

## Construction and projects in Qatar: overview

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### OVERVIEW OF THE CONSTRUCTION AND PROJECTS SECTOR

#### 1. What are the main trends in the local construction and projects market? What are the most significant deals?

##### Main trends

The FIFA 2022 World Cup™ (World Cup) and the Qatar National Vision 2030 (QNV) is dominating activity in the construction and project sector in Qatar. Successful delivery of the World Cup will require the Qatari government to complete the infrastructure development promised to FIFA. This will also help Qatar to meet the targets it has set itself in the QNV. Creating a world-class infrastructure in Qatar will ensure the continued success of the country's powerhouse economy. The abdication in 2013 of Sheikh Hamad bin Khalifa Al Thani as Emir in favour of his son, Sheikh Tamim bin Hamad bin Khalifa Al Thani (Sheikh Tamim) is unlikely to have any effect on these aims. This is because Sheikh Tamim was a key figure in the World Cup bid and launched the QNV.

The main trends in the construction sector remain to:

- Develop Qatar's transport infrastructure.
- Create a modern residential and hospitality environment to support the predicted increase in population.
- Create a range of world class sporting venues.

##### Major projects

The impending World Cup in Qatar is generating lots of attention, but the delivery of the QNV may be more significant in the long run. The QNV has four pillars and two relate to human and social development. This is reflected in significant museum and library projects, and the continuing development of Education City and Qatar University. A few of the high-profile projects underway or announced are as follows:

- **Qatar Rail and Metro Project.** This is thought to be the world's largest civil engineering project underway in 2013. Four multi-billion contracts have been awarded in 2013 (with a fifth to follow) for the design and construction of the tunnels and stations of the initial phase of the Doha Metro. These contracts relate to the first 130 kilometres of the railway, of which 99 kilometres will be underground. The major systems and rolling stock tender have also been issued.
- **Hamad International Airport (HIA).** Previously known as New Doha International Airport (NDIA), this is due to open in 2013 and will include:
  - a passenger terminal, capable of handling up to 50 million passengers per year;

- a 750,000 -tonnes-per-year cargo terminal;
- a free trade zone;
- a business park.
- **New Doha Port Development Project (New Port).** A major new sea port to the south of Doha, with annual capacity to accommodate six million 20-foot equivalent units as well as a naval component.
- **Doha Bay Crossing.** The Public Works Authority has begun to appoint consultants for a planned crossing of Doha Bay.
- **Lusail Real Estate Development.** A mixed use development of 38 square kilometres including housing, offices, shops and four exclusive islands.
- **Energy City.** An integrated energy hub to enhance the Gulf region's ability to capture critical revenue streams from hydrocarbons and act as a nucleus for the Middle East's oil and gas industry.
- **Msheireb Downtown Doha.** A large urban regeneration complex by Msheireb Properties in central Doha, designed to reflect the architectural heritage of Qatar.
- **Doha Festival City.** Entertainment and leisure complex with:
  - retail outlets, including an Ikea store that has already opened;
  - hotels;
  - convention centre.
- **Healthcare facilities.** Five primary healthcare centres across Doha, plus four hospitals at Hamad Medical City.

### PROCUREMENT ARRANGEMENTS

#### 2. Which are the most common procurement arrangements if the main parties are local? Are these arrangements different if some or all of the main parties are international contractors or consultants?

Procurement arrangements tend to vary according to the size of the project rather than its parties. Most small and medium to large projects tend to be:

- Turnkey, either by way of Engineer, procure and construct (EPC) or Design and build (D&B).
- "Traditional" procurement with the design pre-arranged by the client.
- Build-only contracts with a single contractor.

On very large and major projects, other arrangements are considered. For example, Hamad International Airport (HIA) has been procured on a construction management basis. This means that the Steering Committee for the New Doha International Airport, (now referred to as HIA) as the client, directly engages a construction manager. The large number of contractors and consultants carrying out the works and design packages are then each engaged separately under a direct contract with the client.

## TRANSACTION STRUCTURES

### 3. What transaction structures and corporate vehicles are most commonly used in both local and international projects?

#### Local projects

Clients are often single entity government departments or public sector related entities (including subsidiary entities and project-specific companies established for the procurement of the project). For smaller projects, local contractors and consultants have the technical and volume capacity to transact alone as single legal entities.

#### International projects

For mid-size and larger projects, where international capacity and expertise are required, compliance with Law No (13) of 2000 for the Regulation of Foreign Capital Investment in Economic Activity generally (subject to a few specific exceptions) has the effect of requiring non-Qatari contractors and consultants to form partnerships with Qatari partners if they wish to be free to bid for work generally. Vehicles for contracting parties are therefore usually joint ventures, which can be either incorporated to become a single company (LLC), or based on a contractual joint venture agreement.

Where the public sector engages contractors who have formed a contractual joint venture arrangement, "joint and several" liability will be required from the joint venture partners to the public sector entity. Additionally, enquiries may be made by the public sector client into the contractual arrangements and risk-sharing between the joint venture partners. This can include full disclosure of (and sometimes the client's approval of) the joint venture agreement. Parent company guarantees will usually be required from all joint venture partners that are subsidiaries.

