is relatively clear.

4.3.2.2 Decision-making powers and processes

Any public decision-making in the Lebanese petroleum sector is subject to Lebanese administrative law.¹¹⁶

The basic starting points are that decisions must be taken by the administrative authority that has the power to make the decision in question and that the decisions taken must be in line with the Constitution and the legal basis that empowers the administrative authority to take the decision. In addition, certain procedural rules apply depending on the relevant decision/authority.

In addition to the general rules that allocate roles and responsibilities to the various authorities discussed in item 4.3.2., the legal framework for petroleum activities also sets out more specific powers for the relevant authorities to award EPAs, grant petroleum licences, issue approvals and permits and to carry out supervision and enforcement activities as well as, in some cases, procedural rules.

Where the authorities are granted discretionary powers, these must be exercised within the general framework of the legal regime for petroleum activities as well as any specific limitations established in relevant provisions. The OPRL does not contain a clause that state the general purpose or objective of the law. However, there are general provisions that we assume will be guiding for decision-making either in general, e.g. OPRL Article 61 on prudent Petroleum activities, or for a specific phase of petroleum activities, e.g. Article 27 of the OPRL on prudent production. We assume that for those provisions that are drafted in a more open-ended manner, e.g. such as the approval of the plan for development and production, such general rules may have a significant degree of impact.¹¹⁷

On other matters, the legal framework can set rather stringent on the exercise of discretionary powers, especially when reading the relevant provisions of the various legal instruments (OPRL, PAR, EPA and, as the case may be, the Pre-qualification Decree and the Tender Protocol) in conjunction. In some cases a more detailed legal framework is established within which the discretionary powers of the relevant authorities must be exercised. For instance, Article 35 (1) of the OPRL establishes that for the application for and grant of production permits, procedures shall be established. PAR Article 46 elaborates on such procedures and sets inter alia out in detail the elements the Minister and the LPA shall take into consideration when deciding on the duration of a production permit.

In some cases, the EPA sets out even more stringent rules for decision-making than the OPRL and PAR, see e.g. EPA Article 7.7 on exploration plan approvals and Article 10.6 on Appraisal Plan approvals that also address time frames for approvals.¹¹⁸

In addition to the above, the Right to Access to Information Law adds transparency into Lebanese public decision-making. Not only does the law establish wide requirements as to the public's right to access information, but it also establishes, in its Chapter 3, obligations to provide reasons for administrative decisions. In as far as this applies, it increases transparency and the possibilities for accountability, including in cases where decisions are based on discretionary powers.

Again, our overall impression is that the powers of the Lebanese authorities, as well as the decision-making procedures, are relatively clearly set out in the legal framework for petroleum activities.

4.3.2.3 Accountability

The OPRL does not regulate Parliamentary oversight of the Council of Ministers and the Minister's activities, or the general possibilities of lodging appeals on decisions made. These are issues that are addressed in Lebanese constitutional and administrative law.¹¹⁹

Parliament exercises a constitutional authority over the Council of Ministers and the Minister of Energy and Water, which is put into action through questions, interrogations, vote of confidence and parliamentary enquiries.

The Lebanese Conseil D'Etat (i.e. administrative court) functions as first and last degree court to oversee claims for review judicial decisions made by administrative bodies including annulment requests for abuse of power.

Any individual personally and directly affected by a decision issued by an administrative authority can appeal this decision within two months from the date of publication/ notification of this decision.¹²⁰

Under the Article 10 of the OPRL, the LPA is specifically exempted from the provisions of Decree 4517 on the Governance of Public Entities and it shall not be subject to the Council of Civil Service. The LPA shall be subject only to a posteriori audit of the Public Audit Court, and its accounts shall be audited by an external auditing and accounting firm appointed by the joint decision of the Minister of Finance and the Minister of Energy and Water, to whom the yearly auditing report shall be submitted.¹²¹ Decree no. 7968 dated 07/04/2012 determines the structure of the LPA and its operational mode. The LPA is granted administrative and financial autonomy and is in charge of managing the petroleum sector in Lebanon within the supervisory authority of the Minister. According to Article 3 of the above mentioned Decree, the members of the LPA are prohibited to work at any company exercising petroleum activities in Lebanon while in position and two years after the termination of their mandate as members of the LPA, and would otherwise be subject to criminal offences as per article 346 of the Criminal Code.¹²²

Moreover, according to Article 6 of the Decree, any member of the LPA accused of misconduct or wilful negligence is disciplined by the High Disciplinary Committee based on a decision by the Minister. Articles 54, 55, 56 and 57 indicate in detail the related disciplinary, criminal and civil applicable sanctions.

Review of the decisions issued by the LPA can be submitted to the board of directors of the LPA. Furthermore, LPA decisions can be subject to review before the administrative court (Conseil D'Etat) which is the competent body to hear disputes involving public entities.

It was mentioned above how the Right to Access to Information Law can increase transparency and accountability as it, *inter alia*, requires that reasons shall be provided for administrative decisions. Another issue relevant for the present context is Article 8 which requires that relevant authorities shall prepare and publish annual reports for their administrative activities.

In summary, our overall impression is that Lebanese law establishes adequate accountability mechanisms. However, in this respect we emphasize that in order to have their desired effects; laws must be implemented and enforced. It remains as of yet to see how many of these rules would be implemented in a given case concerning decisions made in relation to petroleum resource management.

4.3.2.4 Access to information

There are no general rules in the OPRL or PAR regarding consultation with potentially affected persons, or publication of decisions made by the institutions that manage the Lebanese Petroleum sector or other related information. Requirements for consultation and publishing requirements are rather set on a case-by-case basis.¹²³

The lack of public dissemination requirements on public decision-making in the OPRL and the PAR is now of less importance. In January 2017, the Lebanese Parliament passed the Right to Access to Information Law. It includes provisions that, *prima facie*, grant vast rights of access to any person to information from all public entities. Enhancing transparency and preventing corruption seems to have been a core motivation behind passing the law. If the law is implemented and enforced loyally, it could prove a significant step towards improving the transparency in Lebanon in general, including in the petroleum sector.

Under the Right to Access to Information Law, anyone can request administrative documents, statistics, reports and studies, internal and external correspondence, concluded contracts and other archive material see Article 1, 3 and 14. The information can be requested from public offices, courts, municipalities and federations, state owned enterprises, private companies managing public assets and companies operating under government concessions, see Article 2. Moreover, some information shall be published automatically, see Articles 6, 7 and 8.

It should be noted that whereas the law is broad in scope, it also comes with an extensive list of exceptions, limiting the scope of the access rights significantly, see Article 4 and 5. Considering the complexity of petroleum activities and the nature of the decisions and documents that relate to petroleum activities, it would be useful to adopt a specific implementation procedure of the Right to Access to Information by the Minister and by the LPA.¹²⁴ We recommend that such procedures are established.

In case of a request for information being denied, the law states that an appeal can be directed to The Anti-Corruption Commission or the Lebanese Courts. However, since the Anti-Corruption Commission does not yet exist, it is believed that the Conseil d'Etat can

be a possible alternative. We are not aware whether this has been tested yet. Nevertheless, even if the Conseil d'Etat can be an alternative route for plaintiffs, it is unfortunate that the Anti-Corruption Commission is not yet established. We recommend that the Lebanese authorities put priority on its establishment.

In this work, due consideration should also be taken to the relevant parts of the Draft Strengthening of Transparency Law¹²⁵ which may be adopted. Articles 15 and 16 appear to address a public authority much like the Anti-Corruption Commission foreseen in the Right to Access to Information Law. The Draft Strengthening of Transparency Law appears to, inter alia; aim at closing perceived “gaps” in the currently applicable Lebanese law with respect to transparency and accountability in the legal framework for petroleum activities.¹²⁶ If adopted, the draft law could increase the level of transparency within the legal framework for petroleum activities on a number of points. However, if the Right to Access to Information Law is fully applicable to information relating to the petroleum sector, and is implemented and enforced adequately, we do not see the need to enact any parts of the Draft Strengthening of Transparency Law that overlap with the Right to Access to Information Law.

As was mentioned above, there is little use of laws that are not implemented or enforced. As the Lebanese offshore petroleum sector is nascent, it remains to be seen how the Right to Access to Information Law will be implemented by the petroleum authorities. In this respect, we note that both the Minister and the LPA emphasizes their intention to operate transparently. With the exception of sensitive technical information as is customary within the industry, see for instance the type of data/matters regulated in PAR Article 154, it is believed that decisions made by petroleum authorities should be published or disclosed upon request. The intention to operate transparently has already been demonstrated as the LPA has already published on its website information related to its financial activity and technical service contracts it had executed from 2013 to date.¹²⁷

In addition, we understand that the LPA has taken steps toward the preparation of a petroleum registry as mentioned in article 52 of the OPRL and article 22 of the PAR. We understand that this draft also addresses the issue of disclosure of beneficial ownership, which is discussed in more detail in item 4.4 below.

Our overall impression is that the legal framework establishing rights to access to information appears robust, however, as will be discussed below in item 4.4, there may be a need for additional regulations for EITI implementation purposes. Moreover, as the Right to Access to Information Law is a recent adoption, it remains to be seen how it will be implemented.

4.3.3 Summary: Observations

Our overall impression is that the allocation of roles and responsibilities between relevant Lebanese authorities involved in petroleum resource management is relatively clear and that their powers and decision-making procedures are relatively clearly set out.

Our overall impression is that Lebanese law establishes adequate accountability mechanisms. However, in this respect we emphasize that in order to have their

desired effects; laws must be implemented and enforced. It remains as of yet to be seen how these rules would be implemented in a given case.

- Our overall impression is that the legal framework establishing rights to access to information appears robust, however, as will be discussed below in item 4.4, there may be a need for addition regulations for EITI implementation purposes.
- We recommend that Lebanese authorities should consider establishing a specific implementation procedure of the Right to Access to Information by the Minister and by the LPA.
- We recommend that Lebanese authorities should put priority on the establishment of an Anti-Corruption Commission as foreseen in the Right to Access to Information Law and the Draft Strengthening of Transparency Law.

4.3.4 Policy recommendations

Policy recommendation: Lebanese authorities should consider establishing a specific implementation procedure of the Right to Access to Information by the Minister and by the LPA.

Policy recommendation: Lebanese authorities should put priority on the establishment of an Anti-Corruption Commission as foreseen in the Right to Access to Information Law and the Draft Strengthening of Transparency Law.

4.4 *Broader transparency and public dissemination of petroleum-related information*

4.4.1 Examples from international legislative practices and the 2016 EITI Standard

International recommendations underscore the importance of disseminating all petroleum-related information in all phases of petroleum activities; on opening of areas for petroleum activities, announcement of a licensing procedure, award of exploration and production rights, exploration, production, transportation and sales of petroleum, decommissioning of related infrastructure and collection and management of petroleum revenues. Information related to the environment (e.g. environmental and social impact assessments, outcome of public consultations) as well as other information and reports related to petroleum activities should also be publicly available.¹²⁸

Laws related to access to information can be useful for the public to gain access to such information, however, under such laws interested persons often have to request the information in question. Ideally the petroleum-related information should rather

be published routinely and periodically. Host countries that have implemented the EITI Standard will publish such information as required by the relevant EITI Standard in its EITI Reports. Moreover, some modern petroleum laws establish general publication requirements – independent of EITI reporting. For instance, the 2012 South Sudan Petroleum Act provides in its Section 79:

“79. (1) The Minister shall make available to the public, both on the Ministry website and by any other appropriate means to inform interested persons:

(a) all key oil sector production, revenue, and expenditure data, petroleum agreements & licenses;

(b) regulations and procedures related to the petroleum sector;

(c) justification of award of petroleum agreements, the beneficial ownership information for the contractor and documented proof of the requisite technical competence, sufficient experience, history of compliance and ethical conduct and financial capacity of the contractor;

(d) annual production permits;

(e) any model petroleum agreement referred to in Section 71;

(f) the key parameters of each petroleum agreement, to the extent such parameters differ from an already published model petroleum agreement, including the cost oil management and limits, the production-sharing formulas and mechanisms any bonuses, taxes or fees, royalties, any exemptions or favourable tax treatment and any stability clauses; and

(g) except for the information and data referred to in Section 76 (5), information relating to petroleum activities, including information on petroleum agreements and relevant treaties as prescribed in the regulations.

(2) The information referred to in subsections (1)(c), (d) & (f) of this Section shall also be published in the Gazette.”

Other host countries choose to enact specific transparency, or EITI implementing, laws. As an example amongst many, we refer to the 2015 Tanzania Extractive Industries (Transparency and accountability) Act. The act sets up the rules for institutional framework for implementation of the EITI Standard, disclosure obligations, reconciliation processes, reporting and more.¹²⁹

As long as the disclosure requirements are fit for purpose under the applicable law, it is immaterial whether the requirements to publish are embedded in a petroleum law or other laws. The main point is to make key information on petroleum activities publicly available.

In the case of Lebanon, any review of the applicable law relating to public dissemination of relevant information must be considered against the requirements of the 2016 EITI Standard, which Lebanon has undertaken to implement in the near future. Implementation of the 2016 EITI Standard can be an immense task. The disclosure requirements under the 2016 EITI Standard are very broad. Some requirements are mandatory and others merely recommended.¹³⁰ The host country must therefore evaluate how and to which extent the 2016 EITI Standard is to be implemented in light of the specific context of the host country. The relevant contextual circumstances to consider may include policy, legal and factual circumstances. Depending on the existing level of transparency in a given host country, EITI implementation can be a comprehensive task. It might also be time-consuming, especially where implementation requires changes in the applicable law. Any parts of the implementation work that requires changes in laws and regulations will ultimately be decided by the relevant authorities. The more practical work related to implementation work is undertaken by a MSG, based on a work plan.¹³¹

EITI requirement 2, 3 and 6 are summarized in the 2016 EITI Standard under the headings “Overview” as follows:¹³²

“EITI REQUIREMENT 2: Legal and institutional framework, including allocation of contracts and licenses. The EITI Requirements related to a transparent legal framework and award of extractive industry rights include: (2.1) legal framework and fiscal regime; (2.1) license allocations (2.3) register of licenses; (2.4) contracts; (2.5) beneficial ownership; and (2.6) state-participation in the extractive sector”

and

“EITI REQUIREMENT 3: The EITI requires disclosures of information related to exploration and production, enabling stakeholders to understand the potential of the sector. The EITI Requirements related to a transparency in exploration and production activities include: (3.1) information about exploration activities; (3.2) production data; and (3.3) export data.”

and

“EITI REQUIREMENT 6 The EITI requires disclosures of information related to social expenditures and the impact of the extractive sector on the economy, helping stakeholders to assess whether the extractive sector is leading to the desirable social and economic impacts and outcomes. The EITI Requirements related to social and economic spending include: (6.1) social expenditures by

companies; (6.2) SOE quasi-fiscal expenditures; and (6.3) an overview of the contribution of the extractive sector to the economy.

