



Construction

in 34 jurisdictions worldwide

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Qatar

Marcus C Boeglin and Michael E Schneider

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1 Joint ventures

Must foreign designers or contractors enter into a joint venture with a local contractor to design, build and be paid for their work? Does the law require that the local contractor control the joint venture?

As a matter of principle, construction and engineering work in Qatar may be performed only by Qatari establishments. Exceptions may be granted on an ad hoc basis. Establishments for the performance of construction and engineering work normally are established as joint-venture companies under the Commercial Companies Act (Law No. 5 of 2005) in one of the forms provided by that Act.

The investment in such an establishment is subject to the Foreign Investment Law (Law No. 13 of 2000) which allows foreigners to invest in all national economy sectors, provided that they have a Qatari partner which has a share of at least 51 per cent of the capital in the joint venture. The same requirement applies to consulting engineering firms, which may be registered according to Law on the Practice of the Engineering Profession (Law No. 19 of 2005); the Qatari partner again must not have less than a 51 per cent share. The parties of the joint venture are free to provide in the shareholders' agreement that the foreign shareholder has a share in the profits that is greater than the entitlement according to the shareholding. Management control may be achieved through a management agreement between the company and the foreign investor.

Exemptions from the requirement of a Qatari shareholding may be granted by Emiri decree in case of foreign investments in certain sectors such as industry, agriculture, mining, energy, tourism or contracting, provided the investment is geared towards developing the industry in question or providing a public utility or service that serves the best interests of the country.

A foreign company may be exempted from the requirement of a Qatari sponsor by way of a ministerial decision for the execution of a project awarded by government entities or agencies. The exemption is usually a formality for a foreign company which is awarded such a contract.

2 Foreign pursuit of the local market

If a foreign designer or contractor wanted to set up an operation to pursue the local market what are the key concerns they should consider before they took such a step?

A foreign contractor may start by setting up a representative office to explore the market. The establishment of such a representative office requires a licence from the Ministry of Economy and Commerce. A representative office may not engage in commercial activities other than exploring business opportunities.

3 Licensing procedures

Must foreign designers and contractors be licensed locally to work and, if so, what are the consequences for working without a licence?

Foreign companies proposing engineering work in Qatar are subject to Law No. 19 of 2005 on the Practice of the Engineering Profession, which applies to architects and various branches of engineering. This law requires that the joint venture must be registered and must register its engineers in the register established at the General Authority for Construction Planning and Development. Violations of this rule will lead to the imposition of penalties on the entity as well as the punishment of the individual working without a licence.

4 Labour requirements

Are there any laws requiring a minimum amount of local labour to be employed on a particular construction project?

Qatar Labour Law No. 14 of 2004 provides that priority be given to employment of Qatari nationals. The law empowers the Ministry of Labour and Social Affairs to determine the admitted proportion of foreign workers. Non-Qatari workers can be employed with the approval of the Labour Department after the employing company has obtained the permit to perform work in Qatar and an authorisation to employ foreign personnel. The applications for these authorisations must include the employment contracts with an Arabic translation.

In practice, the great majority of managers, engineers and workers employed in the Qatari construction industry are foreigners (see also questions 5 and 29).

5 Local labour law

If a contractor directly hires local labour (at any level) for a project, are there any legal obligations towards the employees that cannot be terminated upon completion of the employment?

Qatar Labour Law No. 14 is applicable. The wages are regularly provided for in the employment contract. There are no regulations on minimum wages and no trade unions in Qatar.

Law No. 14 provides in article 73 for the maximum of ordinary working hours per week (48 hours in general and 36 hours during Ramadan) at the rate of eight hours per day and for minimum annual leave during certain holidays.

6 Health and safety regulation

Are there any specific health and safety rules regulating the construction industry?

There are no industry-specific health and safety regulations. Health and safety rules are provided for in Law No. 14. Article 99 of that law requires the employer to give directions for the avoidance of risks at the work place and take other precautions. Some government directives have an impact on the industry, for example directives of

the Labour Department restricting work in open-air sites during the summer months (namely 15 June to 31 August). During this period, morning working hours must not exceed five hours in total and may not continue after 11:30am. Afternoon working hours must start after 3pm. Companies working in the petroleum and gas sector are not subject to this ministerial decision.

7 Close of operations

If a foreign contractor that has been legally operating decides to close its operations, what are the legal obstacles to closing up and leaving?

As a prerequisite for winding up, a construction joint venture must obtain an income tax clearance certificate from the Income Tax Department evidencing payment of income tax on the profits of its Qatar operations and clearance from the Ministry of Labour.

8 Standard forms of construction contracts

What standard-contract forms are used for construction and design?