## FINANCE

### 4. How are projects financed? How do arrangements differ for major international projects?

Major oil and gas, petrochemical and integrated water and power projects have been project financed, with the first closings having been achieved many years ago. Outside of those sectors, most of the large development projects in Qatar are government driven and government funded, and this is the most common form of financing.

The government maintains a healthy budget surplus of US\$7.6 billion. It has allocated US\$65 billion for development projects between 2011 and 2016, so has little need for private finance initiative (PFI) or public private partnership (PPP) funding vehicles.

Bank debt and foreign investment funds have been a source of funding for some private sector property development. Where private sector

project finance is used in Qatar, it comes from a variety of sources. Both international and local banks have been involved in financing projects in Qatar, with both conventional and Islamic financing structures being used.

## SECURITY AND CONTRACTUAL PROTECTIONS

### 5. What forms of security and contractual protections do funders typically require to protect their investments?

#### Security

Corporate borrowings from banks licensed by the Qatar Central Bank (there are 18 at the time of writing) must be guaranteed by the borrowing company's shareholders, except:

- In the case of public companies.
- Where the Qatar Central Bank specifically waives this requirement, or issues instructions or circulars that allow otherwise.

Circulars can also require that credit facilities to the construction sector are secured by a pledge of receivables in favour of the lending bank.

In cases where banks fund private development, lenders will also take traditional mortgage security or, where this is not legally possible, will typically take an assignment of contractual rights. For example, this can happen where the borrower's legal interest in the land being developed is not registrable until the development has been physically completed.

#### Contractual

Public sector entities governed by Law No (26) of 2005 establishing a Law Organizing Tenders and Auctions (Public Tender Law) must, amongst other things, obtain tender bonds from bidders. Clients often require an on-demand performance bond (usually amounting to 10% of the contract price) from the successful bidder. Advance payments are common, and are made against on-demand bank guarantees. Retentions of up to 10% of the contract price and robust forms of parent company guarantees are also commonly required as performance security.

Collateral warranties, whether from main contractors and consultants in favour of third parties, or from sub-contractors and sub-consultants in favour of the client, were traditionally uncommon in the Qatar market and are seen as onerous by contractors and consultants. However, on public works projects (for example, Qatar Rail and the Public Works Authority (Ashghal) they are often required to be entered into by sub-contractors and sub-consultants.

## STANDARD FORMS OF CONTRACTS

### 6. What standard forms of contracts are used for both local and international projects? Which organisations publish them?

#### Local projects

Small and private sector projects have no universal standard form of contract, and often use untailed agreements, which may have been "carried forwards" from previous projects. The quality of contract documentation is often poor. Older versions of standard form contracts issued by Qatar Petroleum are sometimes amended and used.

## International projects

Medium to large public works projects procured by Qatar's public works authority (Ashghal) tend to use Ashghal's own bespoke forms, which were revised and reissued at the end of 2010.

Public sector projects (other than those procured by Ashghal) often use their own bespoke forms of contract which have been prepared either by in-house lawyers or external law firms. These may be amended versions of the International Federation of Consulting Engineers (FIDIC) Yellow, Silver or Red Book contracts, but other forms are also used. On major projects, bespoke and "project specific" forms are prepared.

On public sector projects of all sizes, contract terms with the client are rarely negotiable for main contractors and consultants. Sub-contractors and sub-consultants will typically be required to accept "back-to-back" terms, including "pay-when-paid" clauses.

## CONTRACTUAL ISSUES

### Contractors' risks

#### 7. What risks are typically allocated to the contractor? How are these risks offset or managed?

Contracts in Qatar commonly provide for a high level of risk transfer to contractors and consultants. However, the full extent of risk transfer is often unclear due to the poor drafting of contract amendments or particular conditions. The key categories of risk are:

- **Time.** Tight deadlines are often set in the contracts, and provisions for granting extensions of time are often vague or discretionary. Where extensions of time are allowed, they usually only provide for relief from liquidated damages and may not allow claims for associated loss and expense. Provisions relating to client obligations to respond to requests for approvals or instructions can also allow extensive discretion for the client or engineer. Time-bar clauses for contractors challenging client decisions can be very tight, and missing the deadline often expressly excludes any further rights.
- **Quality.** Specifications and requirements can be vague and subject to client instructions which are deemed within the agreed scope. Specifications often allow a wide discretion to the engineer regarding testing and approvals.
- **Cost.** Pricing can be difficult when time and quality provisions are unclear in the legal terms and conditions, and where tendering is highly competitive. Delays in certification of applications and payment of invoices are also very common.

Contractors and consultants can sometimes help to mitigate these risks by preparing and incorporating a detailed programme into the contract, showing not only the time for each phase of works or services, but the time allowed in the programme for:

- Issue of client information/design.
- Site access requirements.
- Consultations and approvals.

Similarly, attempts can be made to put some "flesh on the bones" of skeleton "employer's requirements" documents to help clarify the detail and expectations of the scope of work. Meticulous contract administration and record keeping will, as always, greatly assist in managing risk.