EITI requirement 4 and 5 relate to revenue collection and revenue allocation specifically and are not, as per today, as immediately relevant to the Lebanese context as those quoted above. There is normally a long lead time between the first award of exploration and production rights and the first revenue collection. We nevertheless address these issues briefly in items 4.4.4 and 4.5 respectively.

4.4.2 Comment on Lebanese legal framework on public dissemination of information and implementation of the 2016 EITI Standard

Lebanon has already undertaken to implement the 2016 Standard. This means that it must implement all the mandatory EITI Requirements and that it also must consider the recommendations stated in the EITI Requirements. We have already discussed parts of EITI Requirement 2 above in items 4.2 and 4.3.

The OPRL does not establish a general rule on disclosure of petroleum-related information. One could question whether the mechanisms established under the Right to Access to Information Law would suffice for the purposes of implementation of EITI Requirements 2, 4 and 6. This would, however, raise a number of questions, notably related to the exceptions made under the Right to Access to Information Law. The information to be disclosed under the 2016 EITI Standard could be argued by reluctant parties to e.g. constitute trade or commercial secrets. Moreover, as established above, the information in question should ideally be routinely and periodically published. We are of the opinion that the Right to Access to Information Law is not the correct vehicle for broader EITI implementation. We recommend that the Lebanese authorities consider the inclusion of specific provisions addressing the disclosure requirements of the 2016 EITI Standard either by the means of (a) new provision(s) in the OPRL or through adoption of a specific transparency law, see the discussion in item 4.6.4.

Moreover, we recommend that the Lebanese authorities opt for implementation of the 2016 EITI Standard in the broadest sense to ensure a high level of transparency and enable accountability in the Lebanese petroleum sector. This means that as far as possible, Lebanese authorities/the MSG should implement not only the mandatory EITI Requirements but also as far as possible the recommendations.

Lebanese authorities should also consider adopting a provision that requires information related to the environment (e.g. environmental and social impact assessments, outcome of public consultations) as well as other information and reports related to petroleum activities to be publicly available. This is already suggested in the draft Strengthening of Transparency in the Petroleum Sector Law Article 10 (4) and (5), that is further discussed in item 4.6.4.

4.4.3 Implementing disclosure of beneficial ownership in Lebanon

4.4.3.1 Introduction

Disclosure of beneficial ownership of companies holding exploration and production rights was an alien concept in the petroleum industry only a few years ago. However, as observed in the EITI Beneficial Ownership Pilot Evaluation Report:¹³³

“Transparency about company and government payments is important for accountability, but tells citizens little about who owns extractive companies and ultimately benefits from the companies’ activities. In many cases, the identity of the real owners – the ‘beneficial owners’ – of the companies that have acquired rights to extract oil, gas and minerals is unknown, often hidden behind a chain of corporate entities. This opacity can contribute to corruption, money laundering and tax evasion in the extractive sector.”

Disclosure of beneficial ownership information is therefore a useful tool for all stakeholders. Such disclosure may reveal that one or more owners of a company are very closely linked to the government, and this may give reason to question whether that company is treated in a more preferential manner than other companies. Conversely, such disclosure may instigate an increased level of trust, e.g. in respect of the authorities’ evaluation of pre-qualification applications and negotiations as discussed in items 4.2.3 and 4.2.4, and thereby prevent unjustified suspicions of corrupt behaviour.

In 2013, the EITI launched an EITI beneficial ownership disclosure pilot project. The pilot project ran from October 2013 to September 2015. The pilot project demonstrated that whereas the concept of disclosure is fairly straight-forward, practical implementation can be challenging. Valuable lessons on how to implement such disclosure were learnt and implementing countries should draw on these experiences.

It is our understanding that the LPA is working on rules of disclosure of beneficial ownership right now. At a conference in Rome in May 2017 it was stated that the LPA was working on a draft Council of Ministers Decree on Petroleum Right register (“draft Decree”) as foreseen in OPRL Article 52 that is to entail rules on disclosure of beneficiary ownership. We commend this initiative, as it would be a benefit for Lebanon to implement the disclosure requirement in connection with the awards of the first EPAs, which is imminent. We have not seen this draft yet, and as such, the recommendations being given in the following are independent of any such proposed rules.

The guiding recommendations given in the following are linked with Lebanese implementation of the 2016 EITI Standard. The key sources for the recommendations is therefore the 2016 EITI Standard itself as well as EITI Guidance Note 22 of May 2016 (the “Guidance Note”) on how to plan for beneficial ownership disclosure (roadmap) and other related EITI recommendation.¹³⁴ We emphasize, however, that the purpose of this report is not to establish a roadmap for Lebanese implementation of EITI requirement 2.5; this is a task for the MSG.

We recommend that Lebanon opts for implementation of not only the mandatory requirements, but also all the recommendations in EITI Requirement 2.5, and that a broad definition of “beneficial owners” is adopted. Having said that, we emphasize that we acknowledge that the MSG responsible for Lebanese implementation of the 2016 EITI Standard or, as the case may be, the LPA in the decree on the new petroleum registry, might have found or find good reasons for choosing other, more restrictive options. We therefore refer to our recommendations in the following as “guiding” only.

4.4.3.2 EITI Requirement 2.5

EITI Requirement 2.5 a) provides the starting point for EITI implementation of beneficial ownership disclosure:

“It is recommended that implementing countries maintain a publicly available register of the beneficial owners of the corporate entity(ies) that bid for, operate or invest in extractive assets, including the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted. Where possible, beneficial ownership information should be incorporated in existing filings by companies to corporate regulators, stock exchanges or agencies

regulating extractive industry licensing. Where this information is already publicly available, the EITI Report should include guidance on how to access this information.” (Our underlining)

The quoted wording indicates that such disclosure is merely “recommended”. However, EITI Requirement 2.5 c) establishes that as from 2020, disclosure of beneficial ownership is mandatory. EITI Requirement 2.5 c) – f) read:

“(c) As of 1 January 2020, it is required that implementing countries request, and companies disclose, beneficial ownership information for inclusion in the EITI Report. This applies to corporate entity (ies) that bid for, operate or invest in extractive assets and should include the identity (ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted. Any gaps or weaknesses in reporting on beneficial ownership information must be disclosed in the EITI Report, including naming any entities that failed to submit all or parts of the beneficial ownership information. Where a country is facing constitutional or significant practical barriers to the implementation of this requirement by 1 January 2020, the country may seek adapted implementation in accordance with requirement 8.1.

d) Information about the identity of the beneficial owner should include the name of the beneficial owner, the nationality, and the country of residence, as well as identifying any politically exposed persons. It is also recommended that the national identity number, date of birth, residential or service address, and means of contact are disclosed.

e) The multi-stakeholder group should agree an approach for participating companies assuring the accuracy of the beneficial ownership information they provide. This could include requiring companies to attest the beneficial ownership declaration form through sign off by a member of the senior management team or senior legal counsel, or submit supporting documentation.

f) Definition of beneficial ownership:

i. A beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity.

ii. The multi-stakeholder group should agree an appropriate definition of the term beneficial owner. The definition should be aligned with (f) (i) above and take international norms and relevant national laws into account, and should include ownership threshold(s). The definition should also specify reporting obligations for politically exposed persons.

iii. Publicly listed companies, including wholly-owned subsidiaries, are required to disclose the name of the stock exchange and include a link to the stock exchange filings where they are listed.

iv. In the case of joint ventures, each entity within the venture should disclose its beneficial owner(s), unless it is publicly listed or is a wholly-owned subsidiary of a publicly listed company. Each entity is responsible for the accuracy of the information provided.

g) The EITI Report should also disclose the legal owners and share of ownership of such companies.

The Guidance Note provides detailed comments on the above, often illuminated by lessons learned from the pilot project. As such it is a useful tool for establishing and evaluation of beneficial ownership disclosure rules.

4.4.3.3 Guiding recommendations for Lebanese implementation of disclosure of beneficial ownership

It is our understanding that there are no legal barriers for the disclosure of beneficial ownership in Lebanese law. Lebanon does not require disclosure or record of beneficial ownership information in official company records (i.e. at the Commercial Registrar or at the Ministry of Economy and Trade). Still, disclosure of beneficial ownership is not a novel concept in Lebanon. The banking sector in Lebanon is currently applying disclosure of beneficial ownership through “know your client procedures”.¹³⁵ This is an advantage, and Lebanese petroleum authorities should seek to gain insight on any experiences made in the banking sector that they may build on.¹³⁶

Lebanon has undertaken to implement the 2016 EITI Standard, which means that beneficial ownership disclosure is mandatory by 2020. The Lebanese petroleum industry is nascent and no EPAs are awarded as of yet. It appears sensible to require disclosure of beneficial ownership amongst as soon as possible so that the information could be required as a part of the imminent award of EPAs under FOLR. This appears also to be the intention of the LPA,¹³⁷ yet we are not aware of whether the LPA has in its work used EITI Requirement 2.5 as a yardstick. Thus, even if the forthcoming decree on a petroleum registry includes requirements to disclose beneficial ownership, there may still be issues related to beneficiary ownership that the MSG either has to or may wish to discuss in relation to implementation of the 2016 EITI Standard.

Against the above background, our guiding recommendations for disclosure of beneficial ownership are summarized below.

4.4.3.3.1 Timing and general approach

We recommend that Lebanon establishes a requirement to disclose beneficial ownership, before, or as soon as reasonably practically after, the award of EPAs in 2017. The requirement should, if possible, cover the companies that are awarded petroleum rights under the FOLR. In the future, such disclosure should take place early in the bidding process, preferably at the stage where the companies apply for pre-qualification.

As we understand that there are no legal obstacles for beneficial disclosure in Lebanon, we recommend that the beneficial ownership disclosure requirement as expressed in EITI Requirement 2.5 is implemented in a broad sense. We recommend that the final set of rules and implementing mechanisms should meet all the requirements as well as the recommendations established in EITI Requirement 2.5.

4.4.3.3.2 Definition of “beneficial owner”

In essence, a “beneficial owner” of a company are the individuals who truly own and control the company.¹⁴⁰ Pursuant to EITI Requirement 2.5 f) ii), the MSG should decide on an appropriate definition of the term beneficial owner. The definition should be aligned with

EITI Requirement 2.5 f) i): “A beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity”

EITI Requirement 2.5 f) ii) establishes also that the MSG should also take international norms and relevant national laws into account, that it should include ownership threshold(s) and specify reporting obligations for politically exposed persons.

The above-quoted “basis”- definition should be expanded so that it in a clearer manner addresses what is meant by “directly” or “indirectly” “ultimately” “own” or “control” a company. We recommend that the term “beneficial owner” is based on the above definition but that Lebanese authorities seeks to decide on a clearer, more broad definition, including inter alia the following elements:

- Lebanese authorities should make it clear that, with the exception of publicly listed companies, “beneficial owners” are always individuals.
- Lebanese authorities should consider not including a threshold,¹⁴¹ i.e. a minimum percentage of beneficial ownership, as a trigger for disclosure. Rather, all beneficial owners should be disclosed. The rationale for this is that even a small ownership share in companies deriving benefits from the petroleum activities can give rise to considerable revenues. We also expect that this approach can help instigate trust. If a threshold is introduced, then it should be set low and in any event at least include the major beneficial owners. What constitutes “major” in this respect, can be specified by numbers.

- Lebanese authorities should ensure that it is clear that beneficial ownership goes beyond legal ownership and control derived from legal ownership. The definition should therefore include the natural persons that derive economic benefits from the relevant legal entity, irrespective of whether the economic benefits are derived from direct ownership of shares or otherwise, e.g. through private agreements with legal owners. This approach appears also to be in line with the current practice in the Lebanese banking sector. Circular of the BDL no. 83 of 2001 does not define “beneficial owner” but it makes mention of the “actual beneficiary” as an alternative. A similar approach should be taken in the petroleum industry.¹⁴²
- Equally, Lebanese authorities should ensure that it is clear that individuals that actually exercise control over a company, e.g. through private agreements with legal owners, are beneficial owners.

This approach has the advantage that it does not matter who the legal owners are; it is *inter alia* those benefitting from the companies' activities that are the beneficiary owners.¹⁴³

- Lebanese authorities should also specify reporting obligations for politically exposed persons. We assume that the most appropriate definition for Lebanon is that included in UNCAC Article 52 (1): “*individuals who are, or have been, entrusted with prominent public functions, and their family members and close associates.*”¹⁴⁴

Moreover, in line with the EITI Requirement 5 f) (iii) and (iv), we further recommend that it is made clear that there is an exception for disclosure of individuals as beneficial owners in the case of publicly listed companies, including wholly-owned subsidiaries. The exception should however differentiate between fully and partially listed companies, e.g. require that disclosure is required for the non-listed parts. Such companies shall be required to disclose the name of the stock exchange and include a link to the stock exchange filings where they are listed. In the case of joint ventures, each entity within the venture should disclose its beneficial owner(s), unless it is publicly listed or is a wholly-owned subsidiary of a publicly listed company. Each entity should be responsible for the accuracy of the information provided. According to EITI Requirement 2.5 g), legal owners should also be disclosed

4.4.3.3.3 Identifying information

We recommend that, in line with the EITI Requirement 5 d), Lebanese authorities require that the identifying information for beneficial owners includes the name of the beneficial owner, the nationality, and the country of residence, the national identity number, date of birth, residential or service address, and means of contact. It should also be a requirement to submit an explanation as to how the control or economic benefit is exercised.

