

## THE LEGAL FRAMEWORK



How could asset recovery work for Lebanon?

**Each year, developing countries lose between \$20 to \$40 billion due to bribery, misappropriation of funds, and other corrupt practices.** These criminal acts drain economic development initiatives, contribute to further impoverishment, and come with other societal costs, such as the negative impact on education and public health services. One way of combating these practices is through recovering assets siphoned from the public sector by public servants—elected, or nominated—and their accomplices. How does this process work, and could it work in the Lebanese context?

An asset recovery process begins by collecting information and tracing the assets of the concerned persons with the first objective of determining whether the value of their assets is compatible with their regular income or not and

then determining where these assets are located. This first phase could be as simple as looking at public records, such as the property register and the commercial registry in Lebanon, or could involve a more in-depth search that would require experts to use forensics to trace the assets, notably when they are hidden in complex structures in the country or abroad.

In addition to the public records in Lebanon, valuable sources of information can be reports and documentaries published by NGOs or journalists, information provided by whistleblowers to the soon to be formed National Anti-Corruption Institution (NACI), oversight public bodies such as the **Central Inspection** and the Audit Bureau, and, most importantly, a serious forensic audit of all public accounts.

It is very important to highlight the importance of international cooperation in collecting information and tracing assets at this initial fact-finding stage. The Ministry of Finance, for instance, is vested with special powers to acquire tax-based information from foreign financial and fiscal entities and administrations by virtue of Law 55/2016 on the exchange of information for tax purposes (though these powers have not been used to date). Also, the Special Commission of Investigation (SIC) at the central bank can directly address all Lebanese and foreign authorities in order to ask for needed information and access details of investigations in other countries, by virtue of Law 44/2015 on combating money laundering and terrorism (it had similar powers under Law 318/2001 but these powers were improved upon). This phase of the asset recovery process must be strictly confidential.

Once the needed information is collected and the assets traced and located, the initial fact-finding phase is followed by the four other phases of asset recovery—securing the assets, the court process, enforcement of judgements, and the return of assets (see box right)—as detailed in the [asset recovery handbook](#) of the World Bank and the United Nations Office on Drugs and Crime’s Stolen Asset Recovery Initiative (StAR). Notably, all phases of asset recovery involve international cooperation.

## USING TOOLS AT HAND

Lebanon has all the needed legislative tools internally and internationally to seek and secure the return of assets, though some require improvement and all require the political will to implement. Thus far there has been no major case of asset recovery using any of the below cited laws, raising serious questions as to the levels of corruption in Lebanon and the lack of independence of the judiciary.

From the outset, the 1943 Criminal Code outlawed bribery, embezzlement, misappropriation of public funds, trading of influence, and abuse of function. Lebanon also has Law 154/1999 on illicit enrichment, updated once already in 2009. This law has loopholes that made its enforcement impossible (such as a bank warranty of LL25 million as a prerequisite to submit a complaint and the risk of a LL200 million fine and three months to one year imprisonment for the person who filed the complaint if the charges are dropped), and is currently subject to new amendments. Law 44/2015 on combatting money laundering and terrorism can also serve, along with the special powers given

## PHASES OF ASSET RECOVERY, AFTER INITIAL INVESTIGATION

- **Securing the assets** by taking all necessary precautionary and preventive measures, such as freezing, seizing, and confiscating assets up until the issuance of a relevant judgment or decision. Such measures can be taken in Lebanon either through the common judiciary proceedings by referral to the competent courts, or by referring to the SIC, which is entitled by Law 44 to lead investigations with regards to suspicious transactions, to lift the bank secrecy from suspicious accounts, and to seize or freeze these accounts. The SIC can also address its foreign correspondents (the SICs or similar bodies in other countries) to take precautionary measures related to assets located abroad.
- **The court process** in Lebanon and/or abroad. The judicial proceedings relating to asset recovery are generally criminal, but they can also be civil. Civil proceedings can lead to the nullity of contracts and the payments of indemnities (contractual obligations).
- The **enforcement** of the judgments and decisions issued according to the procedures of enforcement of each country and the **return of assets** to the country of origin are the last two phases of asset recovery. Generally, the return of assets requires international or bilateral conventions between the country of origin and other countries where the assets are situated.

to the SIC by virtue of the law (detailed above), as a powerful legislative tool for asset recovery.