## Excluding liability

### 8. How can liability be excluded or restricted under local law?

Generally, parties enjoy freedom of contract under Qatar law. Express terms which either exclude, cap or pre-estimate damages will in most cases be binding and enforceable between the parties. Some exceptions include:

- Under Article (259) of Law No. (22) of 2004 the Civil Law, liability resulting from "deceit or gross mistake" cannot be limited or excluded.
- Under Article (711) of the Civil Law contractors and designers give a joint guarantee for ten years from project completion (known as "decennial liability"). This strict liability covers the "total or partial collapse or fault in the buildings ... even if the collapse or fault has resulted from a defect in the land itself", provided that the defect threatens its "sturdiness or safety". Under Article (715) of the Civil Law this liability cannot be contractually limited or excluded, and any attempt to do so will be void.
- Under Article (171)(2) of the Civil Law, a court (or arbitral tribunal) can, after weighing up the interests of the parties, reduce an "exhausting" contractual obligation to a "reasonable margin" if:
  - "public exceptional incidents" occur which could not have been expected; and
  - the occurrence of those incidents makes an obligation "though not impossible but exhausting to the debtor and threatens him with grave loss".

It is not entirely clear how this principle might be applied in practice, but any attempts to contractually exclude its application will be void.

- Under Article (266) of the Civil Law, where damages are pre-estimated or liquidated, the agreed amount may not be due if the debtor (that is, the contractor or consultant) can show that either:
  - no loss has been suffered by the innocent party;
  - the level of the pre-agreed damages were "exaggerated to a high degree"; or
  - the obligation has been partially performed.

In those instances a judge (or arbitrator) can reduce the compensation due. Any contractual term attempting to exclude this principle will be void.

However, the converse does not apply for a creditor of liquidated damages. Article (267) of the Civil Law provides that if the creditor's loss is greater than the pre-agreed damages, he cannot claim a higher amount unless he can show the loss arises as a result of the debtor's "deceit or gross mistake".

## Caps on liability

### 9. Do the parties usually agree a cap on liability? If yes, how is this usually fixed? What liabilities, if any, are typically not capped?

Liability for liquidated damages for delay is often capped at between 5% to 10% of the contract price. Overall contractual liability is often

capped, depending on the nature of the work, between 100% to 200% of the contract price. The following liabilities or indemnities are sometimes outside the overall contractual liability cap:

- For intellectual property rights.
- For death and personal injury.
- For property damage.

Certain liabilities cannot be contractually capped (*see Question 8*).

Liquidated damages are commonly applied to any delay in completing work under contracts for both contractors and consultants. Increasingly we are seeing liquidated damages being applied to “mobilisation” and “key personnel” clauses for failing to either mobilise on time, or supply and maintain the agreed named personnel.

### Force majeure

#### 10. Are force majeure exclusions available and enforceable?

Force majeure provisions are common in contracts and are generally enforceable. However, unclear drafting often makes it difficult to establish with any certainty the extent to which the clause is applicable.

Article (258) of the Civil Law allows the parties to contractually agree that the debtor (that is, the contractor or consultant) will be liable for the consequences of force majeure. Therefore, if a contract term transfers this risk, it will be generally binding and enforceable.

However, under Article (171)(2) of the Civil Law, a debtor can apply to the court to have his contractual obligation reduced to a “reasonable margin” in certain “force majeure type” scenarios (*see Question 8*). Although relatively untested, “public exceptional incidents” can have less impact than events typically covered by force majeure clauses. This specific principle in Article (171)(2) can be applied notwithstanding the general principle of freedom of contract or Article (258) of the Civil Law, and will prevail over any contractual terms to the contrary.

With particular regard to the construction industry, Article (700) of the Civil Law provides that contractors cannot avoid or vary their contractual obligations and agreed terms as a result of price increases in the market (for example, raw materials, labour and so on) which were either unforeseeable or were outside his control. However, this provision is also subject to Article (171)(2) of the Civil Law.

### Material delays

#### 11. What contractual provisions are typically negotiated to cover material delays to the project?

“Time” risks are specifically considered in *Question 7*. Provisions for extensions of time do not always identify the specific events or circumstances under which a contractor or consultant is entitled to an extension of time so that they can avoid paying damages for the delay. Contract provisions typically refer to circumstances which “arise through no fault of the contractor”, which are then subject to the client’s or the engineer’s discretion in allowing an extension of time to be granted. The scenario which commonly arises in practice, where multiple factors and parties actually cause the delay, is rarely provided for in contracts. However, the civil law principle of equitable allocation of liability will apply in most cases in dispute. Also, there are some provisions in Qatar law regarding the application of liquidated damages, which may assist contractors/consultants in this respect (*see Question 8*).

### Material variations

#### 12. How are material variations to the works usually dealt with in the contract?

Historically, provisions for material variations have been quite vague, although recent public works contracts now contain more detailed procedures for this. These often give the client or engineer substantial discretion regarding price, additional time and so on. Disagreements regarding these provisions are sometimes covered by escalation-type dispute resolution procedures (that is, procedures with various increasing management levels to which the matter can be referred for “amicable resolution” before resorting to the courts or arbitration). These are typically subject to tight time-bar provisions for challenging the outcome at each stage.