There are no officially adopted or prescribed standard-contract forms and conditions. The principal employers for construction work have their own standard contracts or conditions or develop them for the project, sometimes by reference to international contract conditions. The most important of these contract conditions are those of Qatar Petroleum (QP); its standard conditions are also used by some government entities. Other public entities, such as the Qatar General Electricity and Water Corporation (KAHRAMAA), have developed their own standard contract conditions. The FIDIC (the International Federation of Consulting Engineers) forms are in use but not as frequently as in other countries in the region.

The scope for negotiating the terms of these forms is limited; but especially in larger projects and depending on the industry, modifications may be obtained by the contractor.

9 Price escalations

In typical construction contracts, who assumes the risk of material price escalation and shortages?

Risk allocation is usually dealt with in the contracts. Contracts are normally fixed price, with no provision for price escalation. The Civil Code provides for price adjustment if the contract is concluded on the basis of estimates (article 708) but excludes adjustment in case of fixed prices (article 709).

This is increasingly problematic, given the high inflation rates in the country and the depreciation of the Qatari riyal, which is tied to the US dollar. This inflation and the pegging to the US dollar have become a matter of wider concern, and depegging is a solution that has been considered. The matter is related to the developments with respect to the planned currency union within the GCC (the Co-operation Council for the Arab States of the Gulf).

10 Competition

Do local laws provide any advantage to domestic contractors in competition with foreign contractors?

There is no legal advantage for local contractors in private or government tenders, but contractors (domestic or foreign) residing in and operating out of Qatar are better positioned to be awarded business based on their knowledge, prior experience and recognition in the local market.

11 PPP and PFI

Is there a formal statutory and regulatory framework for PPP and PFI contracts?

Due to the country's wealth, infrastructure projects are generally government-owned and operated. Some projects have been awarded

on a BOT (build, operate, transfer) basis; otherwise PPP projects are not common. Contracts invariably provide for contractor's warranty and maintenance obligations for a predetermined period.

12 Payment of fees

How may a contractor secure the right to payment of its costs and fees from an owner? May the contractor place liens on the property?

The safest mechanism, obviously, is the payment schedule under the contract, with adequate advance and progress payments. Liens for contractors and suppliers are provided for under articles 1184 to 1186 of the Qatar Civil Code.

Depending on the dispute settlement provisions in the contract, claims for payment can be made in arbitration or in the state courts. In addition, the contractor may apply for an attachment order on the property under construction. The attachment order, if obtained, must be validated by the contractor within a time period specified by the court by initiating proceedings on the merits against the employer.

13 Tort claims and indemnity

Do local laws permit a general contractor to be indemnified against all acts, errors and omissions arising from the work of a subcontractor, even when the general contractor is negligent?

Liability of the subcontractor towards the main contractor depends on the term of the subcontract. The main contractor's negligence may reduce or exclude the subcontractor's liability or the quantum of the damage that it must repair.

14 Liability to third parties

Where a contractor constructs a building that will be sold or leased to a third party, does the contractor bear any potential responsibility to the third party? May the third party pursue a claim against the contractor despite the lack of contractual privity?

Under the Civil Code, contracts are binding only on the parties which sign them. Consequently, contractual claims from third parties are not possible.

15 Insurance

To what extent may a contractor obtain insurance to cover its contractual risks?

There is no statutory obligation to buy insurance coverage. Contracts, especially with government entities or agencies, however, regularly require the contractor to take out insurance policies to cover certain risks or all-risk and third-party liability during the performance of the works. In addition, the contractor should bear in mind the 10-year liability prescribed by articles 711 and 712 of the Civil Code.

16 Statutory payment protection

Where major projects have been interrupted or cancelled, do the local laws provide any protection for unpaid contractors who have performed work?

Article 57 of the 2005 Public Procurement Regulations provides that the contract is avoided in cases of bankruptcy or insolvency of the contractor. Similar provisions can often be found in the contract itself.

17 Contracting with government entities

Can a government agency assert sovereign immunity as a defence to a contractor's claim for payment?

All contract claims against government entities or agencies can be pursued in court or, if so agreed, in arbitration. In some contracts the government entity in question has expressly waived its immunity from jurisdiction and from execution. We are not aware of a situ-

ation where a government entity or agency has invoked sovereign immunity in a construction dispute before the state courts in Qatar. In the French case *Creighton v Qatar*, the state of Qatar claimed sovereign immunity from execution against a foreign arbitral award under ICC rules in France; the French Supreme Court (*Creighton Ltd v Qatar*, 6 July 2000, Rev arb 2001, 114) denied such immunity. The court ruled that the reference to the ICC rules, which provide that the parties shall comply with all awards, amounts to a waiver of the immunity from execution. In other jurisdictions, an arbitration agreement may be construed as a waiver of immunity from jurisdiction, but not from execution.

