

THE PROJECTS AND
CONSTRUCTION
REVIEW

SEVENTH EDITION

Editor

Júlio César Bueno

THE LAWREVIEWS

THE

PROJECTS AND CONSTRUCTION REVIEW

The Projects and Construction Review

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PREFACE

La meilleure façon d'être actuel, disait mon frère Daniel Villey, est de résister et de réagir contre les vices de son époque. Michel Villey, *Critique de la pensée juridique modern* (Paris: Dalloz, 1976).

This book has been structured following years of debates and lectures promoted by the International Construction Law Committee of the International Bar Association (ICP), the International Academy of Construction Lawyers (IACL), the Royal Institution of Chartered Surveyors (RICS), the Chartered Institute of Arbitrators (CIArb), the Society of Construction Law (SCL), the Dispute Resolution Board Foundation (DRBF), the American Bar Association's Forum on the Construction Industry (ABA), the American College of Construction Lawyers (ACCL), the Canadian College of Construction Lawyers (CCCL) and the International Construction Lawyers Association (ICLA). All of these institutions and associations have dedicated themselves to promoting an in-depth analysis of the most important issues related to projects and construction law practice and I thank their leaders and members for their important support in the preparation of this book.

Project financing and construction law are highly specialised areas of legal practice. They are intrinsically functional and pragmatic and require the combination of a multitasking group of professionals – owners, contractors, bankers, insurers, brokers, architects, engineers, geologists, surveyors, public authorities and lawyers – each bringing their own knowledge and perspective to the table.

I am glad to say that we have a contribution from yet another new jurisdiction in this year's edition: Uzbekistan. Although there is an increased perception that project financing and construction law are global issues, the local flavour offered by leading experts in 22 countries has shown us that to understand the world we must first make sense of what happens locally; to further advance our understanding of the law we must resist the modern view (and vice?) that all that matters is global and what is regional is of no importance. Many thanks to all the authors and their law firms who graciously agreed to participate.

Finally, I dedicate this seventh edition of *The Projects and Construction Review* to SCL International, a worldwide federation or alliance of national or regional Society of Construction Law (SCL) organisations that aim to foster the academic and practical legal

aspects of the construction industry. We celebrate the success of SCL International's Biennial Conference in São Paulo in September 2016, but also the upcoming conferences in New Delhi (2017) and Chicago (2018). I thank the leaders of SCL International for all their support in the organisation of these events.

Júlio César Bueno

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Júlio César Bueno has been a partner at Pinheiro Neto Advogados since 2001. He is based in São Paulo and has considerable national and international experience focusing on the practice of construction law and engineering contracts (including the use of FIDIC standard forms), project finance, public procurement, as well on arbitration and mediation proceedings, and dispute boards.

He represents some of the world's largest organisations (owners, multilateral agencies, financial institutions, contractors and developers) in their global infrastructure and construction projects located throughout Brazil and the rest of Latin America, and in Africa. He assists clients across the entire project spectrum and recent examples include gas facilities, power plants (nuclear, coal-fired, gas-fired, combined cycle and hydro), wind farms, steel manufacturing facilities, copper mining facilities, coal mining facilities and ports.

He is the president of the Brazilian Society of Construction Law. He is also a member of the board of directors of Region 2 of the Dispute Resolution Board Foundation, and a former officer of the International Bar Association's Latin American Forum and the International Construction Projects Committee. He is also a fellow of the Chartered Institute of Arbitrators and the Royal Institution of Chartered Surveyors. He is a fellow of the International Academy of Construction Lawyers, the coordinator of the Dispute Board Commission of the Center for Arbitration and Mediation (CAM/CCBC), a co-coordinator of the Brazilian Arbitration Committee's working group dealing with arbitration in infrastructure contracts, a board member of the International Construction Law Association and a member of the Mediation and Arbitration Chamber of the Institute of Engineering of São Paulo and the Brazilian Institute of Civil Procedure Law.