### Other negotiated provisions

#### 13. What other contractual provisions are usually heavily negotiated by the parties?

Public sector work is often tendered on a basis that requires full compliance. Qualified bids may in some cases be acceptable if specified in the request for proposals. However, the qualifications (whether legal or technical) must usually be clearly specified and priced as part of the tender submission. Exceptionally, some negotiation can sometimes take place with public sector entities, particularly where the required services are of a universal nature. This may be the case where there is very little competition in the international market (for example, professional services agreements for iconic architecture, innovative engineering and other design solutions). Greater negotiation takes place for private commercial projects (*see Question 14*).

## ARCHITECTS, ENGINEERS AND CONSTRUCTION PROFESSIONALS

#### 14. How are construction professionals usually selected? Following selection, how are they then formally appointed?

##### Selection

On public sector projects, selection is usually by tender in accordance with the Public Tender Law (*see Question 5*). On private sector commercial projects, selection and appointment is commonly the result of:

- Personal contacts.
- Pre-existing relationships.
- Recommendations.
- Local and international reputation.

In these cases, terms and conditions are more negotiable than on public sector projects.

#### 15. What provisions of construction professionals’ appointments are most heavily negotiated? Are liabilities routinely limited or capped in construction professionals’ appointments?

On public sector projects of all sizes, contract terms with the client are rarely negotiable for consultants (*see Question 6*). The terms of consultants’ appointments are often far more onerous than a consultant

might be used to in the UK or Europe. A high degree of risk is generally passed down to consultants and partnering is almost unheard of in Qatar outside of the oil and gas sector.

Limited negotiation can sometimes take place with public sector entities (see Question 13). This usually only happens where there is very little competition in the international market (for example, professional services agreements for iconic architecture or innovative engineering). Slightly wider negotiation may take place for private commercial projects, but by British standards, negotiation is limited and focuses heavily on price.

Where not prohibited by law (for example, for decennial liability in Article 711 of the Civil Law (see Question 8)), liability is sometimes capped at a multiple (100 to 200%) of the consultant's fee. Consultants will be expected to carry specified levels of professional indemnity insurance. Consultants may also be required to sign up to 'fitness for purpose' type obligations. Consultants should seek advice in each case regarding the interpretation that Qatar law would apply to the exact proposed wording. Depending on the wording used, the obligations are often not interpreted in Qatar law as onerously as would be the case in English law. This is particularly the case if the dispute resolution forum is the Qatar Courts, where the wording will be translated into Arabic before being considered. Consultants will also be asked to provide on-demand bonds, parent company guarantees (if they have parent companies) and, increasingly for major projects, collateral warranties.

## PAYMENT FOR CONSTRUCTION WORK

### 16. What are the usual methods of payment for construction work? Are there ways for the contractor and consultants to secure payment or mitigate risks of non-payment under local law?

#### Methods of payment

Payment is usually in arrears subject to certification by the client or engineer. Payments are commonly "milestone" based. Advance payments for contractors and consultants are common though these are always subject to an on-demand bank guarantee. Problems can arise with provisions in the guarantees and in the associated contracts concerning how the outstanding balance of the guarantee reduces as the advance payment is repaid, particularly where that reduction relies on some action by the employer. These provisions should be checked carefully.

Payments to contractors and consultants are usually made directly into a bank account, which must be in Qatar.

#### Securing payment

Although there are a few provisions in the law that may assist with securing payment, they are vague and difficult to enforce in the courts. These cannot therefore be relied upon with certainty. Long delays in payment are common on most types of projects.

Public sector entities often rely on cash-flow from the Ministry of Economy and Finance (MoEF) and contracts sometimes contain provisions making payment dependent upon receipt of the client entity's cash-flow from the MoEF. Failure by the client to pay invoices (even if certified) will sometimes expressly prohibit the contractor or consultant from suspending work. Due to the general concept of freedom of contract, clear express terms of this nature, even if potentially onerous on the contractor or consultant, are likely to be binding and enforceable.

In public sector contracts, interest for late payment is sometimes provided for. However, it is often expressly provided in the agreement that interest is not payable where the reason for late payment is a delay in funding from the MoEF to the client.

## SUBCONTRACTORS

### 17. How do the parties typically manage their relationships with subcontractors?

Sub-contracts and sub-consultancy agreements are typically wholly "back-to-back" with the main agreement, with full risk pass-down and "pay-when-paid" clauses.

Sub-contractors and sub-consultants must usually comply with (and not put the main contractor/consultant in breach of) the main agreement. Indemnities to the main contractor/consultant are sometimes incorporated in connection with this obligation.

Sub-contract agreements are more frequently negotiated than main agreements, particularly in terms of:

- Liability caps.
- Levels of liquidated damages for delay.
- The general allocation of the share of liability.

#### Licensing

### 18. What licences and other consents must contractors and construction professionals have to carry out local construction work? Are there any specific licensing requirements for international contractors and construction professionals?

All entities carrying on business in Qatar must be properly registered with the Ministry of Business and Trade.

