



Lebanese Oil & Gas Initiative
المبادرة اللبنانية للنفط والغاز

Recommendations to Enhance Transparency in Lebanon's Petroleum Legislation

2017 POLICY MEMO



Subject:

Recommendations to Enhance
Transparency in Lebanon's
Petroleum Legislation

From:

Lebanese Oil and Gas Initiative (LOGI)

Date:

September 16, 2017

Attachment:

Detailed legal review of Lebanon's
Petroleum Legislation



Lebanese Oil & Gas Initiative المبادرة اللبنانية للنفط والغاز

*Limiting risks of corruption and enhancing transparency and accountability mechanisms in Lebanon's oil and gas sector are critical for the future of the country. **LOGI hired international and local law firms specialized in petroleum law to review Lebanon's petroleum legislation.** The identified potential red flags, risks of corruption and lack of transparency are detailed in the attached 84-page report. **These findings were discussed during a September 15 workshop with representatives of the Lebanese Petroleum Administration, Members of Parliament, petroleum experts, and civil society.***

Below is a list of key recommendations that LOGI seeks to highlight based on the report and workshop discussions. These recommendations are not intended to delay the first offshore licensing round, but are meant to highlight existing concerns and find ways to mitigate them.

1. Overall impression: the Lebanese legal framework applicable to petroleum activities is in large parts in line with good international practices. However, given Lebanon's poor governance, proper monitoring and implementation will be critical. Below are areas that need improvement.

2. Risks of corruption in sub-contracting & local content requirements: sub-contracting activities and prioritizing Lebanese citizens in the procurement of goods, services and employment will be established through "major contracts" subjected to public tender. The definition of "major contracts" remains vague.

LOGI recommends to regulate and flesh out the details of the procurement and local content process by law. And establish a monitoring mechanism to oversee the proper implementation of that new law.

3. Clarify confusion around pre-qualification of groups of companies: address the discrepancy between articles 7.4 and 3.3 in the pre-qualification decree.

- The Pre-qualification Decree includes two contradictory articles 3.3 and 7.4:
 - i. Article 7.4 states that applicants that do not meet the criteria set forth may not be pre-qualified.
 - ii. 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.
 - iii. 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 to apply in the petroleum licensing round.
- LOGI calls the government to address the discrepancy that currently exists between articles 3.3 and 7.4 of the Pre-qualification decree.
- LOGI calls for including item 12 from the Tender Protocol in the Pre-qualification decree. This will ensure that non-compliant companies with the pre-qualification criteria are unable to enter future licensing rounds independent of Joint Stock Companies.
- LOGI recommends that any awarding of contracts under article 3.3 be closely monitored by the LPA and civil society to ensure that such right is not used inappropriately.

4. Disclose direct and indirect owners of all companies involved in petroleum activities - including sub-contractors: the disclosure of beneficial owners is critical to monitor risks of corruption, and increase transparency.

- Establish a requirement to disclose beneficial owners by law as soon as possible. Establish a clear and broad definition for beneficial ownership:
 - i. Beneficial owners are natural persons
 - ii. Beneficiary ownership goes beyond legal ownership and control
 - iii. Beneficial owners are the individuals who actually get economic benefits from the companies and who actually exercise control over the companies.
 - iv. Ideally, no thresholds should be set for beneficial ownership disclosure. In case a threshold for disclosure is introduced, then an exception should be made for beneficial ownership of politically exposed persons. All beneficial ownership by politically exposed persons should be disclosed irrespective of a threshold.
- Develop a roadmap for implementing beneficial ownership to ensure proper execution.

5. Publish reasons of companies' disqualification, winning results & specify reasons: LOGI highly recommends the amendment of the current pre-qualification decree and make it legally binding that the Lebanese government send in writing (1) the announcement of results of the pre-qualification process; (2) substantiated reason of rejection to companies that are not pre-qualified; and (3) publish all results in writing.

6. Establish an independent oversight & monitoring mechanism of any negotiations between the Lebanese government and companies bidding on licensing rounds.

- It is critical to introduce transparency mechanisms. These include, publishing the companies' bidding applications; disclosing the ranking list of bidders; and disclosing the LPA's final ranking of bidding companies and recommendations of winners to the Minister of Energy and Water (without disclosing information that could affect companies' competitiveness).

7. All signed contracts must be published.

The publication of the signed contracts (EPAs, and sub-contracts) allows all stakeholders, including civil society, to assess the fairness of the deals, and monitor and evaluate their implementation.

8. Monitor current Lebanese government revenues, including revenues from application fees and sales of seismic data.

State revenues from petroleum activities will take some time to start flowing in. As of now, the only revenues to the Lebanese government are from two sources: (1) the application fees paid by companies to participate in the first offshore licensing round; and (2) the sales of seismic data to interested companies.

- LOGI recommends the government to publish on an annual basis the financial statement pertaining to the revenue streams from application fees, and sales of seismic data.
- Based on the information received during the workshop, it has been stated that the revenues from application fees and seismic data sales are in a Central Bank account under the authority of Minister of Energy and Water, and the Director of the Tripoli and Zahrani Facilities. Publishing regular financial statement of this account will ensure proper accountability.
- More clarity is needed as to the process of seismic data sales: the Tender Protocol decree should include specific language as to the sales process of the seismic data, particularly highlighting the government's role vis a vis the fact that the purchase of seismic data is from seismic companies and not from the government.
- LOGI recommends that a Sovereign Wealth Fund is established prior to any inflow of revenues from the petroleum sector.

9. Monitor and report oil and gas production.

During the oil & gas production phase there is a risk of corruption through theft of production & revenues due to volume discrepancies or absence of metering. LOGI highly recommends issuing more detailed technical regulations on metering procedures as we get closer to production.

10. LOGI urges Parliament to vote on and pass the draft law 'Strengthening of Transparency in the Petroleum Sector' as soon as possible, with no amendments to its original content. Immediate adoption of the draft law could serve as an interim alternative to wait for the full EITI implementation in Lebanese law.

11. Transparency in public decision making:

- Introduce requirements for systematic routines for public consultations for all draft laws and regulations, including those intended for the petroleum sector.
- Implement the Right to Access Information law by establishing an implementation procedure across the different government agencies, especially those involved in the petroleum sector.
- Establish an Anti-Corruption Commission.
- Pass additional regulations to enable EITI implementation, including making environmental and social impact assessments public.
- Establish whistleblower protection regulation and programs.
- Publish in the National Gazette justifications for amendments made by the Council of Ministers on draft decrees submitted by the Minister of Energy & Water based on the recommendation of the LPA.

Further details and recommendations are provided in the attached report.

We urge you to advocate, adopt and implement every single recommendation. The implications on the governance of our oil and gas industry, and country in general, is at stake. It is our shared responsibility to ensure the development of our natural resources benefit all citizens, and do not fall prey to corruption.



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Building a global network of experts to help Lebanon benefit from its potential oil and gas wealth.

LEARN MORE ABOUT LOGI
www.logi-lebanon.org

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