He holds a law degree from the University of São Paulo Law School (LLB, 1991), a master's degree from the University of Cambridge (LLM, 1995) and a doctorate from the University of São Paulo Law School (PhD, 2001). He has published several articles on matters relating to civil procedure law, energy, engineering contracts, infrastructure and construction law.

He is recommended in *Who's Who Legal* (for construction, project finance, government contracts and public procurement); *Chambers Latin America* (for construction and projects, and dispute resolution); *IFLR1000* (for project finance); by Practical Law Company (for construction and projects); and Brazilian directory *Análise Advocacia 500* (for construction and projects, dispute resolution and contracts).

QATAR

Andrew Jones, Zaher Nammour and Sarah Sage¹

I INTRODUCTION

Qatar is a peninsula on the western side of the Gulf, with a land area approximately equivalent to Connecticut. As at the end of April 2017, the population stood at 2.67 million, of whom approximately 12 per cent are Qatari citizens.² This is an estimated annual average population growth of 4 per cent on the previous year.³ Qatar's population continued to grow throughout 2016; and the country has resumed its position as number one in the top countries in the world for net migration and number 16 population growth. The continued growth can be attributed in considerable part to the strength of the Qatari economy, which has shown some of the strongest year-on-year growth in the world throughout the global economic downturn. As a result of its economic success, together with its commitment to hosting the 2022 FIFA World Cup, Qatar is now undertaking an impressive array of infrastructure and industrial projects. The current Emir (as of July 2013) has renewed a focus on the country's domestic welfare, not only with ambitious infrastructure projects, but also through investment in healthcare and education facilities. The projects will be funded largely by the government, from its surpluses generated by Qatar's liquefied natural gas (LNG), oil, gas and petrochemical exports. Qatar has the third-largest natural gas reserves in the world (after Russia and Iran) and has the highest GDP per capita in the world.⁴ Qatar had the initial approval of the Council of Ministers to conduct the Qatar 2015 Mini-Census of Population, Housing and Establishment; however, no further update has since been published. This would be the fifth census of Qatar, the previous being conducted in 2010.

II THE YEAR IN REVIEW

Hydrocarbon production remains central to Qatar's economic strength, and it continues to provide the foundations for Qatar's current projections for growth. Despite the halving of oil prices from their 2014 highs, Qatar's economy continued to grow robustly in 2016, particularly in the non-hydrocarbon sector, where key infrastructure projects maintained progress.

In 2016, the non-hydrocarbon sector growth saw a more rapid acceleration than the hydrocarbon sector (with 5.6 per cent growth in the non-hydrocarbon sector recorded in 2016, particularly in construction, transport, communications and finance).⁵

1 Andrew Jones and Zaher Nammour are partners and Sarah Sage is an associate at Dentons.

2 Qatar Statistics Authority, 30 April 2016.

3 CIA World Factbook, updated 1 May 2017.

4 Ibid.

5 'Qatar Economic Insight', QNB report dated April 2017.

The slowdown of hydrocarbon growth is attributable to the large expansion of extraction and processing of these resources coming to an end. After the discovery of a new field of 2.5 trillion cubic feet in 2013, there remains in place a general moratorium on further exploration and development in the much larger North Field, holding approximately 900 trillion cubic feet of natural gas. This moratorium is part of the evolution of Qatar's hydrocarbon sector, as it moves from a phase of expansion into one of more mature stability and lower growth. The reduced rate of growth of Qatar's LNG and gas-to-liquids exports is, in part, connected to the global economic malaise, from which recovery is slow.⁶ This reflects the ongoing oil price crash, which has had an impact worldwide on the hydrocarbon sector. While Qatar has successfully accumulated a substantial buffer to prevent its economy suffering during this period,⁷ there are reports of projects being delayed or cancelled (e.g., the Al-Karaana petrochemicals scheme, with an estimated value of US\$6.5 billion, which was jointly abandoned by Qatar Petroleum and Royal Dutch Shell).⁸ Qatar's oil output is expected to be lower by more than 11 per cent year-on-year in 2017, in line with the decision of the Organisation of the Petroleum Exporting Countries to cut production. Qatar's oil production is estimated at 0.62 million barrels per day in 2017 against 0.7 million barrels per day in 2016 (i.e., a fall of 11.43 per cent). The change in focus is also driven by the strategy laid down in Qatar National Vision 2030 – a far-sighted programme to diversify the Qatari economy to lessen its reliance on the hydrocarbons sector and ensure its sustainable long-term development.