Moreover, we recommend that any politically exposed persons should be identified with names, roles and where relevant, an indication of the relationship with the politically exposed person if the person identified is a family member or close associate with

individuals who are, or have been, entrusted with prominent public functions rather than the actual person themselves. Disclosure of politically exposed persons should take place irrespective of any threshold set, see item 4.4.3.3.2.

4.4.3.3.4 Method for confirming information

In order for the disclosure of beneficial ownership to achieve its intended purpose, the information given on beneficial owners must be correct. This can be hard to verify.

As suggested by the EITI Requirement 2.5 e), we recommend that Lebanese authorities require companies to attest the beneficial ownership declaration form through sign off by a member of the senior management team or senior legal counsel, and that they are required to submit supporting documentation.

We recommend that Lebanese authorities should consider establishing adequate sanctions for non-compliance and submission of false information or referring to relevant sanctions in existing legislation.

4.4.3.3.5 Adequate information at all times

It is equally important that the information is up to date at all and any times. This can be a challenge.

We recommend that Lebanese authorities should require the information first submitted to be up to date, and that companies report any changes to that information, alternatively changes can be reported on a periodic rather on a case-by-case basis.

4.4.3.3.6 Publication requirements

The EITI Requirement 2.5 a) recommends that beneficial ownership information is published in a publicly available register. Some countries have opted for publication online.

We understand that the LPA is working on including beneficial ownership information in the petroleum registry to be established. This can be a good solution. We recommend that the information registered there are available online.

4.4.4 Collection of government take

4.4.4.1 Comment on EITI Requirement 4

One of the areas particularly vulnerable to corrupt behaviour in the petroleum industry is collection of government take, i.e. essentially all the elements of government revenues from petroleum activities, see also the discussion in item 2.4 above. For the present purposes, as Lebanon is to implement the 2016 EITI Standard, EITI Requirement 4 is the main international recommendation. The overview of EITI Requirement 4 reads:

An understanding of company payments and government revenues can inform public debate about the governance of the extractive industries. The EITI requires a comprehensive reconciliation of company payments and government revenues from the extractive industries. The EITI Requirements related to revenue collection include: (4.1) comprehensive disclosure of taxes and revenues; (4.2) sale of the state's share of production or other revenues collected in kind; (4.3) Infrastructure provisions and barter arrangements; (4.4) transportation revenues; (4.5) SOE transactions; (4.6) subnational payments; (4.7) level of disaggregation; (4.8) data timeliness; and (4.9) data quality.¹⁴⁵

This requirement, which is further elaborated in great detail with recommendations and suggestions for implementation, embodies the idea behind the EITI Association. The main aim of the EITI Association is to set a standard for revenue transparency in the extractive industries. The initial thought was that if companies are disclosing what they pay to host governments in relation to extractive industries and host governments publish what they receive, then it would be possible to - through a reconciliation exercise - establish whether the numbers match. Where companies state that they have paid more than the government

states it has received, there would be reason to question where those amounts disappeared to. Thus, the comprehensive disclosure requirements as set out above, is the very heart of the 2016 EITI Standard.

4.4.4.2 Comments on the Lebanese legal framework

Collection of revenues is regulated in Chapter 6 of the OPRL and Chapter 6 of the PAR. Moreover, the Model EPA also regulates these issues in more detail.¹⁴⁶ Moreover, a draft Petroleum Tax law has been prepared.

The Lebanese legal framework foresees royalties, profit petroleum shares and taxes¹⁴⁷ as the main elements of government take. There is no state participation in the FOLR, see Article 5 of the Model EPA.¹⁴⁸ In addition, an area fee is payable.

It would go beyond the scope of this Assignment to carry out a detailed analysis of the adequacy rules for calculation and payment of each of the elements of government take as mentioned above, the rules on valuation of petroleum, accounting and audit rights. For the present purposes, the key element is that there appears to be no express disclosure requirements addressing these issues.

We recommend that the Lebanese authorities opt for implementation of the EITI Requirement 4 in the broadest sense to ensure a high level of transparency and enable accountability in the Lebanese petroleum sector.

We also recommend that the Lebanese authorities consider the inclusion of specific provisions addressing the disclosure requirements of the 2016 EITI Standard either in by the means of a specific procedure for the petroleum sector under the Right to Access to Information Law¹⁴⁹ or through adoption of a specific transparency law, see the discussion in item 4.6.4.

4.4.5 Summary: Observations and recommendations

- Lebanon has undertaken to implement the 2016 EITI Standard and there is a need to establish corresponding disclosure obligations. In the work towards implementation, Lebanese authorities must take both the mandatory requirements of the relevant EITI Requirements as well as the recommendations and encouragements provided therein into consideration.
- We recommend that Lebanese authorities establish a requirement to disclose beneficial ownership, before, or as soon as reasonably practically after, the award of EPAs in 2017.
- We recommend that Lebanese authorities opts for implementation of not only the mandatory requirements, but also all the recommendations in EITI Requirement 2.5.

- We recommend that Lebanese authorities establish a clear and broad definition of “beneficial owners” that inter alia makes it clear that beneficial owners are natural persons, that goes beyond legal ownership and control and captures the individuals who get economic benefits from the companies and who actually exercises control. No thresholds should be set for the disclosure obligation and all beneficial ownership by politically exposed persons should be reported.
- We recommend that the Lebanese authorities consider the inclusion of specific provisions addressing the disclosure requirements of the 2016 EITI Standard either by the means of (a) new provision(s) in the OPRL or through adoption of a specific transparency law, see the discussion in item 4.6.4.
- We recommend that Lebanese authorities consider adopting a provision that requires information related to the environment (e.g. environmental and social impact assessments, outcome of public consultations) as well as other information and reports related to petroleum activities to be publicly available.
- We recommend that the Lebanese authorities opt for implementation of the 2016 EITI Standard in the broadest sense to ensure a high level of transparency and enable accountability in the Lebanese petroleum sector. This means that as far as possible, Lebanese authorities/the MSG should implement not only the mandatory EITI Requirements but also as far as possible the recommendations.

4.4.6 Policy recommendation

Policy recommendation: Lebanese authorities should establish a requirement to disclose beneficial ownership, before, or as soon as reasonably practically after, the award of EPAs in 2017.

Policy recommendation: Lebanese authorities should establish a clear and broad definition of “beneficial owners” that inter alia makes it clear that beneficial owners are natural persons, that goes beyond legal ownership and control and captures the individuals who get economic benefits from the companies and who actually exercises control. No thresholds should be set for the disclosure obligation and all beneficial ownership by politically exposed persons should be reported.

Policy recommendation: Lebanese authorities should, as far as possible, opt for implementation of the 2016 EITI Standard in the broadest sense to ensure a high level of transparency and enable accountability in the Lebanese petroleum sector.



4.5 Management of revenue, creation and oversight of funds

4.5.1 Summary of selected international recommendations

One of the areas vulnerable to corrupt behaviour in the petroleum industry is revenue management, see also the discussion in item 2.4 above.¹⁵⁰ One author observes:

“In principle, oil or mineral revenues could be handled as any tax or receipt, placed in Treasury accounts, and allocated in accordance with normal budgetary processes. However, in a resource – dependent economy, the magnitude of receipts and the difficulties of control suggest the need for special legislation directed to the particular problems posed by such revenues. [..]”

As an initial matter, any oil revenue management law – like other laws – must be adapted to the needs, institutions and legal framework of the country. Drafting must take place within the parameters of the local legal system and must take account of existing laws and practices.

Many subjects that may be included in a revenue management law may already be addressed in other legislation and regulations.”¹⁵¹

Thus, we see that many countries choose to adopt revenue management laws.¹⁵² As highlighted in the above quote, the reasons for adopting such laws may be many. They vary from country to country depending on the host country's specific context. In some host countries, the main concern is that petroleum revenues may be inadequately accounted for; the generally applicable law for allocation and use of government taxes and receipts may not be adequate or sufficiently robust to handle petroleum revenues. Special regulation of petroleum revenue management may be necessary to create trust. In other host countries the main concern may be to mitigate the possible effects that a large influx of revenues from an industry that is highly exposed to price volatility can have on the domestic economy. Some host countries may want to make sure that petroleum revenues are (first) spent on pressing domestic needs, allocated in a certain manner, e.g. the Natural Resource Management Charter states:

The government should invest revenues to achieve optimal and equitable outcomes, for current and future generations¹⁵³

Revenue management laws should, unless regulated in other laws and regulations, establish rules on inter alia¹⁵⁴ structuring an account for petroleum revenues, deposits and withdrawals, spending limits, stabilisation and endowment funds, use of revenues, fund management, limitations on investments rules on oversight and controls, audits and reporting, judicial controls, penalties, transparency and accountability and public integrity (conflicts of interest, corrupt behaviour, public procurement).

For the accountability purposes, we note that transparency and oversight mechanisms are vital to create trust and ensure compliance with the rules set out in the petroleum revenue management law. Depending on the local context, oversight may be carried out by established governmental institutions or it may be a need for a special oversight commission.¹⁵⁵ The petroleum revenue management law should establish requirements for periodic and public reporting and audit mechanisms. Host countries must also consider the adequate measures for transparency in the management of a sovereign fund and revenue management in general, and rules should be established on the scope of, methodology for and the entities responsible for disclosure. As a starting point, all

petroleum revenue related information should be made public. There are, however, certain elements in the management of a sovereign fund that should be kept confidential, e.g. market sensitive information.

For Lebanon as an implementing country of the 2016 EITI Standard, EITI Requirement 5 will set a minimum standard. The overview of EITI Requirement 5 reads:

EITI requires disclosures of information related to revenue allocations, enabling stakeholders to understand how revenues are recorded in the national and where applicable, subnational budgets. The EITI Requirements related to revenue allocations include: (5.1) distribution of revenues; (5.2) subnational transfers; and (5.3) revenue management and expenditures.¹⁵⁶

In its implementation of the 2016 EITI Standard, there are also other international sources that the MSG and Lebanese authorities should take into consideration, notably the IMF Guide on Resource Revenue Transparency, which is currently under revision.¹⁵⁷

4.5.2 Evaluation of the Lebanese legal framework

Petroleum activities have not yet commenced in Lebanon. As of yet, we expect that, in addition to any State revenues from the sales of seismic data discussed in item 2.4.2, the only State receipts relating to petroleum activities are the application fees paid for participation in the FOLR. These latter fees shall be paid to the Treasury, see item 4.2.2. For such limited receipts, this solution appears adequate for the time being. Despite the imminently expected award of EPAs under the FOLR, it will take some time before Lebanon will, if at all, receive revenues from any petroleum activities. There is often long lead time from exploration and production rights are first awarded until revenues can be collected. There is therefore ample time yet to develop legal mechanisms for revenue management. On the issue of petroleum revenue management, Article 3 (2) and (3) of OPRL foresees the establishment of a sovereign fund:

“2. The net proceeds collected or received by Government arising out of Petroleum Activities or Petroleum Rights shall be placed in a sovereign fund.

3. The statute regulating the Fund, the rules for its specific management, the principles of investment and use of proceeds shall be regulated by a specific law, based on clear and transparent principles for investment and use of proceeds that shall keep the capital and part of the proceeds in an investment fund for future generations, leaving the other part to be spent according to standards that will guarantee the rights of the State and avoid serious, short or long-term negative economic consequences.”

We read Article 3 (2) of the OPRL as a requirement to place all proceeds in to the fund. This would include proceeds from sales of royalties taken in kind or royalty paid in cash as well as the revenues from sales of the State's profit petroleum. Area fees shall be paid to the Treasury, see Article 70 of the PAR, and taxes shall be paid in accordance with the applicable law, see Article 45 of the OPRL. We understand that the draft petroleum tax law foresees that the payment of income taxes shall be regulated by the decree on the sovereign fund. We assume that this may imply that area fees and taxes shall be forwarded to the fund, although this is not entirely clear. Article 3 (3) of the OPRL establishes guidelines for a statute to regulate the fund, which is much in line with the typical elements of a petroleum revenue management law as stated above.

In addition to the elements listed in Article 3 (3) of the OPRL, we expect that it is practical for Lebanese authorities to take EITI Requirement 5 into consideration when working on this statute. Further to the requirements listed above, EITI Requirement 5 also stipulates more detailed recommendations and encouragements for implementation. Item 5.3 on revenue management and expenditures lists a number of elements that the MSG is encouraged to disclose. All of these encouragements should be taken into consideration and as far as possible be implemented in Lebanon to ensure as much transparency and accountability surrounding the management and expenditure of petroleum revenues as possible. We expect this to be an important measure to promote trust.

It falls outside the scope of this Assignment to provide an in-depth analysis on how transparency and accountability in resource revenue management should be implemented in Lebanon. This is an exercise that we expect to take some time for the Lebanese authorities/MSG to consider and decide on. We recommend that Lebanese authorities establish a sovereign fund statute that inter alia ensures transparency and accountability surrounding revenue management and expenditures in good time before major petroleum revenues can be expected.

4.5.3 Summary: Observations and recommendations

- Petroleum activities have not yet commenced in Lebanon. As of yet, we expect the only receipts relating to petroleum activities to be limited to the application fee for participation in the FOLR that shall be paid to the Treasury. This should be adequate for the time being.
- Lebanon has undertaken to implement the 2016 EITI Standard, and should take both the requirements of EITI Requirement 5 as well as the encouragements provided therein into consideration. All elements of EITI Requirement 5 should, if possible, be implemented in Lebanon to ensure as much transparency and accountability surrounding the management and expenditure of petroleum revenues as possible. We expect this to be an important measure to promote trust.
- We recommend that Lebanese authorities establish a sovereign fund statute that inter alia ensures transparency and accountability surrounding revenue management and expenditures in good time before major petroleum revenues can be expected.