We are not aware of any case in the courts of Qatar concerning the enforcement of a foreign arbitral award against the state. Qatar has not ratified the United Nations Convention on Jurisdictional Immunities of States and their Property of 2 December 2004.

18 Bribery

If a contractor has illegally obtained the award of a contract, for example by bribery, will the contract be enforceable?

Article 57 of the 2005 Public Procurement Regulations provides that the contract is void in cases of fraud and corruption. Bribery will also lead to criminal charges against responsible individuals including shareholders and officers of the company or joint venture in question.

19 Arbitration

What is the prevailing attitude towards arbitration of construction disputes? Is it preferred over litigation in the local courts?

Article 10 of the 2005 Public Procurement Regulations provides that the parties to a contract with the government or any public entity may agree to arbitration, but require the approval of the minister of finance. The provision expressly requires that, pending the arbitration, the parties must continue performing their obligations under the contract. The regulations do not apply to Qatar Petroleum, which regularly provides for arbitration, or to contracts by the military and the police.

20 Foreign corruption

Does local legislation prohibit corrupt practices carried out abroad by persons domiciled in your jurisdiction?

The territorial application of criminal law and its sanctions depends on the rules of international criminal law. As a principle, criminal law applies only to acts committed in the country of the court's jurisdiction. Among the exceptions are the provisions of the United Nations Convention against Corruption of 30 January 2007 to which Qatar is a signatory (see Decree No. 17 of 2007). The convention prohibits acts of corruption anywhere in the world and requires states to establish as a criminal offence acts of corruption not only of officials within the jurisdiction but also of foreign and international officials. However, the convention also confirms the principle of non-intervention of a state in the affairs of another state.

21 Force majeure and acts of God

Under local law are contractors excused from performing contractual obligations owing to events beyond their control?

According to article 188 of the Civil Code, contracts are avoided if they become impossible to perform. Similarly, article 704 of the Civil Code, applicable specifically to contracts for work (including construction) provides that in case of impossibility of performance the contract is terminated. The contractor is compensated for the work within the limits of the enrichment of the employer. Contrary to the laws of some other Arab countries, which have adopted the French concepts of administrative contracts and *imprévision*, these concepts are not part of Qatari law.

22 Dispute resolution mechanisms

What dispute resolution procedures are successfully used to solve construction disputes?

Construction disputes are usually referred to the local courts, and less frequently to arbitration.

23 Courts and tribunals

Are there any specialised tribunals that are dedicated to resolving construction disputes?

Construction disputes are tried by the courts for civil and commercial matters and the corresponding chambers in the Court of Appeals and the Supreme Court. There are no specialised courts or chambers specifically for construction disputes, nor is there a court-ordered system of 'adjudication' in place in Qatar.

24 Dispute review boards

Are dispute review boards (DRBs) used? Are their decisions treated as mandatory, advisory, final or interim?

There is no provision for DRBs in the Procurement Regulations but the regulations also would not lead to the exclusion of DRBs. The practice of such boards under the FIDIC conditions and other model contracts is likely to lead to the use of DRBs in Qatari projects.

25 Mediation

Has the practice of voluntary participation in professionally organised mediation gained acceptance and, if so, how prevalent is the practice and where are the mediators coming from?

There is no statutory definition of mediation, nor does Qatari law provide for or regulate it. Mediation is not commonly used in Qatar but contracts occasionally provide it as a preliminary step before the dispute is submitted to arbitration or the courts.

26 Confidentiality in mediation

Are statements made in mediation confidential?

In the absence of applicable statutory provisions the confidential nature of a mediation would depend on the parties' agreement (express and possibly implied). This is the case in particular, if the parties adopt the generally available mediation rules, such as the ICC ADR rules, the mediation rules of the Swiss Chambers of Commerce, the UNCITRAL conciliation rules or the LCIA mediation procedure.

27 Arbitral award

Is there any basis upon which an arbitral award issued by a foreign or international tribunal may be rejected by your local courts?

Enforcement of foreign arbitral awards is governed in Qatar by the 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), which Qatar ratified in 2003 and which considerably limits the grounds on which enforcement may be refused. Qatar adopted the Convention subject to reciprocity; in other words, only awards from states that also are party to the Convention are enforced. With respect to awards from states that have not ratified the New York Convention, article 381 of the Civil and Commercial Procedure Code applies.

The state of Qatar is undertaking efforts towards modernisation and internationalisation of arbitration. Qatar arbitration law is currently set forth in the Qatar Civil and Commercial Procedure Code (part 1, chapter 13; and part 3, chapter 3).

28 Governing law and arbitration provider

If a foreign contractor wanted to pursue work and insisted by contract upon international arbitration as the dispute resolution mechanism, which of the customary international arbitration providers is preferred and why?