Despite the reduced growth of the hydrocarbon sector, Qatar is well positioned to withstand lower oil prices, having accumulated significant savings it can use to finance its programme of improvements and fiscal deficits.⁹ The fiscal surplus remained at 8 per cent (down from 15.6 per cent in 2013/2014)¹⁰ in year ending 31 March 2015, making Qatar the only Gulf Cooperation Council (GCC) member not to report a deficit in 2015; however, it had a US\$12 billion (7.8 per cent of GDP) deficit in 2016.¹¹ Growth in manufacturing, construction and financial services has pushed up the non-hydrocarbon sectors – these now account for just over half of Qatar's nominal GDP.¹² Hydrocarbons still account for 92 per cent of export earnings and 56 per cent of government revenues are derived from oil and gas.¹³ Much of the impetus and investment in infrastructure has been led by central government. The Ministry of Finance announced on 22 March 2015 that from then, the fiscal year in Qatar would run with the calendar year, starting in January 2016. As such, there was an extension to the 2014/2015 budget with an estimated total expenditure of US\$108.51 billion over the full 21 months (being the original 2014/2015 budgeted period plus the additional nine months until the end of the 2015 calendar year). In a statement regarding Qatar's 2017 budget, the Minister of Finance confirmed that the budget allocated to major projects in Qatar would be US\$24.6 billion, to ensure the implementation of development projects.¹⁴

6 International Monetary Fund's World Economic Outlook, April 2016.

7 'Qatar Economic Insight', QNB report dated September 2015.

8 Shell 2015 Media Releases dated 14 January 2015.

9 'Qatar Economic Insight', QNB report dated April 2017.

10 Ibid.

11 CIA World Factbook, updated 4 May 2016.

12 Ibid.

13 Ibid.

14 QIF Quarterly Report Q4 2016.

The main public projects that the government is currently undertaking include:

- a* Lusail Mixed-Use Development: a residential and commercial waterfront development valued at US\$45 billion;
- b* Qatar Integrated Rail: a new US\$40 billion railway and metro system, including urban metro, high-speed passenger railway and freight line;
- c* Ashghal Expressway Programme: the public works authority's US\$20 billion project to develop a number of major motorways;
- d* Hamad International Airport: the US\$15.5 billion project to expand the new airport by completing phase 2 and 3 of the development;
- e* Ashghal Local Roads and Drainage Programme, the US\$14.6 billion project under which the public works authority will complete a network of roads, drainage, utilities and related infrastructure;
- f* Bul Hanine Oilfield Redevelopment: the US\$11 billion Qatar Petroleum project to boost crude oil production in Qatar through new facilities expected to double the capacity of the oil field; and
- g* Barzan Gas Development: the US\$10.3 billion Ras Gas project to increase gas supply to the domestic market.