Engineering related activities in Qatar are governed by Law No. (19) of 2005 the Engineering Law. Each individual or each firm performing engineering works in Qatar must obtain a licence from the Engineering Committee of the Urban Planning and Building Development General Authority (Engineering Committee). The requirements for obtaining an engineering licence are extensive and include:

- Minimum numbers of staff.
- Levels of qualifications.
- Years of experience.
- Size of office space.

Engineering consultancy works are widely defined as works involving the following matters:

- Preparation of architectural, construction, survey and planning drawings.
- Preparation of plans and designs.
- Supervision of execution.
- Rendering of advice.
- Conducting of feasibility studies.
- Cost estimation.

- Cost accounting.
- Management of projects.

A firm can register as an International Engineering Consultancy or Local Engineering Consultancy.

Exceptionally, exemptions are available to the above engineering licensing requirements. International engineering offices may be exempt if they are contracted to provide certain distinct technical specialities that either:

- Are not available in Qatar.
- Require particular technical experience for development purposes.

A further possible exemption may apply under Article (3) of Law No (13) of 2000 (Foreign Investment Law). This allows a branch of a foreign company to be registered in Qatar if it has been awarded a contract in Qatar to render a service of public benefit. If the entity is deemed to be an engineering consultant, the Engineering Committee can grant an exemption from acquiring a full licence.

Drawings submitted for approval by municipal authorities must be signed by local registered engineering practices.

## 19. What licences and other consents must a project obtain?

The required licences and consents will vary according to the nature of the project, its location, and so on. Below is an indicative, but non-exhaustive, list of permits that may be required:

- Planning permission from the Municipality.
- Preliminary approval by the concerned Municipality to open a file.
- Fire safety clearance from the Civil Defense Department (CDD).
- Clearance for road design and access from the road construction department at the Urban Planning and Development Authority (UPDA).
- Clearance for power and water service delivery from the Qatar General Electricity and Water Corporation (Kahramaa).
- Clearance for telecom service delivery from Qatar Telecom (QTEL).
- Clearance from the building permit department of the UPDA.
- Final building permit approval from the Municipality.
- Public announcement of the construction project at the Municipality.
- Fire safety approval from the CDD.
- Certificate of completion from the Municipality.
- Registration of the building at the Municipality.

### Projects insurance

## 20. What types of insurance must be maintained by law? Are other non-compulsory types of insurance maintained under contract?

### Compulsory insurance

An engineering office is required to have certain insurances, particularly professional indemnity insurance, in order to be registered as an engineering office in Qatar. Vehicles must also be insured.

### Non-compulsory insurance

Other insurances which a commercially prudent consultant or contractor will carry, and which are commonly required in contracts, are as follows:

- Employer's liability insurance.
- Third party liability insurance.
- Contractor's all risks insurance.

Clients now increasingly ask to be a "named insured" on project-specific policies.

## LABOUR LAWS

### 21. Are there any labour law requirements for hiring (local and foreign) workers?

#### Local workers

Qatari nationals are to be given priority over non-Qatari nationals when an employer is seeking to fill a role. This practice is known as "Qatarisation". There are no particular requirements for hiring a Qatari national.

#### Foreign workers

As a result of the practice of Qatarisation, an employer must obtain permission from the recruitment committee at the labour department of the Ministry of Labour and Social Affairs before employing foreign employees. Once obtained, the employer must apply for a work visa so that the employee can enter Qatar. Within seven days of the employee's arrival into Qatar, the residence permit procedure must be commenced so that the employee can work and reside in Qatar.

### 22. Which labour laws are relevant to projects?

The vast majority of employees in Qatar, particularly those engaged in connection with the construction industry, are subject to Law No. (14) of 2004 (Labour Law). One of the few exceptions to this applies to employees of governmental entities, who are instead subject to Law No. (8) of 2009 (Human Resources Law).

Although not strictly a labour law, Law No. (4) of 2009 (Sponsorship Law) is also relevant in relation to employee sponsorship arrangements. This applies to all non-Qatari nationals working and residing in Qatar.

### 23. Must an employer pay statutory redundancy or other payments at the end of a project? Are all employees eligible?

There is no requirement to pay statutory redundancy pay in redundancy situations. If employees are employed for more than one continuous year, then under the Labour Law they are entitled to receive an end of service gratuity benefit for each complete year of service. Any partial year of service is calculated on a pro-rata basis. The calculation is based on the employee's last basic salary received (that is, the employee's salary excluding any allowances or benefits).

Specialist advice should be taken where an employer provides a pension scheme for employees. The law regarding the payment of an end of service gratuity is different and more complicated in these circumstances.

## HEALTH AND SAFETY

### 24. Which health and safety laws apply to projects?

Part 10 of the Labour Law contains a range of health and safety related obligations, requiring an employer to:

- Provide employees with information concerning the precautionary measures that have been put in place to protect them from work-related injury or disease.
- Inform employees at the start of their employment about any occupational hazards.
- Provide employees with first aid facilities and carry out regular medical check-ups.