4.5.4 Policy recommendation

Policy recommendation: Lebanese authorities should establish a sovereign fund statute that inter alia ensures transparency and accountability surrounding revenue management and expenditures in good time before major petroleum revenues can be expected.



4.6 *Comments on certain other transparency and anti-corruption measures specific to the Lebanese petroleum sector*

4.6.1 Introduction

Generally, we note that host countries adopt very different approaches to whether or not specific anti-corruption provisions are included into the legal framework for petroleum activities, or whether the host country chooses to rely on the generally applicable anti-corruption laws instead. It is assumed that the solution adopted in each host country is much dictated by legal traditions, the quality of the anti-corruption laws already in place as well as the efficiency of the institutions that supervise compliance/investigate and enforce the same laws.

Although still nascent, there has been, and there still is, much focus and work on integrating transparency, accountability and anti-corruption measures in the legal framework applicable to the Lebanese petroleum industry. Our impression is that these are matters that engage all relevant stakeholders.

In this item 4.6 we comment briefly on the specific anti-corruption clause in PAR Article 162 in item 4.6.2 and the corresponding clause in Model EPA Article 41 in item 4.6.3. Moreover, we comment on the Draft Strengthening of Transparency Law in item 4.6.3.

4.6.2 PAR Article 162

PAR Article 162 applies to any physical or legal person participating in petroleum activities.

It establishes an obligation for such persons to cooperate with the Government of Lebanon to prevent corruption and to take certain active steps in cases where a person is suspected of corruption or other deliberate or grossly negligent misuse of resources. Such regulation has some merit, and the provision may serve as an important signal as to what Lebanese authorities expect from those participating in the Lebanese petroleum sector. There may be some room for improvement of the wording. Because the term corruption is not defined in Lebanese law, the wording could benefit from addressing “corrupt behaviour” rather than “corruption”. Moreover, PAR Article 162 could benefit from stipulating consequences in cases of breach of the aforementioned obligations.

Article 162 also addresses passive and active bribery in relation to petroleum activities as it establishes a prohibition of “offer, payment or benefit of any kind, which would or could be construed as an illegal or corrupt practice, shall be made or accepted, either directly or indirectly, as an inducement or reward for any rights granted by the Government under the Offshore Petroleum Resources Law or for acting or making any decision, abstaining from any action or abstaining from making a decision in relation

to Petroleum Activities.” However, in terms of scope, Article 162 differs only from the provisions of the Lebanese criminal law in being limited to bribery related to petroleum activities. As such, this Article 162 does not add to the bribery framework established under the Lebanese criminal law.¹⁵⁸

Again, it is noted that PAR Article 162 does not establish any consequences of breach thereof. It is clear that PAR Article 162 does not establish a criminal offence.¹⁵⁹ One could thus question the purpose of and need for PAR Article 162. We are of the opinion, however, that PAR Article 162 provides an important message to investors, and it shows the expectations the Lebanese authorities have to their behaviour. Other than for informative purposes, we do not expect that PAR Article 162 will be of much independent consequence unless it is read in conjunction with the provisions of the EPA and, thus, the person in breach is a Right Holder, Affiliate of a Right Holder and their respective personnel, see item 4.6.3.

Pursuant to its wording, the above quoted rule also applies to a wider circle of persons (affiliated companies, agents, representatives, sub-contractors or consultants) when such offer, gift, payments or benefit violate applicable law in Lebanon, relevant laws of the home countries of such persons, the OECD Convention and UNCAC. Through this provision, other countries’ rules and the rules of the relevant conventions are apparently incorporated by reference into Lebanese law. Again, however, we question how this provision can be enforced independent of any other legal basis in law or an EPA. It nevertheless remains a signal to those participating in petroleum activities as to the behaviour that is expected from those participating in the Lebanese petroleum sector.

4.6.3 Model EPA Article 41

The Model EPA Article 41 is in its wording similar to Article 162.¹⁶⁰ Whereas Article 41 is only applicable to the Right Holders, its Affiliates and their respective personnel, we nevertheless assume it to be of more practical interest as it establishes a contractual obligation that, if breached, can give grounds for the State to invoke harsh remedies for breach of contract .

Model EPA Article 36 establishes that on certain conditions, breach of the terms of the EPA (and the PAR) constitutes grounds for early termination, see Article 36.1 (a) (i). Such early termination shall be without compensation; see Article 36.1 (d). We understand that this would also apply in cases of such breach of PAR Article 162 and Model EPA Article 41.

In our opinion, although it addresses the private parties only, we deem this is a rather potent weapon in the fight against corruption in the Lebanese petroleum sector. Revocation without any compensation is certainly an ample incentive for investors to ensure that corrupt behaviour is countered.

4.6.4 MP Maalouf's draft law on Strengthening Transparency in the Petroleum Sector (the "Draft Strengthening Transparency Law" or the "draft law")

We have reviewed the Draft Strengthening Transparency Law. In its current form, it is a comprehensive draft law that sets out a number of rules aimed at strengthening transparency and accountability and to counter corruption in the Lebanese petroleum sector. The draft law addresses weaknesses identified in the currently applicable law¹⁶¹ and elements that are not currently regulated, but that we would expect to form part of implementation of the 2016 EITI Standard in Lebanon.¹⁶² We have not analysed and evaluated the wording of each Article in detail. Rather, in this item 4.6.4, we provide our high level comments on the structure and the thematics of the draft law.

The common denominators underlying the draft law are petroleum activities, transparency and anti-corruption measures. Within that ambit, the draft law concerns a wide range of issues. As such, the draft law comes across as a "one-stop-shop" for improvement of the regulatory framework on transparency and accountability in the Lebanese petroleum sector. It appears to result from a comprehensive study of the applicable law in Lebanon today and it concurs with many of the observations and recommendations made in this report. Adoption of such rules would strengthen the level of transparency in the Lebanese petroleum sector.

However, as the draft law covers a wide range of topics, many of these are already addressed in various applicable laws and regulations. In part, the draft law appears to overlap with such other legislation and in part it supplements such other legislation. Any apparent overlaps must be analysed carefully before the draft is proposed for enactment. Experience shows that overlapping requirements and unclear rules may impair user-friendliness and transparency. The Parliament may therefore wish to consider adopting the rules of the draft law in a two-step procedure. One step would entail using those parts of the draft law concern topics that are already addressed in other Lebanese legislation as basis to amend the relevant laws and regulations. Another step would entail adopting the remaining parts of the law as a new law. These two steps may be taken at the same time, i.e. the proposals for amendment and a new law could be presented to Parliament as a package.

As for the content of the draft law, we note that the material scope of the draft law is "all petroleum activities", see Article 1, whether on- or offshore. This extension of scope is useful since the OPRL, PAR and Model EPA only apply offshore.¹⁶³ We understand that onshore petroleum activities may be undertaken in Lebanon in the not too distant future. The personal scope covers a wide range of politicians, government officials, persons of the judiciary and persons that represent companies see Article 3.

The draft law establishes a duty to disclose and publish information for certain stakeholders and those holding petroleum rights, see Article 4. It is unclear how this requirement relates to the newly enacted Right of Access to Information Law. This should be clarified before the draft is proposed for enactment. There is no need for repetition of the rules in the Right of

Access to Information Law; any new rules adopted should rather be supplemental to those embedded in the Right of Access to Information Law.¹⁶⁴ For instance, there is, as pointed out above in item 4.3.2.5, a need for a specific implementation procedure of the Right to Access to Information by the Minister and by the LPA. The draft law provides some solid starting points for preparing such procedure; see for instance Articles 10 and 11.

Article 6 (1) is interesting in that it establishes a very broad obligation for the persons mentioned in Article 3 to refrain from investing in the petroleum sector in any way during the period in which they are assigned a certain position and during the consecutive 5 year period after leaving their position. If enacted, this rule would prevail over e.g. Article 3 of Decree no 7968 dated 7 April 2012, where the members of the LPA are prohibited to work at any company exercising petroleum activities in Lebanon while in position and two years after the termination of their mandate as members of the LPA.¹⁶⁵ Furthermore, Article 6 (2) and (3) establish obligations for the persons mentioned in Article 3 to disclose certain interests, a proposal that has great merit.

Article 7 establishes a prohibition of bribery. It addresses active and passive bribery. Many similarities exist between the provisions of the draft law and those of the Lebanese criminal law in relation to bribery. However, the bribery provisions stipulated in the draft law provide an additional advantage to counter corruption. The draft law provisions are more elaborate and industry-specific (e.g. enumeration of the persons subject to the provision which includes foreign officials, the inclusion of treaties related to anti-corruption in the scope of the draft law).

The draft law also sets out detailed rules on a “National Administration for fighting corruption”. This appears to be the same or a similar public entity as the “Anti-Corruption Commission” foreseen in the Right to Access to Information Law. We refer to our discussion in item 4.3.2.5.

We also note that many of the elements in the draft law are requirements that Lebanon must nevertheless consider as a part of EITI implementation. EITI implementation will take some time. Adopting (parts of) the draft law could service as an interim alternative to wait for the full EITI implementation in Lebanese law. Such interim regulation could precede a more full and detailed EITI implementation and as such strengthen the overall level of transparency in the Lebanese petroleum sector as from its beginning. It would be important, however, that the wording is adequately drafted to suit future EITI implementation.

We recommend that Lebanese authorities consider whether immediate adoption of (parts of) the draft law could precede a more full and detailed EITI implementation.

4.6.5 Summary: Observations and recommendations

- There has been, and there still is, much focus and work on integrating transparency, accountability and anti-corruption measures in the legal framework applicable to the Lebanese petroleum industry. Our impression is that these are matters that engage all relevant stakeholders.

- The Draft Strengthening of Transparency Law addresses a number of weaknesses in the Lebanese legal framework for petroleum activities. Adoption of many of its rules would strengthen the level of transparency in the Lebanese petroleum sector. In parts it overlaps and supplements existing legislation. It may be more user-friendly and transparent to, where deemed necessary by Parliament, rather amend the relevant laws and regulations than adopt the draft law as it stands now as one, single law.
- Many of the elements in the Draft Strengthening of Transparency Law are requirements that Lebanon must nevertheless consider as a part of EITI implementation. EITI implementation will take some time. Adopting (parts of) the draft law could service as an interim alternative to wait for the full EITI implementation in Lebanese law.
- We recommend that Lebanese authorities consider whether immediate adoption of (parts of) the draft law could precede a more full and detailed EITI implementation.

4.6.6 Policy recommendation

Policy recommendation: Lebanese authorities should to adopt (parts of) the draft law even before full and detailed EITI implementation.



4.7 High level comments: Procurement, local content, inspections, monitoring and enforcement

4.7.1 Introduction

In appendix 2 we present a table that provides a high-level overview of risks and typical red flags for corruption in each phase of upstream petroleum activities. As is apparent in the table, this report goes in-depth on some of the risks and typical red flags for corruption, in particular in the award phase and on public decision making. As mentioned in 4.1, we have not been able to address all relevant issues in detail. Consequently, the table also shows that there are some issues that we have not analysed in detail, including procurement and local content requirements, inspection, monitoring and enforcement. In the following we provide some high level comments on these issues.

4.7.2 Procurement and local content

Appendix 2 shows that inter alia issues relating to procurement, including local content requirements, represent a risk for corruption.

During the course of a petroleum project, a number of goods and services are required. The bulk of these are goods and services that the right holders, most often through the operator, must procure from others. Such contracts represent good business opportunities as they can be lucrative and of substantial value. In the interest of prudent, efficient and cost-efficient petroleum activities, it is of great importance that the goods and services so procured are of good quality and good value and that public procurement procedures are required so that awards are transparent, open and competitive. To avoid unnecessary bureaucracy, it is common in the international petroleum industry to set a threshold for requiring award through public procurement. How this is done, and where the threshold is set, varies from host country to host country based on contextual and policy considerations.

Many host countries require the right holders to give preferential right to local providers of goods and services in order to create added value from petroleum activities (“local content requirements”).¹⁶⁶ In particular where such requirements are unrealistic or too stringent, yet mandatory, there is great risk for corruption and favouritism.¹⁶⁷ As examples, we may mention the experience made in Nigeria:

“[..] This has been the case in Nigeria, where local content may easily be used by the political & economic elite to extract rents, as well as in Uganda, where close ties between senior public officials & the private sector may distort the policy-making process & the award of licences & other local content benefits. In fact, studies have shown that local policies & resources are often directed to groups based on their affiliation, ethnicity & loyalty to the president [..]”¹⁶⁸

The right holders will carry out some procurement during the exploration phase, but the bulk of the procurement activities will take place during the development phase. There will also be a need for procurement in the production and decommissioning phases. As we were not able to go into detail on all issues, and the bulk of procurement activities will take place as from the development phase, we have not analysed these matters in further detail here.

We note however, that the issues of procurement and local content are addressed in the Lebanese legal framework for petroleum activities. Article 72 of the OPRL establishes the right for right holders to sub-contract and that the right holder shall “declare” such contracts. Article 67 of the OPRL establishes that priorities shall be given to Lebanese persons in the procurement of goods, services and employment on certain conditions. These rules are further implemented in PAR. Article 157 of PAR, for example, regulates procurement and local content. It establishes that “major contracts” shall be subject to public tender. The term “major contracts” is defined in Article 157 (1) based on discretionary parameters. Article 157 (3) sets out the principles for carrying out such public tenders. These rules are further detailed in Article 27 of the Model EPA, which inter alia establishes a minimum threshold value for public procurement and more detailed rules for preferential treatment of Lebanese providers of goods and services.

As a whole, we note that the main elements of the regulation of procurement and local content requirements reflect main elements of good international practise, but that we would expect more regulation of these issues in regulations rather than in contract.

Whereas we have not analysed these rules in detail, we note that Lebanese authorities may wish to consider to make use of a more specific definition of “major contracts” in Article 157 of PAR, e.g. by use of threshold values. Moreover, Lebanese authorities may wish to consider, in due course, regulating the procurement process as well local content requirements in more detail in PAR or other regulations rather than in contract.