Of these projects, the Qatar Railways project is perhaps the most significant, in terms of its size both financially and from an engineering perspective. It is understood to be one of the largest civil engineering projects under way in the world, utilising 21 of the world's tunnel-boring machines on its underground metro development. Eleven multibillion-dollar contracts were awarded by 2014 for the design and construction of the tunnels and stations of the initial phase of the Doha Metro. These contracts will see the construction of the first 103 kilometres of the railway.¹⁵ Reportedly 89 per cent of the tunnelling work has now been completed and completion of the Doha Metro is scheduled for 2019/2020. The Lusail Light Railway is reported to be 35 per cent completed and completion is scheduled for 2020.¹⁶ In conjunction with these major civil engineering contracts, Qatar Railways issued invitations to tender for the delivery of all rolling stock, signalling, track and all associated systems required for the initial phase of the Doha Metro. On 1 February 2016 the contract was awarded to a consortium of Mitsubishi Heavy Industries, Mitsubishi Corporation, Hitachi, Kinki Sharyo and Thales for the turnkey construction of a fully automated driverless metro system along with a 20-year maintenance commitment.

All of these projects are being funded directly or indirectly by the government. However it is possible that project financing may play a greater role in the near future. On 15 March 2016 Qatar's Ministry of Economy and Finance announced plans to enact a new law by the end of 2016, to facilitate the use of public-private partnerships (PPP) in Qatar. It is possible that this move has been prompted by the enactment of new PPP legislation in Dubai in November 2015. As the Qatari economy is projected to experience its first deficit, the demand for private capital may increase. The remainder of this chapter concentrates on the forthcoming Qatar government-funded projects rather than project financing.

¹⁵ www.qr.com.qa.

¹⁶ Ibid.

The deadlines for delivery of many of the projects referred to above were set in December 2010, when Qatar succeeded in its bid to host the 2022 FIFA World Cup. Most of this infrastructure is promised and necessary for that event. Meeting the deadlines will be very challenging.

The steady stream of new entrants to the Qatari construction market – contractors, consultants and professional advisers – continued in 2015, albeit at a slower rate than previously. According to Economist Intelligence Unit estimates, Qatar's population is estimated to increase by 2.3 per cent.¹⁷ The deadline of 2022 remains in place; and the pressure is certainly present given that there is now simply less time in which to complete the projects called for by the FIFA World Cup. The public organisations responsible for delivery of the key projects – notably Qatar Rail and the Supreme Committee for Legacy and Delivery – have now established themselves and have taken appropriate steps to secure relevant powers and governance. For instance, in recent years, there have been a number of decisions issued by the then Minister of Municipality and Urban Planning,¹⁸ together with a new law, enabling Qatar Rail to acquire land and carry out tunnelling. There has also been a new Council of Ministers' Decision concerning Ashghal and new safety laws relating to the Civil Defence Department. In the beginning of 2014, those bodies, together with the other key infrastructure participants for new projects (the New Port Authority, the Public Works Authority (Ashghal) and Kahramaa, the state water and electricity company) began construction works in earnest.

III DOCUMENTS AND TRANSACTIONAL STRUCTURES

i Transactional structures

Apart from conventional project finance in the oil, gas, independent water and power production (IWPP) and petrochemical sectors, there has been no private finance of infrastructure in Qatar – for example, in transport, waste-water or social infrastructure. However, as mentioned above, if planned legislation is introduced to regulate PPPs it is possible that more private financing will be utilised in Qatar. Previous failed attempts to introduce private finance into rail, road, port and water projects in Saudi Arabia, Abu Dhabi and Jordan provide salutary reminders of the difficulties posed by the additional complexity of risk allocation and documentation (among other factors). Nevertheless, recently successful PPP projects in the GCC have demonstrated that this vehicle is a viable option, for example, the New Madinah Airport in Saudi Arabia. To this end build-operate-transfer procurement, or longer-term design-build-operate contracts are under serious consideration in Qatar and may be used for limited categories of infrastructure, for example, waste-water treatment plants. Although access to private capital is unlikely to be a driving factor, they could provide benefits from more efficient and economic procurement and operation. Up to now, almost all publicly funded procurement has been on the basis of the project owner appointing design consultants and issuing design to construction-only contractors. Design-build (DB) is the exception.