Several Ministerial Decisions relating to employees' health and safety have been issued. Ministerial Decision No. (20) of 2005 is particularly relevant to the construction industry. This sets out the employer's general obligation to ensure:

- That its workplace is safe for its employees.
- That safe systems for work are in place.

A list of penalties for non-compliance with the health and safety law can be found at the end of the Labour Law, which include fines and/or imprisonment. The level of fines will depend upon the obligation breached and will be multiplied by the number of employees affected by the violation(s).

## ENVIRONMENTAL ISSUES

### 25. Which local laws regulate projects' effects on the environment?

#### Air/water/waste

The Supreme Council for Environment and Natural Reserves (SCENR) and the Ministry of the Environment are the competent authorities for environmental protection related matters in Qatar. There are a range of environmental laws but two of the most relevant are:

- Law No. (30) of 2002, Law of Environment Protection (Environmental Protection Law) and the Executive Regulations under Ministerial Decision No. 4 of 2005. These provide that all plans for public and/or private development projects must be submitted to the authorities for approval.
- Law No. (4) of 1983 concerning Exploitation and Protection of Aquatic Life in Qatar provides that any plant, laboratory and factory waste, sewage water, chemical and petroleum substances, ship oils, and any other liquids that may cause harm to aquatic life may not be discharged into fishing water or internal water without the written approval of the competent department.

Environmental concerns are increasingly prominent and gaining more importance in Qatar. Environmental development is one of the pillars of the Qatar National Vision (QNV). As a result, the role of the environmental authorities is expanding, particularly in the approval process for construction projects. Liaison with the authorities is recommended. Although we are not aware of any particular proposed legislation, it is expected that further environmental legislation will be enacted in the coming years. Some of this may be introduced via the Qatar Construction Standards, with the 2010 version currently in force.

### Environmental impact assessments (EIAs)

Environmental impact assessments may be required for some projects. This will depend on the specific project, and so applications should be made to the authorities on a project-by-project basis.

### Sustainable development

Sustainable development is gaining increasing attention in Qatar. Several projects are aiming to meet sustainable standards, for example, the central Doha regeneration project for Msheireb Properties. In general, US Leadership in Environmental Energy and Design (LEED) standards are the prevailing rating system. However, Qatar is increasingly adopting the Global Sustainability Assessment System (GSAS) and may specify its use on future projects.

### 26. Do new buildings need to meet carbon emissions or climate change targets?

New buildings do not need to meet carbon emissions or climate change targets.

## CORRUPT PRACTICES

### 27. Are there any rules prohibiting corrupt business practices and bribery (particularly any rules targeting the projects sector)? What are the applicable civil or criminal penalties?

#### Rules

The rules prohibiting corrupt business practices and bribery include:

- **Decree No. (17) of 2007.** This ratified the United Nations Convention against Corruption. States who are party to this convention are obliged to adopt legislative and other measures to establish the act of bribing a public official as a criminal offence.
- **Public Tender Law.** Governmental entities and bidders on public sector contracts must comply with anti-corruption laws and ethical standards of integrity and transparency. Contracts must be revoked in circumstances where either:
  - the contractor commits fraud or deception in the course of performing the contract;
  - the contractor directly or indirectly bribes a public official.
- **The Human Resources Law.** This applies to governmental bodies and civil servants (individuals working within these governmental bodies).

The term "governmental body" widely applies to ministries, authorities and public institutions. There is no distinction within the law as to the amount of ownership or interest that needs to be held by the government in an entity for that entity to be considered a governmental body.

A civil servant is prohibited from "accepting presents, gifts, gratuities, grants, cash, or others, directly or indirectly, in exchange of or as a result of work related to his position in order to accomplish an interest for another". An offence is committed if a civil servant accepts a gift, gratuity, and so on, as a result of his work in order to achieve something for another. The offence is committed by the civil servant, not by the party giving the

gratuity. The offence crystallises if the gift is given in exchange for, or as a result of, the civil servant's work in accomplishing the interest for another.

- **Articles (140) to (147) of Law No. (11) of 2004 (Penal Code).** This deals specifically with the offence of the bribery of public officers.

The definition of a public officer is much wider than that of a civil servant and includes: "employees in the ministries, the other governmental corps and public organisations and institutions and all other employees in private institutions and associations, companies and co-operative associations, if one of the ministries or one of the other governmental corps or public institutions or organisations participate in it".

It is an offence for a public officer: to ask for, or accept (whether for himself or another party) any money, benefit or promise. It is also an offence for an individual to offer the public officer any money, benefit or promise in return for the public officer to do something that is related to his position as a public officer, whether or not the act requested actually falls inside the scope of the public officer's duties. The offence carries a penalty of up to ten years' imprisonment and a fine equivalent to the value of the bribe (but not be less than QAR5,000). It is also an offence to facilitate payments.

- **Emiri Decision No. (75) of 2011.** This established the Administrative Control and Transparency Authority in order to achieve transparency and act against corruption in government agencies and private companies contracted to provide public services. The Authority has powers including among others:
  - to access data and information;
  - to monitor and investigate in accordance with the law;
  - to request to punish an employee that hides, refrains from providing with or refuses to disclose data to a member of the Authority.