Moreover, Lebanon has recently adopted a series of laws aiming at increasing transparency and preventing and fighting corruption: Law 55/2016 on the exchange of information for tax purposes (and its implementing decree 1022/2017), Law

60/2016 on tax residence, Law 75/2016 on bearer shares (shares that can be transferred anonymously), Law 28/2017 on access to information, Law 83/2018 on the protection of whistleblowers, Law 106/2018 on defining

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beneficial ownership, Law 175/2020 against corruption in the public sector (which also established the NACI), and the [National Anti-Corruption Strategy](#) approved by the Council of Ministers on May 12, 2020. It is worth noting that in addition to updates to the illicit enrichment law, amendments to the 1956 banking secrecy law is also being discussed in Parliament committees.

## Comment

## Anti-corruption

These legislative measures, among others not listed above, have been adopted by Lebanon as part of the execution of the country's obligations toward the international community, since Lebanon is party to the **UN Convention against Corruption** in addition to other international conventions relating to the international cooperation in tax matters, such as the Multilateral Convention on Mutual Assistance in Tax Matters (**MAC**) and the Multilateral Competent Authority Agreement (**MCAA**) on automatic exchange of financial account information.

Given all the above, the legislative tools that already exist within Lebanon and the agreements with other nations, why is asset recovery still challenging in the Lebanese context?

## ROADBLOCKS AHEAD

In addition to the challenges inherent to asset recovery, Lebanon has demons of its own. The Lebanese judicial system is known for its lack of independence. This is one of the main obstacles to asset recovery in Lebanon. Lebanon's General Prosecution, judicial police, investigative judges, and criminal judges have a primary role in investigating crimes of corruption and in conviction, confiscation, compensation, and cooperation with their peers abroad. The independence of the judiciary is a necessity to recover the international community's trust in Lebanon and to begin an efficient asset recovery process.

The other main obstacles inherent to the Lebanese environment are the absence of an effective national strategy for asset recovery, the constitutional immunities from prosecution afforded to the President of the Republic, the deputies and the ministers, and most importantly, the lack of will shown thus far by the Lebanese state with regard to **asset recovery**.

Beyond these Lebanon specifics, a common obstacle faced by states seeking to launch the asset recovery process is funding. Asset recovery is a long and complex process that involves cross-border cooperation; therefore, it is very expensive. The funding issue is aggravated amid the current economic crisis in Lebanon, nevertheless, this is an obstacle that can be overcome, through, for example, creating a national fund for asset recovery that would auto-finance the process out of the asset recovered. A draft of an asset recovery bill is currently being discussed in a Parliament sub-committee, foreseeing the creation of such a fund. Others could also participate in funding the process of asset recovery, such as the Lebanese diaspora and the internation-



al community, but only if the process is promising and the government behind it has proven its commitment to the process.

Haiti, Nigeria, Kenya, Ukraine, Brazil, among others, were able to **recover assets** with the support of foreign countries such as Switzerland. Yet, the four main elements that were present every time a recovery was successful were: a change in political regime, the political will translated into a reinforcement of anti-corruption legislation and bodies, the combination of formal and informal international co-operation tools, and finally settlements and plea agreements whereby corrupt officials would repatriate a substantial part

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of the stolen funds and would resign, in exchange of partial or a total amnesty.

International conventions along with the legislative efforts of foreign countries such as the United King-

dom, France, and **Switzerland** have made it more feasible to return assets through international cooperation. Yet so far, there has been no serious attempt by any Lebanese government, current or previous, to embark on asset recovery. Regardless of the challenges, asset recovery is a necessary step on the path to a more transparent, more accountable Lebanese state—one that will abide by practices that discourage rather than enable corruption. ■

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