17 The Economist Intelligence Unit, updated 20 April 2017.

18 The Ministry of Municipality and Urban Planning became the Ministry of Municipality and Environment on 27 January 2016 as a result of Emiri Decision No. 5 of 2016.

ii Documentation

Documentation outside project financing is conventional and makes use of standard forms of construction contracts and consultants' appointments. Qatar Petroleum has historically been the repository for project management expertise in Qatar. It has sometimes managed projects on behalf of other public bodies, such as Qatar Foundation, and has used its own standard documents on those projects. For flagship buildings where architectural design and innovation are paramount (rather than functional performance) this has had mixed results. Qatar Petroleum has joined forces with Qatar Foundation to establish a joint venture separate project management arm called Astad Project Management. Ashghal, the public works authority has its own standard documentation.

International Federation of Consulting Engineers (FIDIC) forms of contract are becoming more widely used. In April 2012 tender invitation documents were issued by Qatar Rail Company to pre-qualified consortiums for the first four large tunnelling contracts and one stations contract for the new Doha Metro. Four of these packages have already been awarded. Further invitations to tender have been sent out for the procurement of all relevant systems – including rolling stock, signalling, telecoms, power and track works – required to operate the Doha Metro. All of these contracts will be based on a bespoke DB form of contract that Qatar Rail has developed, drawing on the 1999 FIDIC Yellow Book as a base.

In the past, the quality of contract documentation has frequently not been as high as might be expected for the size and complexity of projects undertaken.

The NEC contract is not used, nor are the UK JCT contracts.

iii Delivery methods and standard forms

Both in the public and private sector, attitudes to contracting are generally traditional, and long-term relationships and trust do not play a major role. There is some cynicism among international bidders as to the relative importance of quality and price in the evaluation of contractors' tenders.

IV RISK ALLOCATION AND MANAGEMENT

i Management of risks

The prevailing approach by owners tends to be to maximise risk transfer to contractors (and consultants). Risk of unforeseen ground conditions is usually sought to be placed on contractors. Change-in-law risk is also sometimes sought to be transferred to the contractor. Risk of increases in the price of materials is expected to be borne by contractors as are delays due to scarcity of materials and delays in approval procedures and import procedures. Material price fluctuations caused considerable difficulties in recent years with the boom followed by contraction of the regional construction market, which caused key material prices to rise and fall dramatically. With the anticipated boom in construction activity in Qatar, headline inflation picked up to 2.7 per cent in 2016 from 1.7 per cent in 2015. Inflation is expected to slow to 0.9 per cent in 2017, then pick up to 3.3 per cent in 2018 with the introduction of VAT.¹⁹

Generally speaking, Qatar should be considered a high-risk environment for contractors. Those who enter into fixed-price lump-sum contracts are expected to stick to

19 'Qatar Economic Insight', QNB report dated April 2017.

the fixed price, with a reluctance to recognise rights to compensation for delays caused by variations, late or inadequate design or information issues, late site access or late payment (the latter being common).

ii Limitation of liability

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

- a Liability resulting from 'deceit or gross mistake', which under Article 259 of Law No. 22 of 2004, the Civil Law, cannot be limited or excluded (except in the case of deceit or gross mistake on the part of subcontractors).
- b It is not permissible to exclude liability arising in respect of future unjust acts (very broadly corresponding to *acte illicite* or tort).
- c Decennial liability under Article 711 of the Civil Law. This is a joint guarantee imposed on a contractor and architect for 10 years against 'the total or partial collapse or fault in the buildings [. . .] or fixed constructions [. . .] and this guarantee shall cover whatever defects shall appear [. . .] which threaten its sturdiness and safety'. Liability under Article 711 cannot be excluded or limited.
- d Under Article 171 (2) of the Civil Law a court or arbitral tribunal may, after weighing up the interests of the parties, reduce an 'exhausting' contractual obligation to 'a reasonable margin' if:
 - 'public exceptional incidents' occur that could not have been expected; and
 - the occurrence of them makes fulfilment of the contractual obligation 'though not impossible, exhausting to the debtor and threatens him with grave loss'.