#### Penalties

See above, *Rules*.

## BANKRUPTCY/INSOLVENCY

### 28. What rights do the client and funder have on the contractor's bankruptcy or insolvency?

In Qatar, insolvency is mainly dealt with in Law No. (27) of 2006 issuing the Commercial Law (Commercial Law). The relevant provisions can be found under Title Six (entitled "Bankruptcy and Preventive Conciliation"). Below is an indicative but non-exhaustive list of some of the other provisions that govern insolvency and preferential claims:

- The Civil Law.
- Law No. (5) of 2002 (Commercial Companies Law).
- The Labour Law.
- Law No. (40) of 2002 (Customs Law).

Qatar's insolvency law provides that any contracts executed by a company prior to a declaration of bankruptcy remain valid, unless they are contracts for personal services. That being the case, a contractual provision allowing an employer, in the event of the contractor's bankruptcy, to terminate the contract for the contractor's default, and complete the work itself, will be valid.

## MAIN CONSTRUCTION ORGANISATION

### Society of Construction Law (Gulf) (SCLG)

**Main activities.** One of the main organisations of interest to western contractors or consultants is the Society of Construction Law (Gulf) (SCLG). Several British professional construction organisations have representation in Qatar (for example, the Chartered Institute of Builders (CIOB)). Contact can be made with organisations in the UK to establish local contact details in Qatar.

W [www.scl-gulf.org](http://www.scl-gulf.org)

## PPPs

### 29. Are public private partnerships (PPPs) common in local construction projects? If so, which sectors commonly use PPPs?

So far there has not been any trend towards PPP procurement as generally understood in Europe and the USA (*see Question 4*). The government has suggested it will consider whether to use some kind of PPP-type arrangements in the future.

### 30. What local laws apply to PPPs?

There is no legislation which specifically applies to PPPs.

### 31. What is the typical procurement/tender process in a PPP transaction? Does the government or another body publish standard forms of PPP project agreement and related contracts?

PPPs are not common in Qatar. Therefore, there are no standard forms of PPP project agreement or related contracts.

## DISPUTE RESOLUTION

### 32. Which are the most common formal dispute resolution methods used? Which courts and arbitration organisations deal with construction disputes?

#### Formal dispute resolution methods

Litigation in the Qatar courts was typically the most common formal dispute resolution method on public sector contracts, certainly for Ashghal. Court proceedings are carried out completely in Arabic and all documents must be translated into Arabic. However, arbitration is increasingly displacing litigation as the most common method. Qatar Rail, the New Port and HIA all have arbitration clauses in their contracts. Most adopt the International Chamber of Commerce (ICC) Rules, with Doha as the seat of the arbitration.

The Tenders Law specifies that most public sector entities must obtain approval from a very senior level, often Ministerial, before an arbitration agreement is binding on that public sector entity. Where arbitration is mentioned in public sector contracts it therefore often provides that, in the event of a dispute, the parties may decide to put the matter to arbitration instead of court proceedings, if it is agreed at that time.

## Courts and arbitration organisations

There are no specialised construction courts in Qatar. Construction disputes are resolved by the civil courts, often with court appointed experts (from an internal panel) advising the judge.

Where arbitration is provided for in a contract, the relevant institutions are normally:

- Qatar International Center for Conciliation and Arbitration (QICCA).
- The Qatar International Court and Dispute Resolution Centre (QICDRC).
- International Chamber of Commerce (ICC).

The specified seat of the arbitration is usually Doha. However, in exceptional cases we are aware that seats such as London, Paris, New York and Geneva have been agreed.

The Government took the unusual step of consulting with domestic and international law firms during the course of 2012 on a new draft arbitration law.

### 33. What are the most commonly used alternative dispute resolution (ADR) methods?

Contracts sometimes have “escalation-type” provisions for dispute resolution, providing for multiple stages to which the matter in dispute can be referred before the parties resort to the formal procedures as noted in *Question 32*. This may include, for example:

- Referral to the engineer.
- Referral to a mutually agreed and appointed expert.
- Referral to meetings at the local management level.
- Referral to meetings between senior management (possibly at CEO level).

ADR methods such as conciliation, mediation and adjudication are not yet commonly recognised in Qatar, although we are aware that interest in these methods is increasing as the latest round of major projects are being tendered and procured. The Qatar International Court and Dispute Resolution Centre (QICDRC) is promoting a form of construction adjudication, known as Q-Construct. It is thought unlikely that Q-Construct will be a compulsory scheme.

## TAX

### 34. What are the main tax issues arising on projects?

Construction companies are not subject to any specific taxes particular to the industry sector.

Article (11) of Law No. (21) of 2009 (Income Tax Law) provides for a withholding tax of 7% on non-resident interest income, commissions, brokerage fees and other payments made to non-residents for services carried out partly or wholly in the State of Qatar. A rate of 5% applies to “technical fees” which is understood to include fees for design consultancy services.