4.7.3 Inspections, monitoring and enforcement

For compliance and accountability purposes, adequate measures for supervision and enforcement as well as adoption of an active approach to such supervision and enforcement, is vital to counter corrupt behaviour. Article 74 of the OPRL provides the legal basis for inspection, monitoring and enforcement. This main rule is further implemented in PAR, inter alia in Article 144 which regulates inspections and audits and Article 146 which establishes rights of access for government representatives to relevant areas, facilities and more. Moreover, the Model EPA also establishes more detailed rules on audit and inspection of the right holder's records, see Article 32 of the Model EPA and Section 1.7 of Annex D to the Model EPA.

It remains to see how these activities will be carried out in practice. We note, however, that experience shows that it may be challenging for the relevant public entities to carry out their tasks adequately unless they are allowed sufficient resources to build capacity and competence to handle their tasks.¹⁶⁹ Lebanese authorities may wish to consider a review of whether the measures for inspections, monitoring and enforcement are adequate as petroleum activities commence in Lebanese waters and whether there is a need to strengthen capacity and competence within the relevant public authorities, notably the LPA, to adequately carry out their tasks.

4.7.4 Metering and reporting of production

In the production phase, there is a risk for theft of production. It is essential that the right holders have adequate procedures and facilities for metering of produced volumes. Moreover, it is essential that the volumes produced are reported correctly.

Monitoring of production is regulated in Article 37 of OPRL, metering in Articles 144 (3) and 157 of the PAR and reporting of production in Article 50 of PAR. We assume that the Right to Access to Information Law applies to production reports, but note that in any event that disclosure of production data must be considered in connection with implementation of the 2016 EITI Standard. We have not evaluated the rules in detail, but note that the rules appear to cover the main elements normally regulated in general petroleum regulations. We also note that many host countries choose to issue detailed technical regulations on fiscal metering.¹⁷⁰ Lebanese authorities may wish to consider issuing more detailed technical regulations on metering as time approaches to commencement of production.





5. Brief comments on generally applicable anti-corruption legislation

5. BRIEF COMMENTS ON GENERALLY APPLICABLE ANTI- CORRUPTION LEGISLATION

As mentioned initially, more general governance and legislative measures should be taken in order to create a holistic and robust system to counter corruption. For the present context, petroleum specific legislation is of course a cornerstone. But the existing general legal framework for anti-corruption is in need to be further complemented to effectively counter corruption in Lebanon.

Moreover, strengthening the transparency and anti-corruption framework in Lebanon requires not only the enactment of new legislation in this respect, but also to ensure the implementation and the enforcement of existing and future legislation. In the present context it is therefore important that the host country has functioning, independent judiciary branch.

In light of recent Lebanese legislative efforts, including in particular the development and adoption of the legal framework for petroleum activities and the adoption of the Right of Access to information law, we note that there appears to be an appreciation by Lebanese stakeholders of the need to adopt a holistic approach in the prevention of corruption. This is confirmed through inter alia the active approach Lebanese authorities have taken in the undertaking to implement the 2016 EITI Standard at such early stage of the domestic petroleum industry as well as numerous statements in media and in public appearances.

LOGI will issue a separate policy memo on these issues along with relevant recommendations.





6. Policy recommendations

6. POLICY RECOMMENDATIONS

6.1 Introduction

The policy recommendations are made in response to the conditions that can facilitate corruption, namely¹⁷¹

- Imperatives and incentives that encourage someone to engage in corruption;
- Availability of multiple opportunities for personal enrichment;
- Access to and control over the means of corruption; and
- Limited risks of exposure and punishment.

Moreover, at a more specific level, the policy recommendations made in this item 5 are aimed at the risks for corruption in the petroleum industry as such.¹⁷²

6.2 Policy recommendation: Review of the rules on award of petroleum rights

The following policy recommendation is made on basis of our observations and recommendations in item 4.2:

Based on the experiences made in its first licensing rounds, Lebanese authorities should in due course review the rules on award in PAR and the Pre-qualification Decree so as to regulate licensing rounds in more detail and fully in line with good international practices.

6.3 Policy recommendation: Contract transparency

The following policy recommendation is made on basis of our observations and recommendations in item 4.2.5:

Lebanese authorities should publish signed EPAs.

6.4 Policy recommendation: Establishing implementation procedures under the Right to Access to Information Law

The following policy recommendation is made on basis of our observations and recommendations in item 4.3.2.5:

Lebanese authorities should consider establishing a specific implementation procedure of the Right to Access to Information Law by the Minister and by the LPA.

6.5 Policy recommendation: Establishment of an Anti-Corruption Commission should be prioritized

The following policy recommendation is made on basis of our observations and recommendations in item 4.3.2.5:

Lebanese authorities should put priority on the establishment of an Anti-Corruption Commission as foreseen in the Right to Access to Information Law and, as the case may be, the Draft Strengthening of Transparency Law.



6.6 Policy recommendation: EITI implementation – public dissemination of information

To ensure clarity of disclosure requirements, the MSG implementing the 2016 EITI Standard should consider the inclusion of specific provisions addressing the disclosure requirements of the 2016 EITI Standard either by amending the applicable law, by inclusion in a new law on strengthening of transparency in the petroleum sector or by a new, separate EITI law



6.7 Policy recommendation: Implementation of beneficial ownership disclosure procedure

The following policy recommendation is made on basis of our observations and recommendations in item 4.4.3:

Policy recommendation: Lebanese authorities should establish a requirement to disclose beneficial ownership, before, or as soon as reasonably practically after, the award of EPAs in 2017.

Policy recommendation: Lebanese authorities should establish a clear and broad definition of “beneficial owners” that inter alia makes it clear that beneficial owners are natural persons, that goes beyond legal ownership and control and captures the individuals who get economic benefits from the companies and who actually exercises control. No thresholds should be set for the disclosure obligation and all beneficial ownership by politically exposed persons should be reported.



6.8 *Policy recommendation: Approach to implementation to the 2016 EITI Standard*

The following policy recommendation is made on basis of our observations and recommendations in item 4.4:

Policy recommendation: Lebanese authorities should, as far as possible, opt for implementation of the 2016 EITI Standard in the broadest sense to ensure a high level of transparency and enable accountability in the Lebanese petroleum sector.



6.9 *Policy recommendation: Adoption of the draft Law on Strengthening Transparency in the Petroleum Sector*

The following policy recommendation is made on basis of our observations and recommendations in item 4.6.4:

Lebanese authorities should consider to adopt (parts of) the draft law even before full and detailed EITI implementation.



6.10 Policy recommendation: Sovereign fund

The following policy recommendation is made on basis of our observations and recommendations in item 4.5:

Lebanese authorities should establish a sovereign fund statute that inter alia ensures transparency and accountability surrounding revenue management and expenditures in good time before major petroleum revenues can be expected.





Appendix 1: Literature

APPENDIX 1: LITERATURE

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***Appendix 2: overview
main “red flags” for
corruption in the various
phases of upstream
petroleum Activities***

APPENDIX 2: OVERVIEW MAIN “RED FLAGS” FOR CORRUPTION IN THE VARIOUS PHASES OF UPSTREAM PETROLEUM ACTIVITIES¹⁷³

We have included an overview of some of the main red flags for corruption in the various phases of upstream petroleum activities below. We have only included the various phases of upstream petroleum activities themselves. For a complete overview, other related activities such as trading, transportation and downstream activities should also be considered. It is, however, premature to focus on such issues in the Lebanese petroleum sector, where the petroleum activities have not yet commenced. Moreover, as there is no state participation in the Lebanese petroleum sector as to date, we do not comment on this.

It should be noted that the existence of a red flag does not automatically mean that corrupt behavior will take place. Rather, it is an indication of a risk for corrupt behavior and that there may be reason to take measures to mitigate that risk. For the purposes of this report, the main focus is on mitigation of corruption risk in the form of steps that may increase the level of transparency and accountability. The rationale for this is provided in item 2.3 of the report.

We also emphasize that the Lebanese petroleum sector is nascent. Thus, the most imminent activities to be undertaken are the award of petroleum rights and exploration activities. Even if there are commercial discoveries of petroleum in Lebanese waters under the EPAs awarded in the FOLR, any development and production activities are still many years ahead – and there may be decades before any facilities are to be decommissioned. As explained in item 1.2, rules on petroleum activities typically evolve alongside with the development of a domestic petroleum sector and experiences made therefrom. Thus, the fact that the Lebanese legal framework for petroleum activities may not yet be complete in respect of all phases today is not necessarily worthy of critic in itself.

General Phase

Risk for corruption

- Policy
- Laws, regulations, fiscal terms

“Red flag”

- Lack of policy clarity
- Opaque, non-transparent legislation
- Lack of mechanisms for accountability
- Supervision, enforcement

Lebanese legal framework – main observations/comments

Our overall impression is that the level of transparency and accountability in the Lebanese legal framework applicable to petroleum activities is in large parts in line with good international practices.

The Right of Access to Information Law and the undertaking to implement the 2016 EITI Standard are measures that, if implemented, may improve the level of transparency and accountability in the Lebanese petroleum sector.

We have not been able to go into detail on all issues. As for the issues that we have studied in more detail, we have identified some areas where the level of transparency can be improved. Reference is made to all of item 4.

As for supervision and enforcement, reference is made to high level comments made in item 4.7.3.

Award Phase

Risk for corruption

- Licensing, including pre-qualification and award

“Red flag”

- Non-transparent pre-qualification and award of licenses
- “Odd” pre-qualification and awards

Lebanese legal framework – main observations/comments

We have analyzed the Lebanese legal framework on award in detail. Relevant observations and recommendations are presented in item 4.2.

Exploration Phase

Risk for corruption

- Permits, approvals
- Procurement

“Red flag”

- Delays on permits and approvals
- Limited competitive bidding, non-transparent bids
- “Odd” or repeated procurement awards
- Rumors of abuse
- Stringent, or unrealistic local content terms

Lebanese legal framework – main observations/comments

We have analyzed Lebanese public-decision making. Relevant observations and recommendations are presented in item 4.3.

As for procurement and local content, reference is made to high level comments made in item 4.7.2.

Development, Production Phase

Risk for corruption

- Permits, approvals
- Procurement
- Theft of production and revenues

“Red flag”

- Same as exploration, & in addition
- Volume discrepancies
 - Absence of metering

Lebanese legal framework – main observations/comments

Same as exploration.

As for monitoring of production and metering, reference is made to high level comments made in item 4.7.4.

Decommissioning Phase

Risk for corruption

- Permits, approvals
- Procurement

“Red flag”

- Same as for exploration

Lebanese legal framework – main observations/comments

Same as exploration

Appendix 2b: Overview of the Various Laws and Regulations Impacting the Various Phases of Upstream Petroleum Activities

Title	Date	Reference	Issuing Authority	Area of regulation
Offshore Petroleum Resources Law ("OPRL")	24/08/2010	Law No 132/2010	Parliament	Establishes the main rules on petroleum activities in Lebanese Waters (See OPRL Article 2), including reconnaissance, exclusive petroleum rights, the exploration and production agreement between the State and the right holders.
Petroleum Activities Regulation ("PAR")	30/04/2013	Decree No 10289/2013	Council of Ministers	Implements the main rules for petroleum activities established in the OPRL (See PAR Article 2) in regulations.
Amendments to the PAR	03/08/2017	Decree No 1177/2017	Council of Ministers	Deletes article 79 and amends articles 80 and 81 of the PAR.
Prequalification Decree	16/02/2013	Decree No 9882/2013	Council of Ministers	Regulates the prequalification process (1st round) in connection with Lebanon's First Offshore Licensing Round.
Prequalification Package of 2017	26/01/2017	Decision No 1/m of the Minister of Energy & Water		Launches the second prequalification round in connection with Lebanon's First Offshore Licensing Round.
Tender Protocol for the First Offshore Licensing Round ("Tender Protocol")	19/01/2017	Annex 1 of Decree No 43/2017	Council of Ministers	Determines the bidding process for Lebanon's First Offshore Licensing Round that the prequalified companies must abide by and describes the evaluation criteria and the financial conditions.
Model Exploration and Production Agreement ("EPA")	19/01/2017	Annex 2 of Decree No 43/2017	Council of Ministers	Stipulates the contractual elements of exploration and production activities for EPAs awarded under Lebanon's First Offshore Licensing Round.
The Right of Access to Information Law	16/02/2017	Law No 28/2017	Parliament	Grants rights of access to information from all public entities to any person.

Title	Date	Reference	Issuing Authority	Area of regulation
The Lebanese Petroleum Administration Decree (“LPA”)	07/04/2012	Decree No 7968/2012	Council of Ministers	Establishes the LPA and determines the structure of the LPA & its operational mode.
Delineation of Offshore Blocks Decree	19/01/2017	Decree No 42/2017	Council of Ministers	Delineates the Lebanese maritime waters into 10 blocks.
(DRAFT) Petroleum Tax Law	N/A	N/A	N/A	Regulates and foresees income tax and other taxes relevant to the petroleum sector.
(DRAFT) Strengthening of Transparency in the Petroleum Sector Law	N/A	N/A	N/A	While complementing other existing laws, this draft-law aims to create a comprehensive framework to prevent corruption and enhance transparency in the petroleum sector.

Appendix 3: Arntzen de Besche Lawfirm, Al-Jad and Short Bios¹⁷⁴

About Arntzen de Besche

ARNTZEN
DE BESCHE



Arntzen de Besche is a leading law firm based in Oslo, Norway, specializing in the domestic and international oil and energy sector. With global industry knowledge and experience, we contribute to targeted value creation at oil companies, contractors and public authorities.

After over 40 years of cooperation with oil companies, contractors and petroleum authorities, we have Norway’s strongest team of lawyers in the oil and energy sector.

We advise on all legal matters related to the oil, gas and energy sectors. In the petroleum sector, this includes all contractual and regulatory aspects of exploration, development, production, disposal and transport, as well as company and license transactions, petroleum tax, financing, insurance and dispute resolution by arbitration and litigation.