Given the confidential nature of the contracts, it is difficult to give any reliable answer to this question. It would seem that the most popular arbitration rules are those of the International Chamber of Commerce (ICC rules). The use of other rules, such as those of the Swiss Chambers of Commerce (Swiss rules) or the London Court of International Arbitration (LCIA rules) depends on preferences and experiences of the parties and the lawyers or engineers assisting them in the preparation of the tender documents or the contract negotiation. Regional arbitration centres, in particular those in Cairo (CRCICA) and Dubai (DIAC) are probably gaining in recognition. In their respective fields the arbitration centres in the Qatar Financial Centre and the DIFC in Dubai (in cooperation with the LCIA) also are competing for the business. Finally, the Qatar International Centre of Arbitration is developing its activities and has had some success with local and some foreign users.

The preferences concerning the choice of the places of arbitration is equally difficult to ascertain. Doha, Paris, Geneva and London are probably the most frequently chosen. Concerning the merits of the dispute, there is a strong preference for the law of Qatar. The choice of foreign law depends to some extent on the industry. In construction contracts, English and Swiss law are probably the most frequent choices.

29 International environmental law

Is your jurisdiction party to the Stockholm Declaration of 1972? What are the local laws that provide for preservation of the environment and wildlife while advancing infrastructure and building projects?

Qatar is not a signatory of the Stockholm Declaration. The basic enactment in the field of environment is Law No. 30 of 2002 for the Protection of the Environment. Pursuant to this law, the Supreme Council of the Environment and Natural Reserves issued Decision No. 4 of 2005, which provides, in chapter 2, for environmental impact assessments for all public and private development projects.

30 Other international legal considerations

Are there any other important legal issues that may present obstacles to a foreign contractor attempting to do business in your jurisdiction?

Qatar still abides by a rather strict immigration policy that includes restrictions on the numbers and nationalities of foreign workers. On the other hand the entry of skilled and technically qualified expatri-

ates has both facilitated rapid economic growth and diversification and provided significant on-the-job training for Qatari nationals.

31 International treaties

Is your jurisdiction a signatory to any investment agreements for the protection of investments of a foreign entity in construction and infrastructure projects? If so, how does your model agreement define 'investment'?

As of 1 June 2007, Qatar has signed 34 bilateral investment agreements (BITs), of which only 12 are in force, with the following states: Belarus, China, Finland, France, Germany, India, Iran, Italy, South Korea, Morocco, Romania and Switzerland.

To our knowledge there is no Qatari model bilateral investment treaty. Consequently, the definitions of investment in the treaties concluded by Qatar depend on the models of other states or the result of negotiations in individual cases.

The BITs concluded by Qatar offer investors an option to initiate ICSID arbitration or other forms of international arbitration, such as ad hoc arbitration (eg, the French-Qatari BIT). As Qatar has not signed the ICSID Convention, ICSID arbitration is not available for the time being. However, arbitration under the ICSID Additional Facility rules may be possible under some of the BITs.

ICSID arbitral tribunals frequently deal with claims by investors related to construction projects, for example:

- *Consortium RFCC v Kingdom of Morocco* (ICSID Case No. ARB/00/6) – construction of the section of a highway;
- *Salini Costruttori SpA and Italstrade SpA v Kingdom of Morocco*, (ICSID Case No. ARB/00/4) – construction of the section of a highway; and
- *Amco Asia Corporation and others v Republic of Indonesia*, (ICSID Case No. ARB/81/1) – construction and operation of a hotel.

32 Tax treaties

Has your jurisdiction entered into double taxation treaties pursuant to which a contractor is prevented from being taxed in various jurisdictions?

As per 1 July 2008, Qatar only has double taxation treaties with the following countries: Armenia, Azerbaijan, Belarus, France, India, Pakistan, Romania, Russia, Senegal, Seychelles, Singapore, Sri Lanka, Tunisia, Turkey and Yemen.

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33 Currency controls

Are there currency controls that make it difficult or impossible to change operating funds or profits from one currency to another?

The riyal is freely convertible. Its exchange rate is pegged to the US dollar, but this pegging causes increasing concern due to the erosion of the value of the dollar. Five of the six GCC states, including Qatar, have set out to create a monetary union with a single currency by 2010; one of the questions to be resolved concerns the pegging of the new currency. It will have to be seen whether this ambition's target time can be met.

34 Removal of profits and investment

Are there any controls or laws that restrict removal of profits and investments from your jurisdiction?

No, there are no controls or laws that restrict the removal of profits and investments from your jurisdiction.

35 Contractual matrix of international projects

What is the typical contractual matrix for a major project in your jurisdiction in terms of the contractual relationships among the various construction project participants?

Qatar is undergoing a major construction boom with many infrastructure, industrial and private building projects of which some are very large. The contracting methods depend on the type of the project and the entity developing it. There does not seem to be a typical matrix.



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