## ONLINE RESOURCES

### Al Meezan

W [www.almeezan.qa/default.aspx?language=en](http://www.almeezan.qa/default.aspx?language=en)

**Description.** Al Meezan is a website that is run by the government. It contains unofficial translations of some Qatar Laws. All translations of Qatar law are unofficial, apart from the QFC Law (No. 7 of 2005), which was published in both Arabic and English. Official laws are published only in Arabic. Arabic texts are found in the Official Gazette, published by the Ministry of Justice ([www.moj.gov.qa/](http://www.moj.gov.qa/)). The Qatar Financial Centre (QFC) publishes regulations covering entities registered within the QFC and regulated by the QFC Regulatory Authority. For English language copies of the QFC Law and all subordinate legislation, see [www.complinet.com/qfcra](http://www.complinet.com/qfcra).

### 35. Are any methods commonly used to mitigate tax liability on projects? Are there any tax incentives to carry out regeneration projects?

Circular No. (3) of 2011 allows for an application to be made to the MoEF in order to include a “gross-up” provision in an agreement between a non-resident individual or company and a Qatar-incorporated company. It is still unclear as to who can benefit from this exemption. However, when this is clarified, it could amount to a five to ten-year exemption on withholding tax. Presently, there are no tax incentives to carry out regeneration projects.

## OTHER REQUIREMENTS FOR INTERNATIONAL CONTRACTORS

### 36. Are there any specific requirements that international contractors or construction professionals must comply with?

See *Question 18*.

## REFORM AND TRENDS

### 37. Are there any proposals to reform construction and projects law? Are there any new legal or regulatory trends affecting projects?

#### Reform proposals

To our knowledge, there are currently no proposals concerning the reform of construction or projects law. Following the tragedy of the Villaggio fire in 2012, existing rules relating to fire safety are now more strictly enforced. Amendments have also been made to the Civil Defense Law.

A new Commercial Companies Law has been approved but is not yet in force.

#### Trends

The planned pace and extent of infrastructure development means that it is likely new laws and regulations will be passed in the near future. There is often little time between the announcement of a new law and its implementation. Drafts of new laws are not always subject to public consultation.

## Practical Law Contributor Profiles



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**Professional qualifications.** Jordan, 1987

**Areas of practice.** Qatar law (corporate and regulatory).

#### Recent transactions

- Qatargas II and III: advising the ECAs and lenders on the largest LNG project financing ever undertaken.
- Confidential client: advising on the construction of the QAR220 million West Bay Complex Project.
- Al-Ahli Hospital: advising on the construction of the Al-Ahli Hospital Project (US\$21,390,559).
- Qatar Foundation: advising Qatar Foundation on the Qatar Science and Technology Park Project.



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**Professional qualifications.** England and Wales, 1977

**Areas of practice.** Construction.

#### Recent transactions

- ICC arbitration in Doha concerning a road project: 11-day arbitration hearing held in 2012.
- ICC arbitration in Doha for the owner of a large industrial facility.
- Advising the main contractor on very large claims and prospective ICC arbitration arising from construction of an iconic public facility.
- Advising design consultants on terms of appointments and decennial liability claims.
- Advising numerous project owners, contractors and sub-contractors on negotiation of contracts and disputes arising on construction projects.

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**Professional qualifications.** England and Wales, 2001

**Areas of practice.** Construction.

#### Recent transactions

- Reviewing/advising on building contracts, consultancy agreements for major public sector projects and liability and performance security issues plus drafting/negotiating sub-contracts.
- Qatar 2022 Bid Committee advice on various contractual/liability issues including stadium design competition for 2022 FIFA Bid.
- Advising two international "signature architects" on design agreements and liability for major public sector projects.
- DB International: advising/negotiating on joint venture for Qatar Rail Project.
- Samsung Engineering: risk advice for construction/engineering contracts.



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**Areas of practice.** Construction.

#### Recent transactions

- Confidential client: assisting as a junior attorney in our team defending a QAR150 million claim under an ICC Arbitration seated in Doha.
- Confidential client: assisting with advice on a potential ICC Arbitration seated in Paris.
- Barclays Wealth: assisting in relation to matters of Qatari law.
- QNB: assisting in relation to a US\$215 million syndicated loan.

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**Professional qualifications.** England and Wales, 1998 (Barrister); 2010 (Solicitor)

**Areas of practice.** Construction, arbitration, ADR.

#### Recent transactions

- Ad hoc United Nations Commission on International Trade Law (UNCITRAL) arbitration between major international contractor and Gulf Cooperation Council (GCC) based property developer relating to the construction of a shopping mall in Dubai.
- ICC Arbitration between major global media network and a national shareholder concerning sale of shares in respect of a domestic subsidiary of the media network
- Advising Qatar Rail (QR) on qualifications submitted by those tendering for the five major civil engineering contracts for the QR project; assisting QR to prepare the major systems tender, including review of all technical documents; drafting a standard-form consultants' appointment for QR based on FIDIC White Book.
- Advising a major Japanese contractor on potential claims arising out of the construction of a facility relating to the oil & gas industry in Qatar.
- Advising a major international contractor on claims and allegations of default relating to the construction of a landmark public facility in Doha..

**Languages.** English, Portuguese, French

**Professional associations/memberships.** FCI Arb, ICI OB