We have advised a number of states in Africa, Asia Pacific, Europe, Latin America, and the Middle East on petroleum legislation and regulatory reform, petroleum policy, production sharing agreements (PSA), petroleum sector management and institutional development, as well as award of exploration and production rights.

We advise government and companies on good governance and anti-corruption measures.

Clients include the biggest international oil companies, newcomers on the Norwegian oil and gas scene, some of the largest power producers in the Nordic countries and in Northern Europe as well as Norwegian and foreign authorities and regulators.

For more information, see: www.adeb.no

About Ms Tonje Pareli Gormley, Partner, Arntzen de Besche Lawfirm



Tonje Pareli Gormley, Partner

Ms. Gormley is a Norwegian qualified lawyer specialized in petroleum law and petroleum contracts. She holds a Master degree in law (cand.jur.) from the University of Oslo and the Common Professional Examination in law from London Metropolitan University. Ms Gormley has provided legal advice to companies, governments/public authorities and organisations engaged in the petroleum industry in Africa, Asia, Europe and the Middle East since 2004.

Gormley advises companies on domestic and international petroleum law and contractual matters including negotiation support and drafting of contracts. During the period 2013-2015 she was seconded to the E&P company Lundin Norway AS where she functioned as an in-house lawyer. Gormley advises governments on the structuring and drafting of legislation, regulations, model agreement and on award of E&P rights. She assists governmental authorities on the day-to-day resource management, regulatory and contractual issues in relation to licensees/contractors. She has worked with the Norwegian Ministry of Labour and Social Affairs on health, safety and environment issues within the petroleum sector. In 2012 and 2013 she was seconded to the petroleum directorate of an

Asian country where she assisted the legal department on various legal issues relating to the day-to-day management of petroleum resources. Gormley advises both companies and governments on good governance, transparency and anti-corruption. She publishes legal articles internationally on petroleum law and contracts, and is a frequently used guest lecturer and speaker on such topics.



Aleksander Dypvik Myklebust, Associate

About Mr Aleksander Dypvik Myklebust, Associate, Arntzen de Besche Lawfirm

Mr. Myklebust holds a Master Degree in Law from the University of Oslo and has studied selected topics within international commerce and investment law as a part of the International Legal Studies Program at AU, Washington College of Law, Washington D.C, USA. He joined the Oil, Offshore and Energy group at Arntzen de Besche law firm (“AdeB”) in 2017.

Myklebust specialises within international commerce and investment law, petroleum law and petroleum contracts. Before he joined AdeB, he has worked as a political advisor in the Norwegian Parliament, where he inter alia supported the Standing Committee on Scrutiny and Constitutional Affairs and the Committee on Local Government and Administration on matters relating to justice and constitutional issues.

About Al-Jad Law

ALJADLAW

Al Jad are regarded as one of the leading advisers in the energy industry in Lebanon and Iraq. Al Jad lawyers work across the full value chain, advising operators, joint-venturers and service companies on commercial, corporate and regulatory matters. Al Jad experience includes providing advice on energy transactions and ongoing project support including contentious issues. The firm also offers advice to government authorities, international organisation and non-governmental entities on good governance, anti-money laundering and transparency issues. Al Jad are directly present in Lebanon and Iraq, and they offer a gateway to legal services in other jurisdictions in the Middle East. For more information, see: www.al-jad.com

About Mr Malek Takieddine, Partner, Al-Jad Law



Malek Takieddine

Malek is an oil and gas lawyer qualified to practice under Lebanese Law. He has obtained a masters degree in oil and gas law from the University of Aberdeen (2008). Over the past 14 years, he has been involved in advising major and independent IOCs on upstream oil and gas projects in the UK, Africa and the Middle East. He has made a number of publications related to Lebanese hydrocarbon laws, and is regularly invited to speak on these matters at conferences and roundtable discussions in Dubai, Lebanon, Washington DC (the Aspen Institute), London and Aberdeen. He is a lecturer in Oil and Gas Law at the Lebanese American University in Beirut (LAU). He is also regularly sought to provide advice and analysis to Norwegian Oil for Development Program/NORAD, the European Union (Beirut office), United Nations bodies (Beirut, Vienna and New York) and other international organizations on matters covering hydrocarbon laws and anti-corruption laws in Lebanon and other Arab countries. He is a member of the Association of International Petroleum Negotiators, acts on the board of directors of the Energy Committee of the Beirut Bar Association and is Legal Consultant with CMS.

About Mr Hassan Khalife, Lawyer, Al-Jad Lawvv



Hassan Khalife

Hassan is a qualified lawyer in Lebanon and is actively assisting international clients and private and public institutions mainly with work pertaining to commercial, petroleum, energy and dispute resolution laws. He holds an LLM in Energy Law and Policy with Distinction from the Centre for Energy Petroleum Mineral Law and Policy (CEPMLP) of the University of Dundee for which he has been awarded the Chevening scholarship by the UK Government. Formerly, Hassan Obtained his Maîtrise en Droit from the Francophone Section of the Faculty of Law of the Lebanese University where he gained a thorough knowledge of European law in addition to Lebanese law. He worked with different local and international law firms and is currently a senior associate at Al-Jad Law Firm (CMS Associated Office). Hassan also worked with the Energy Charter Secretariat on energy investment related projects including countries' investment reports, energy investment risk assessment, and dispute resolution under the Energy Charter Treaty. He has been also involved with the United Nations Development Program and the Lebanese Parliament on several draft legislations.



Appendix 3: Endnotes

APPENDIX 3: ENDNOTES

1

As is apparent in item 4.1, no written policies were provided.

2

As this report illustrates, the applicable law for petroleum activities often stretch beyond the petroleum law or the petroleum regulations. Other relevant laws may include administrative law, environmental law, labour laws, fiscal laws, local content legislation, right to access to information laws, accounting laws, various laws related to the registration and reporting requirements for corporate entities, revenue management laws and more. Some countries also have specific laws for the implementation of the Extractive Industries Transparency Initiative. How a country specifically structures its legal framework for petroleum activities, depends inter alia on legal traditions, laws and regulations already in place as well as policy considerations.

3

A list of the legislation reviewed is provided in item 4.1.

4

Such approach is even often recommended, see item 1.2 below.

5

Moreover, a draft new law has been proposed in order to strengthen the transparency in the Lebanese petroleum sector. Inter alia, it addresses elements that would be part of implementation of the 2016 EITI Standard.

6

See items 4.2, 4.3, 4.6 and 5 in particular.

7

We have differentiated our recommendations as such because we are aware that host countries are sometimes challenged with having to balance different policy goals, which in turn can compromise optimal levels of transparency. Such compromise might not automatically mean that there is a breach of good international practices.

8

As is the case in most countries, the implementation of the 2016 EITI Standard is expected to take some time. See items 4.4 and 4.5 in particular.

9

We have differentiated our recommendations as such because we are aware that host countries are sometimes challenged with having to balance different policy goals, which in turn can compromise optimal levels of transparency. Such compromise might not automatically mean that there is a breach of good international practises.

10

As is the case in most countries, the implementation of the 2016 EITI Standard is expected to take some time. See items 4.4 and 4.5 in particular.

11

For more information, see <http://www.lpa.gov.lb/open%20blocks.php>

12

See for instance <http://www.ogj.com/articles/2017/07/lebanon-closes-in-on-first-offshore-bid-round.html> (last visited 8 August 2017)

13

The term “Waters” is defined in the Offshore Petroleum Resources Law, No 132 of 2010 Article 1.

14

A pre-qualification process was first carried out in 2013, in relation to the launch of the FOLR. In 2017, as the FOLR was revived, a new pre-qualification process was held. In this process, the companies pre-qualified in 2013 were asked to update their files and new pre-qualification applications were also received. The process and the results are described in further detail here: <http://www.lpa.gov.lb/prequalification.php> (last visited 20 July 2017.)

15

In this report, the term “host country” refers to a country in which petroleum activities are being carried out.

16

In the current Lebanese context, the most immediate activities encompass award of EPAs and exploration activities.

17

The step-by-step approach to regulatory development has been a conscious approach in countries as diverse as Timor-Leste and Norway.

18

OECD, Corruption: A glossary of international standards in criminal law” (OECD Publishing, 2008), p.22.

19

See item 2 of Report on Helping Countries Combat Corruption, the Role of the World Bank, Poverty Reduction and Economic Management, The World Bank, September 1997, available on <http://www.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm> (the “World Bank Report”), last visited 20 June 2017.

20

The United Nations Convention against Corruption (“UNCAC”), Chapter III “Criminalization & Law Enforcement”

21

The basics of anti-corruption, U4 Anti-corruption research center, available on <http://www.u4.no/articles/the-basics-of-anti-corruption/> (“The basics of anti-corruption”) last visited 17 June 2017.

22

The convention is available on <http://www.oecd.org/corruption/oecdantibriberyconvention.htm> last visited, 24 June 2017

23

The UN Convention against Corruption (UNCAC), as it is the world’s most widely adopted instrument against corruption, with 181 parties to it. The convention is available on <https://www.unodc.org/unodc/en/treaties/CAC/>, last visited 18 June 2017

24

See for instance the World Bank Report referred to in footnote 19.

25

“The basics of anti-corruption”, item 4

26

Quote from “The basics of anti-corruption” referred to in footnote 21.

27

The term “transparency” is used in many contexts. As aptly observed by one author, transparency became “the Swiss army knife of policy tools.” Virginia Haufler, “Disclosure as governance: The extractive industries initiative and resource management in the developing world,” 10(3) *Global Environmental Politics* 53, (2010).

28

The phenomenon is discussed in somewhat more detail in item 2.4.

29

See for instance U4, “Transparency and accountability in Lebanon’s emerging petroleum sector” from 20 April 2015, on page 2. (available on www.u4.no, last visited 20 July 2017)

30

Quote from a report entitled “Follow the Money: A Guide to Monitoring Budgets and Oil and Gas Revenues,” (New York: Open Society Institute, 2005, by Jim Shultz) it is stated on page 14 available at: <http://cps.ceu.hu/sites/default/files/publications/cps-joint-publication-follow-the-money-2004.pdf> (last visited April 2, 2013). The reports and research that substantiates the resource curse are plentiful. The following brief provides a useful introduction: Ivar Kolstad, Tina Søreide and Aled Williams, *Corruption in natural resource management – an introduction*, (U4 Brief No.2, 2008) (available on www.u4.no, last visited in June 2017).

31

D. Silverstone, "Drafting Legislative Provisions to Combat Corruption in Petroleum Activities" ("Drafting Legislative Provisions to Combat Corruption in Petroleum Activities"), paper presented at the 2017 Conference of Commonwealth Association of Legislative Counsel (CALC), Melbourne/Sydney Australia,, March 27- April 5, 2017, <http://www.calc.ngo/members/papers/melbourne,-march-2017> but note that the papers as of now (July 2017) are only available to members.

32

AdeB's addition to adapt to context.

33

However, if there are no petroleum activities in a host country, it is not necessarily wrong to leave more detailed regulation of these issues before petroleum activities have commenced; see our observations in item 1.2. There is often long lead time from exploration and production rights are first awarded until revenues can be collected.

34

Joseph C. Bell and Teresa Maurea Faria, "Critical Issues for a Revenue Management Law" chapter 11 of "Escaping the Resource Curse"(Columbia University Press 2007), chapter available on <https://www.hoganlovells.com>, last visited on 8 August 2017

35

For instance, the Timor-Leste Petroleum Fund Act of 2005, the Ghana Petroleum Management Act of 2011, the South Sudan Petroleum Revenue Management Bill of 2013. See item 4.5.

36

We present the principles of good governance in item 3 and discuss specific risks in item 4. Of course, capacity building and allocating adequate resources into the entities responsible for petroleum resource management is equally important and should be a host government priority. In this connection, we note inter alia that Article 156 of PAR establishes a duty for right holders to provide training to government officials and that Article 16 (6) of the Model EPA establishes that the Minister and the LPA may appoint representatives to sit as observers in management committee meetings. Both of these measures aim to contribute to capacity building.

37

This, however, is not expected to have a direct impact on risk for corruption in the Lebanese petroleum industry. Conversely, however, reference is made to item 3.3 that show how other states' implementation of such rules can contribute to reduce the risk for corruption in the Lebanese petroleum sector.

38

LOGI plans to issue a separate note on possible improvements of the generally applicable rules to counter corrupt behaviour.

39

See the 2007 Report on good governance of the national petroleum sector available at <https://www.chathamhouse.org/publications/papers/view/108468> (last visited June 2017). As for the substantive requirements for petroleum legislation, more specific guidelines are also provided in the Chatham House Guidelines for Good Governance in Emerging Oil and Gas Producers 2015, available at <https://www.chathamhouse.org/publication/oil-gas-good-governance-guidelines-2015> (last visited June 2017).

40

See item 4 for an analysis of the Lebanese legal framework specific for the petroleum sector. Although the focus in this report is on the petroleum specific rules, more general governance and legislative measures should be taken in order to create a holistic and robust system to counter corruption. Petroleum legislation is of course a cornerstone, but general legislation aimed at promoting and ensuring good governance such as laws relating to public servants, decision-making in the public sector (including both impartiality issues and case handling issues) also plays an important role. Moreover, legislation does not help much if it is not implemented or enforced. It is therefore also important to have adequate processes for filing complaints on decisions made by the public administration and that the host country has functioning, independent judiciary branch

41

The EITI Association is a tripartite coalition consisting of personal representatives of governments, companies and civil society organizations (the “Members” of the EITI Association); see the Articles of Association, *op. cit.* note 2, art. 5. The Articles of Association were adopted when the EITI Association was established at the EITI Conference in Qatar in February 2009.

42

See the Articles of Association article 2(2), available on <http://eiti.org/fr/node/765>.

43

Available on <https://eiti.org/document/standard>, last visited 5 July 2017.

44

Pursuant to EITI requirement 2 “Legal and institutional framework, including allocation of contracts and licenses”, the EITI Requirements related to a transparent legal framework and award of extractive industry rights include: (2.1) legal framework and fiscal regime; (2.2) license allocations (2.3) register of licenses; (2.4) contracts; (2.5) beneficial ownership; and (2.6) state-participation in the extractive sector. EITI Requirement 3 addresses exploration and production, EITI Requirement 4 addresses revenue collection, EITI Requirement 5 addresses revenue allocations and EITI Requirement 6 social and economic spending. EITI Requirement 7 concerns outcomes and impact.