This provision may not be excluded by agreement.
- e Under Article 266 of the Civil Law, where damages are pre-estimated or liquidated, the agreed amount may not be due if the debtor can show that no loss has been suffered by the creditor; or the level of the pre-agreed damages was 'exaggerated to a high degree'; or the obligation has been partially performed. In that case, the court or arbitral tribunal may reduce the compensation due. This Article may not be excluded by agreement.

Liability for liquidated damages for delay is often capped at between 5 and 10 per cent of the contract price. Overall contractual liability is often capped, depending upon the nature of the work, between 100 and 200 per cent of the contract price. Examples of liabilities that are commonly excluded from the agreed overall liability cap include: indemnities relating to intellectual property rights; liabilities recovered by the party in breach under insurance policies; liability for death and personal injury; and sometimes property damage.

Liquidated damages are commonly applied for delay in completion of work under contracts for both contractors and consultants. It is becoming common for employers to seek to impose liquidated damages upon consultants for failing to mobilise and maintain key personnel.

Force majeure provisions are common in contracts and are generally enforceable. Unclear drafting often makes it difficult to establish with any certainty the effect of the clause in specific cases. Article 171 of the Civil Law is also relevant in relation to *force majeure* scenarios.

Article 258 of the Civil Law allows the parties to agree that the debtor will be liable for the consequences of *force majeure*. Accordingly, if a contract term places this risk on a party it will generally be enforceable, subject to Article 171.

iii Political risks

Qatar is politically stable. There has been no civil unrest or protest such as in other countries affected by the Arab Spring. Other than the influence of forces affecting the Middle East or the Gulf region generally, political risk would not usually be considered a major factor for contractors. Long-term project finance lenders may of course be more cautious. Qatar long-term debt presently enjoys a credit rating from Moody's of Aa2 (as does Qatar Petroleum), but on 4 March 2016 Moody's took the decision to place Qatar's Aa2 credit rating on review for downgrade.²⁰ Standard & Poor's continues to affirm Qatar's AA long-term and A-1+ short-term foreign and local currency sovereign credit rating.²¹

Article 27 of the Qatari Constitution states: 'Private property is inviolable; and no one shall be deprived of his property save by reason of public benefit and in the cases prescribed by the Law and in the manner stated therein provided that the person concerned is fairly compensated.'

The Qatari riyal is freely convertible and its value is pegged to a fixed rate of exchange with the US dollar.

V SECURITY AND COLLATERAL

Corporate borrowings from banks licensed by the Qatar Central Bank are required to be guaranteed by the borrowing company's shareholders, except in the case of public companies or if the Qatar Central Bank specifically waives this requirement. In cases where banks fund private development lenders will also take traditional mortgage security or where this is legally not possible will typically take an assignment of contractual rights. This happens, for example, where the borrower's legal interest in the land being developed cannot be registered until the development is completed physically.

VI BONDS

Public sector bodies are presently governed by Law No. 26 of 2005 establishing the Law Organising Tenders and Auctions (the Public Tenders Law) as amended by Law No. 22 of 2008 and No. 14 of 2010. The Public Tenders Law is due to be updated as more particularly described in Section IX.ii, below. Under the Public Tenders Law, public sector bodies are required, *inter alia*, to obtain tender bonds from bidders, payable on demand. Project owners commonly require from contractors (and consequently, contractors commonly require from subcontractors) on-demand performance bonds, usually of 10 per cent of the contract price. Advance payments are common, and are made against on-demand bank guarantees. Also commonly required as security for performance of construction contracts are retentions of up to 10 per cent and robust forms of parent company guarantees. Collateral warranties, whether from main contractors and consultants in favour of end users, or from subcontractors and sub-consultants, are not common in the Qatar market and are seen as onerous by contractors and consultants. There are signs, however, that there may be increasing expectations for these.