45

For further information on the process, see <https://eiti.org/news/lebanon-commits-to-implement-eiti> (last visited 22 June 2017)

46

Pursuant to the Model EPA Article 41 (3) Right Holders under an EPA also makes a contractual commitment that they shall not undertake certain types of corrupt behavior that violates the applicable law in their home countries as well as the OECD Convention.

47

See Low and Battaglia, "Corruption and the energy sector: Inevitable bedfellows?", Chapter 18 of the "Research Handbook on International Energy Law" (Edvard Elgars, 2014) on page 487.

48

The primary example is the US Foreign Corrupt Practices Act ("FCPA"), which has a very broad approach in jurisdictional reach. Moreover, the relevant US authorities investigate and enforce their domestic laws on this area with great eager. This has expedited a sharp focus on compliance within relevant companies. The UK Bribery Act has also had an impact. Although it has only been in force since 2011 and only applies to events that have taken place after its entry into force, the UK authorities are active in investigations and we start to see more enforcement steps being taken.

49

I.e. where the company (or parent company) is based or listed on the stock exchange

50

This effect will come irrespective of whether the host countries have taken action to promote transparency or whether the information so disclosed is subject to confidentiality duties in the host countries. In the US, companies involved in the extractive industries are required to disclose payments made to governments for the commercial development of oil, natural gas or minerals. The requirement was mandated by the 2010 Dodd-Frank Act, and issued by the U.S. Securities and Exchange Commission in 2016. The European Union has adopted legislation with similar requirements, particularly through the two 2013 Accounting and Transparency directives (See <https://www.sec.gov/news/pressrelease/2016-132.html> and <https://www.iasplus.com/en/news/2013/06/eu-accounting-transparency-directives>, both last visited 28 June 2017)

51

See respectively <https://www.unglobalcompact.org/>, <http://www.oecd.org/corporate/mne/> and <http://www.ilo.org/global/topics/indigenous-tribal/lang--en/index.htm>, all visited last on 1 August 2017.

52

Whereas this might be difficult in practice, in as far as petroleum rights are awarded based on licensing rounds in Lebanon, there is a requirement to a similar effect embedded in PAR Article 7 (2), where it is stated that "A Petroleum Right may only be awarded to a legal person incorporated, registered and headquartered in a jurisdiction fully transparent to Lebanese authorities. The same requirement applies also to an Affiliated Company of the Right Holder awarded an exclusive Petroleum Right."

53

Reference is made to footnote 1 above.

54

This information was provided by LPA as part of “Lebanon Oil & Gas 2017 Summit” on 25th May in Rome.

55

In this analysis, we evaluate the Lebanese legal framework for petroleum activities in particular against the practices of modern, international petroleum law, and – where relevant – the requirements under the 2016 EITI Standard, the UNCAC and the Natural Resource Charter, Second Edition, 2014.

56

For instance, whereas there is widespread consensus that the most transparent manner for award of exploration and production rights is competitive bidding/tender rounds, in a given scenario a host country may not be able to use this method, e.g. because the acreage on offer does not gain sufficient interest or because the market does not respond satisfactory on an invitation to tender. If it is a pressing policy goal for the host country to intensify or commence exploration, direct negotiations may be the only manner in which the host country can attract investors – even if direct negotiations is not as a starting point optimal for transparency.

57

“Drafting Legislative Provisions to Combat Corruption in Petroleum Activities”, item III.

58

EI Source Book, Chapter 5.6.3 “Award Procedures”, available on www.eisourcebook.org (last visited 23 June 2017). Reference is also made to Natural Resource Governance Institute “12 Red Flags, Corruption Risks in the Award of Extractive Sector Licenses and Contracts”, see <https://resourcegovernance.org/analysis-tools/publications/twelve-red-flags-corruption-risks-award-extractive-sector-licenses-and> (last visited 4 September 2017).

59

See for instance Chatham House, *Guidelines for Good Governance in Emerging Oil and Gas Producers* (2015), <https://www.chathamhouse.org/publication/oil-gas-good-governance-guidelines-2015> (retrieved on June 2017) on page 12.

60

The term “discretion” and “discretionary powers” as used in this report are references to the legal concept of administrative discretion, that can be defined as “The exercise of professional expertise and judgment, as opposed to strict adherence to regulations or statutes, in making a decision or performing official acts or duties.” see <http://legal-dictionary.thefreedictionary.com/Administrative+Discretion> (last visited 10 August 2017).

61

See for the EI Source Book, Chapter 5.6, available on www.eisourcebook.org (last visited 23 June 2017)

62

S Tordo with D Johnston, and D Johnston (2010), *Petroleum Exploration and Production Rights: Allocation Strategies and Design Issues*, World Bank Working Paper No 179. Steps should also be taken to ensure that the decision-makers are unbiased, e.g. by way of declaration of financial interests. We understand this was a requirement under the recent bidding processes in Mexico. This concept is also encompassed by the draft Strengthening of Transparency in the Petroleum Sector Law Article 6 (3). The draft law is discussed in item 4.6.4.

63

UNCAC, Article 9.

64

Natural Resource Governance Institute, *Natural Resource Charter*, 2nd Edition, Precept 3, at page 14. Available at <https://resourcegovernance.org/approach/natural-resource-charter> (last visited 23 June 2017) There are ample sources to refer to in this connection, reference is also made to International Monetary Fund, *Guide on resource revenue transparency*, (International Monetary Fund Publication Services, 2007), p. 13 and OECD, *Corruption in the Extractive Value Chain*, (OECD Publishing, 2016), pp. 37 and 48.

65

See for instance the *EI Source Book*, Chapter 5.6, item 5.6.3 available on www.eisourcebook.org (last visited 23 June 2017)

66

See Chatham House, *Guidelines for Good Governance in Emerging Oil and Gas Producers* (2015), <https://www.chathamhouse.org/publication/oil-gas-good-governance-guidelines-2015> (retrieved on June 2017) on page 12 where it is stated: "It is critical for the government to establish strong prequalification criteria for investors. General terms for prequalification should be laid out in the petroleum law, with more detailed rules to be included in regulations." Reference is also made to Article 15 of the *Petroleum Law* (2016) of Liberia, available on <https://www.globalwitness.org/en/press-releases/liberia-passes-historic-oil-law-requiring-companies-publish-names-their-owners/> (last visited 5 September 2017).

67

See for instance, *Natural Resource Charter*: "Third, the government should limit bidding to a small number of terms to allow clear comparison across bids. These might be terms on the work program, signature bonuses, and local content provisions. Competition or negotiation need not solely concern the price of the extraction right, but on the other hand too many variables increase complexity, erode the transparency of evaluation, and increase administrative costs" *Natural Resource Charter*, 2nd Edition, Precept 3, at p. 14. See similarly UNCAC, Article 9, letters b and c.

68

In 2009, the bidding for new contracts in Iraq was broadcasted live on TV (see <http://www.reuters.com/article/us-iraq-oil-theatre-idUSTRE55P34G20090626>, last visited 6 August 2017). We understand that a similar approach was taken in the recent bid rounds in Mexico, where the bidding was transmitted online.

69

ibid.

70

ibid.

71

See Chatham House, *Guidelines for Good Governance in Emerging Oil and Gas Producers* (2015), on page 12.

72

Reference is made to item 1.2 and the comments made there on regulatory development. Whereas host countries can be well advised to develop the regulatory framework on a step-by-step basis, award of exploration and production rights is one of the first activities undertaken by a new petroleum country. We would therefore expect the regulation of award in PAR Chapter 3 to be a bit more elaborate, e.g. to cover the main rules on process of petroleum licensing rounds in somewhat more detail. See also similarly the Draft Strengthening of Transparency Law Article 9.

73

On the basis of a proposal from the Minister, whose advice again must be built on the opinion of the LPA, see Article 12 (1).

74

This is also foreseen in Article 7 (1) of the OPRL.

75

In the Tender Protocol, the biddable elements comprise the Technical and the Commercial Proposals.

76

E.g. the Ministry shall base the negotiations on the “principles and criteria” stipulated by the law and by the invitation (Article 18.1) and the invitation to apply shall inter alia comprise a Model EPA and “biddable items” (PAR Article 23). See also the discussion in item 4.2.3.

77

In this work, due consideration must be taken as to what should be generally applicable and what must be determined from time to time. For instance, whereas it could be useful to establish a rule on relevant types of pre-qualification criteria (e.g. the rules set out in Article 6 of the Pre-qualification Package) it is important that the specific criteria (e.g. those set out in Annex 2, 3, 4 and 5) are set from time to time in each specific pre-qualification round.

78

We have been informed that the intention is that the Pre-qualification Decree shall be generally applicable. The versions that we have been provided with as part of the Pre-qualification Packages, attach Annexes stating the specific criteria for the FOLR, and therefore come across as instruments made specifically for FOLR. The analysis, however, has been made on the assumption that the Pre-qualification Decree applies generally.

79

The pre-qualification stage has also been specifically addressed in the Draft Strengthening of Transparency Law Article 8. Whereas parts of Article 8 appear to overlap with the rules in the Pre-qualification Decree, it also introduces interesting additional proposals, e.g. establishing a right for interested companies to pose questions and publication of questions and clarifications. See our comments to the Draft Strengthening of Transparency Law in item 4.6.4.

80

As is in line with good international practices, the Pre-qualification Packages differentiate between pre-qualification as either Operator or Right Holder, both terms defined in Article 1 of the OPRL.

81

One may also question the reason why the arrangement of pre-qualification of groups has been introduced, but from our point of view, the arrangement established in Article 3.3 of the Pre-qualification Decree and the Tender Protocol item 12 could have some merit. On the one hand, it could be that the licensing round would gain more interest from investors if the host government allows groups of companies to form a special purpose company to participate in the licensing round. On the other hand, one could question whether Lebanon wishes to attract investments by companies that are not strong enough to apply for themselves. Yet, the new joint stock company will constitute one, qualified applicant for an EPA and measures has been taken in the Tender Protocol so that the qualified owner stays in control for some time. Moreover, such practices could open for a higher degree of local participation, which for some host governments is an important policy goal. (However, international experience, e.g. from Nigeria, shows that participation on local investors in oil companies is not always the most adequate measure to increase local competence on the petroleum industry.)

82

See <http://www.lpa.gov.lb/prequalification.php> (last visited 14 September 2017).

83

The award process has also been specifically addressed in the Draft Strengthening of Transparency Law Article 9. If the Lebanese authorities follow up on the recommendation to include the main rules of the award process in PAR & the Draft Strengthening of Transparency Law at that time has not yet been adopted, then the proposals in Article 9 of the Draft Strengthening of Transparency Law should be considered for inclusion in PAR.

84

E.g. in the Afghan First Hydrocarbons Bidding Round in 2010.

85

This is not, however, mentioned in item 7.1.2

86

As exploration costs are typically cost recoverable, it is also a benefit for the host government that the operations are cost efficient. However, we see merit in requiring a realistic minimum work commitment amount.

87

In international practice, we have seen that applications/bids are disclosed as such at the submission stage E.g. in the First Afghan Bidding Round in 2009, Colombian Mini-Ronda in 2008.

88

This is inter alia a requirement under Article 16 (15) of the 2016 Liberia Petroleum Law.

89

El Source Book, Chapter 5.6, item 5.6.5 available on www.eisourcebook.org (last visited 23 June 2017)

90

Natural Resource Charter, 2nd Edition, Precept 3, at p. 14.

91

It helps, of course, that the proposals are not confidential, see Tender Protocol item 6.7, although there are no specific legal basis in the Tender Protocol for publishing the proposals. We also note that there might be a possibility for interested parties to gain access to documents and decisions through the Right to Access to Information Act.

92

Some countries only allow negotiations in certain circumstances, e.g. where a bidding round has failed. See an example in the Liberian Petroleum Law (2016) Article 17.

93

The report is available in Norwegian here: <https://www.riksrevisjonen.no/rapporter/Sider/utvinningstillatelser.aspx> (last visited 14 September)

94

Item 5 (4) (iii) also mentions other possible data

95

<http://www.lpa.gov.lb/seismicdata.php>

96

See for instance Natural Resource Governance Institute, *Promoting Transparency and Monitoring of Contracts*, Jan 2015.

97

I.e. Article 154 of the PAR, which is a provision on Information and confidentiality of Data, as defined in the PAR.

98

The Model EPA Article 35 (3) makes exceptions from the confidentiality obligations. Article 35 (3) (v) anticipates that “The confidentiality undertaking shall not apply: [...] (v) to the extent that the confidential information is disclosed in order to comply with the Extractive Industries Transparency Initiative [...]”.

99

As an example see from Timor-Leste <http://www.anpm.tl/jpda2/>

100

See similarly the Draft Strengthening of Transparency Law, Article 9 (3).

101

See Natural Resources Governance Institute, *Past the Tipping Point? Contract Disclosure within the EITI*, see <https://resourcegovernance.org> (last visited 5 September 2017)

102

Reference is made to the principles for good governance discussed in item 3.1. See also the 2007 Report on good governance of the national petroleum sector available at <https://www.chathamhouse.org/publications/papers/view/108468> (last visited June 2017).

103

I.e. from award through to exploration, development, production, transportation and abandonment/decommissioning.

104

The relevant institutions normally include the Government/Council of Ministers, the Minister responsible for petroleum and a regulatory body subordinate to the Minister. Some countries also have specific inter-ministerial commissions with specific responsibilities for the petroleum sector.

105

Government institutions should also be held accountable for the performance of their responsibilities in general.

106

Not all decisions can be publicly available in their entirety. There are a number of legitimate reasons to keep (relevant parts of) public decisions confidential, typically to protect trade secrets, or certain types of personal information et cetera.

107

The issue of capacity building to enable relevant institutions to carry out their roles is of particular importance; lack of supervision and enforcement is a problem in many new petroleum countries. We will, however, not discuss this further here.

108

It should be noted that this approach is not necessarily in conflict with good drafting practices. We see that laws are often best drafted in a “goal-based” rather than a detailed, prescriptive nature. Although regulations still typically are more detailed, we also see an increased use of this drafting technique in regulations, in particular in the areas of health, safety and environment.

109

Depending on the legal traditions and the legal framework in a host country, there are many ways that discretionary powers can be limited. In some countries, the administrative law limits the exercise of discretionary powers. Often one sees also that the legal framework establishes limitations in the wording of the law or regulations itself, either indirectly through establishing objectives or directly by stipulating what the relevant decision-maker shall take into consideration.

110

See <http://blogs.worldbank.org/governance/here-are-10-ways-fight-corruption> (Last visited 15 July 2017)

111

*See Silverstone, Deana, *Drafting Legislative Provisions to Combat Corruption in Petroleum Activities*, (2017) 2017 Conference of Commonwealth Association of Legislative Counsel (CALC), Melbourne/Sydney Australia, <http://www.calc.ngo/members/papers/melbourne-march-2017>, on page 10.*

112

UNCAC, Article 10, letter a.

113

Natural Resource Charter, Precept 2, at p. 10.

114

Typically only involving the Minister and the LPA. E.g. in PAR Article 11, second paragraph: “The Minister shall, on the basis of the opinion of the Petroleum Administration”, see similarly PAR Article 13 and 14.

115

There are variations of the wording in the English translation that indicates that the Minister from time to time shall put more emphasize on the opinions of the LPA; e.g. Article 58 uses a slightly different wording: “The Minister based on recommendation by the Petroleum Administration may [...]”, as does Article 23 (2) “[...] the Minister in consultation with the Petroleum Administration [...]” (our underlining). Thus, it appears that the intention is that the LPA shall have more influence on certain decisions than others. 116

The Lebanese Administrative Laws are not codified. In other words, there is no General Administrative Law such as the Criminal Law or the Code of Obligations and Contracts. The administrative rights are mostly acquired from the decisions issued by the judges in the Lebanese Conseil D’Etat.

117

See OPRL Article 30.1, PAR Article 41 and 42 and Model EPA Article 11. For the sake of good order, we point out that as the Plan for Development and Production is a key instrument for resource management, it is a sound approach not to tie down the authorities’ discretionary powers unnecessarily.

118

These are approvals that companies would wish to obtain as soon as possible in order to proceed with exploration and appraisal.

119

In addition, the Draft Strengthening of Transparency Law addresses accountability, see for instance Articles 3, 6, 14, 15, 16-24.

120

The Conseil D’Etat has the power to annul an administrative decision and to require the administration to take another decision. The administration does not have discretion in whether to comply with or reject the verdict of the Conseil D’Etat. In principle, the Conseil D’Etat does not have authority to look into decisions made based on the discretionary power of the administration. However, the Conseil D’Etat may assess discretionary powers where they are used contrary to the law or legal purpose for which they were awarded or contrary to public interest.

121

See Budget Law number 326 of 2001, Article 73; and Decree 7968, Article 25.

122

Relevant in this context is also the obligation for Right Holders to disclose conflicts of interests, see Model EPA Article 41.

123

Examples include: the requirements set out in the OPRL to consult with other Ministries on certain matters, e.g. relating to strategic impact assessment (Article 7), environmental impact assessments (Article 29.3 and 32), sale of Petroleum (Article 40), emergency response plans (Article 53) and in inspection, monitoring and verifications (Article 74). The PAR establishes requirements to consult with relevant persons in relation to strategic impact assessments (Article 11). Moreover, examples of publication requirements can be found in the Tender Protocol, see item 4.2.3 above.

124

The Draft Strengthening Transparency Law appears to have been drafted based on a similar idea, see for instance Article 4, 8, 9, 10, 11, 12, 13.

125

Which in part appears to overlap with the Right to Access to Information Law in some respects, e.g. notably Article 18, but possibly also Article 4 and 5

126

We note that the draft law in part overlaps or supplements a number of laws and regulations. From a drafting perspective, one may therefore question whether it would be more adequate for transparency and more user-friendly to, where deemed necessary, amend the various laws and regulations that already are in place on the different topics than to adopt the draft law as such.

127

See <http://www.lpa.gov.lb/regulations.php>, where it is inter alia stated that “Since the Lebanese Petroleum Administration is committed to complying with transparency procedures and enhancing public access to information as stipulated in article 7 of Law no. 28 dated 10/2/2017 (The Right of Access to Information), and pursuant to the provisions of article 24-3 of Decree no. 7968/2012 (Petroleum Administration Decree), the LPA is publishing its annual financial reports and the list of contracts related to the provision of technical services signed with international consultants”

128

Some host countries have specific publication requirements related to such information, e.g. Article 55 (9) of the Liberian Petroleum Act (2016), see Article 119 of the Sierra Leone Petroleum Act (2011), available on www.sierra-leone.org/Laws/2011-07.pdf (last visited 5 September 2017).

129

Available on www.ewura.go.tz. Note that the Act appears to be based on the previous EITI Standard, not the 2016 EITI Standard.

130

Contract transparency is one of the elements that are merely recommended, however there are other requirements relating to contracts, see EITI Requirement 2.3 (a) and 2.4 (b). Reference is made to item 4.2.5, where contract transparency is discussed.

131

See EITI Requirement 1, on page 13 of the 2016 EITI Standard, see <https://eiti.org/document/standard>, last visited 5 July 2017.

132

EITI Requirement 2 on page 17, EITI Requirement 3 on page 22 and EITI Requirement 6 on page 28, see <https://eiti.org/document/standard>, last visited 5 July 2017

133

<https://eiti.org/document/beneficial-ownership-pilot-evaluation-report> (last visited 22 July 2017)

134

Relevant documents available on <https://eiti.org/beneficial-ownership#eiti-guidance-and-publications-on-beneficial-ownership> (last visited 22 July 2017). There are also other relevant sources on this topic, inter alia there is a list of relevant additional reading included in item 5 of the Guidance Note.

135

Circular of the BDL no. 83 of 2001. No specific definition for beneficial ownership is provided, but the circular alternatively refers to “beneficial owner” as the “actual beneficiary”; see [file:///C:/Users/toshiba/Downloads/83_en\[6\]%20\(1\).pdf](file:///C:/Users/toshiba/Downloads/83_en[6]%20(1).pdf), last visited 8 August.

137

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138

A review of any such experiences is outside the scope of the ToR for this Assignment.

139

As mentioned in item 4.4.3.1, LPA is reportedly currently working on rules relating to disclosure of beneficial ownership in a decree on a new petroleum registry. As stated there, we have not seen the draft decree and we are not aware as to which level of detail these rules go.

140

Natural Resource Governance Institute, *Beneficial Ownership: Tackling hidden company ownership through Myanmar's EITI Process*, on page 2.

141

Alternatively, a threshold should be set as low as possible. It is common to opt for a threshold. During the pilot project, thresholds were set between 5-25%.

142

US' action plan on transparent company ownership includes mention of economic benefit rather than ownership: [...] a natural person who, directly or indirectly, exercises substantial control over a covered legal entity or has a substantial economic interest in, or receives substantial economic benefit from such legal entity, subject to several exceptions See <https://obamawhitehouse.archives.gov/the-press-office/2013/06/18/united-states-g-8-action-plan-transparency-company-ownership-and-control>, last visited 5 August 2017.

143

According to EITI Requirement 12.5 g), legal owners should also be disclosed.

144

Should Lebanese authorities opt for a threshold for disclosure, then this should not apply to politically exposed persons.

145

Page 22 of the 2016 EITI Standard, available on <https://eiti.org/document/standard>, last visited 5 July 2017.

146

Article 22 regulates royalties, Article 24 regulates profit petroleum entitlements, Article 26 regulates Fiscal terms and other charges. Article 32 regulates records, accounting and audit. In the present context Annex D Accounting and Financial Procedure is also of relevance.

147

We understand that the draft Petroleum Tax Law foresees income tax and taxes on salaries and wages.

148

A state oil company is yet to be established, see Article 6 of the OPRL.

149

Note that we have not undertaken an analysis of whether the Right to Access to Information Law establishes sufficient legal basis for this

150

If there are no petroleum activities in a host country, it is not strictly necessary to have more detailed regulation of these issues before petroleum activities have commenced; see our observations in item 1.2. There is often long lead time from exploration and production rights are first awarded until revenues can be collected.

151

Joseph C. Bell and Teresa Maurea Faria, “Critical Issues for a Revenue Management Law” chapter 11 of “Escaping the Resource Curse”(Columbia University Press 2007), chapter available on <https://www.hoganlovells.com>, last visited on 8 August 2017

152

Examples include the Timor-Leste Petroleum Fund Act of 2005, the Ghana Petroleum Management Act of 2011, the South Sudan Petroleum Revenue Management Bill of 2013, the Sao Tome Oil Revenue Law of 2004.

153

Precept 7, on page 25 of Natural Resource Governance Institute, Natural Resource Charter, 2nd Edition, <https://resourcegovernance.org/approach/natural-resource-charter>, last visited on 23 June 2017. For instance, the Norwegian Government Pension Fund Global was set up in 1990 to “[...] underpin long-term considerations when phasing petroleum revenues into the Norwegian economy. [...] The fund was set up to give the government room for manoeuvre in fiscal policy should oil prices drop or the mainland economy contract. It also served as a tool to manage the financial challenges of an ageing population and an expected drop in petroleum revenue. The fund was designed to be invested for the long term, but in a way that made it possible to draw on when required” See <https://www.nbim.no/en/the-fund/about-the-fund/>, last visited 10 August 2017. In other host countries, there may be other imperative needs. E.g. the Preamble for the Timor-Leste Petroleum Fund Law states: “The Petroleum Fund shall contribute to a wise management of the petroleum resources for the benefit of both current and future generations. The Petroleum Fund shall be a tool that contributes to sound fiscal policy, where appropriate consideration and weight is given to the long-term interests of Timor-Leste’s citizens.”

154

Source: Joseph C. Bell and Teresa Maurea Faria, “Critical Issues for a Revenue Management Law” chapter 11 of “Escaping the Resource Curse”(Columbia University Press 2007), chapter available on <https://www.hoganlovells.com>, last visited on 8 August 2017.

155

Such special oversight boards should ideally include all stakeholders, e.g. not only governmental representatives but also civil society and representatives from the opposition. The mandate and powers of such oversight commissions should be clearly spelt out in the petroleum revenue management act.

156

Page 26 of the 2016 EITI Standard, available on <https://eiti.org/document/standard>, last visited 5 July 2017.

157

See <https://www.imf.org/external/np/exr/consult/2016/ftc/index.htm>, last visited on 8 August 2017.

158

In all cases, the acts stated in Article 162 can be punished by virtue of articles 351, 352, 354, 355, and 356 of the Lebanese criminal law on bribery. See also similarly the Draft Strengthening of Transparency Law Article 7.

159

This is because criminal offences and their associated sanctions cannot be implemented unless stipulated in a law (i.e. not a decree such as the PAR) pursuant to the principle “nullum crimen sine lege, nulla poena sine lege”.

160

A gap potentially remains in respect of any breaches of UNCAC provisions. In fact, UNCAC is referenced only in the PAR (162, last paragraph, point D), however, there is no similar reference in Article 41 of the EPA. It is not clear whether the intention of avoiding reference to UNCAC in the EPA is because the drafters considered that UNCAC constitutes part of applicable Lebanese law and is thus covered in paragraph 41.3(i) of the EPA. The latter may be the case, however, it would have been better if explicit reference to UNCAC was made in the EPA similarly to the drafting of Article 162 of the PAR.

161

E.g. Articles 8 and 9 address some of the issues we have discussed in item 4.2. Article 10 (1) deals with contract transparency.

162

E.g. Article 11 which concerns disclosure of payments and revenue management, Article 13 on Social Expenditure, and Article 10 on the disclosure of certain other contextual information.

163

See Article 2 of OPRL.

164

E.g. by expanding the scope of the Right of Access to Information law, making special rules for the petroleum sector whether they are rules of substance or administrative provisions et cetera.

165

As per the principle of Lex Specialis Derogat Generali. Moreover, the draft is intended to be adopted as law, and not decree.

166

There is no undisputed or universal definition of the term “local content” in the international petroleum industry, however, the term typically refers to the added value that petroleum activities may bring to a host country – other than the direct revenues obtained through for instance the sales of government shares of petroleum produced or through the taxes, service fees or other dues collected from oil companies carrying out upstream petroleum activities. Local content requirements also typically entail a requirement to train and employ local citizens, see also Article 67 (2) of the OPRL and Article 155 of PAR. This also entails a risk for corruption and favoritism, but is not discussed further here.

167

There are also other limitations on how far a host country can push local content requirements without impairing the investment climate. Too rigid local content requirements or requirements that are hard to comply with may impair the interests of investors. They can also impair efficiency and costs of petroleum operations, and thus ultimately also impair the possibility of maximising state revenues from the petroleum industry.

168

See U4, expert answer, "Local Content Policies and Corruption in the Oil and Gas Industry, 12 September 2014, available on www.u4.no, (last visited 30 August 2017).

169

Reference is made also to footnote 37 above.

170

See for instance the 2016 Ghana petroleum measurement regulations and guidelines, available on <http://www.petrocom.gov.gh/laws---regulations.html> (last visited 30 August 2017).

171

Reference is made to item 2.2

172

Reference is made to item 2.4

173

*The overview of risks for corruption and of "red flags" is based in relevant parts on the summary of the article by Charles McPherson and Stephen MacSerriagh "Corruption in the Petroleum Sector"; on page 214, published as Chapter 6 in Campos, J. Edgardo; Pradhan, Sanjay. 2007. *The Many Faces of Corruption : Tracking Vulnerabilities at the Sector Level*. Washington, DC: World Bank. © World Bank. <https://openknowledge.worldbank.org/handle/10986/6848> License: CC BY 3.0 IGO. Last visited 28 August 2017.*



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