20 www.moody.com.

21 www.standardandpoors.com.

VII ENFORCEMENT OF SECURITY AND BANKRUPTCY PROCEEDINGS

In Qatar, insolvency is mainly dealt with in Law No. 27 of 2006 (as amended by Law No. 7 of 2010), the Commercial Law. The relevant provisions can be found under Title Six entitled 'Bankruptcy and Preventive Conciliation'. Below is an indicative but not exhaustive list of some of the other provisions that govern insolvency and preferential claims:

- a* the Civil Law;
- b* Law No. 11 of 2015 – the New Commercial Companies Law;
- c* Law No. 14 of 2004 (as amended by Decree-Law No. 22 of 2007, Law No. 6 of 2009; Law No. 3 of 2014 and Law No. 1 of 2015) – the Labour Law (note this will be amended one year from Law No. 21 of 2015 being published in the Official Gazette on 27 October 2015, details of which are provided below); and
- d* Law No. 40 of 2002 – the Customs Law.

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

VIII SOCIO-ENVIRONMENTAL ISSUES

i Licensing and permits

It is not possible to provide an exhaustive list of regulation and legislation that would affect projects. The following is a general and selective commentary on some matters likely to affect publicly funded building projects.

- a* all entities carrying on business in Qatar must be properly registered with the Ministry of Economy and Commerce. Foreign ownership of companies is regulated;
- b* planning permission from the municipality;
- c* preliminary approval by the relevant municipality to open a file;
- d* fire safety clearance from the Civil Defence Department (CDD);
- e* clearance for road design and access from the Road Construction Department at the Ministry of Municipality and Urban Planning (MMUP);
- f* clearance for power and water service delivery from Kahramaa;
- g* clearance for telecom service delivery from Ooredoo (the new name for QTel);
- h* clearance from the Building Permit Department of the MMUP;
- i* final building permit approval from the municipality;
- j* submitting a public announcement of the construction project at the municipality;
- k* fire safety approval from the CDD;
- l* certificate of completion from the municipality; and
- m* registration of the building at the municipality.

Engineering-related activities in Qatar are regulated by Law No. 19 of 2005 (the Engineering Law) together with executive regulations made under it. 'Engineering' is widely defined and includes architecture, civil, electromechanical, mining, quantity surveying services and project management activities. Each person or firm performing engineering works in Qatar must obtain a licence from the Engineering Committee of the MMUP. The requirements to obtain a licence are extensive and usually take a long time to satisfy. In some circumstances an exemption from the requirement to hold a licence may be granted to non-Qatari persons or

organisations. An update to this law was passed in January 2014, Law No. 2 of 2014, which amended some provisions of Law No. 19 of 2005 regarding the practice of the engineering profession. These changes do not amend the substantive requirement for engineers to obtain a licence before practising in Qatar or indeed any changes to the registration process, but amend the length of validity of individual engineers' licences and amend the make-up of the committee who approve the registration of engineers and engineering firms in Qatar.

Environmental issues

The Supreme Council for Environment and Natural Reserves and the Ministry of the Environment are the competent authorities for environmental protection matters in Qatar. There are a number of environmental laws. Two of the most relevant are:

- a* Law No. 30 of 2002 – Law of Environment Protection (the Environmental Protection Law) and executive regulations made under it. These provide that all plans for public or private development projects must be submitted to the authorities for approval; and
- b* Law No. 4 of 1983 (as amended) concerning Exploitation and Protection of Aquatic Life in Qatar. This prohibits certain harmful discharges into internal waters without approval.

Environmental protection is gaining more importance in Qatar and the role of the environmental authorities is expanding, especially in the approval process of construction projects. Environmental impact assessments may be required for some projects.

Sustainable development is gaining increasing attention in Qatar. Several projects are aiming to meet sustainable standards, such as the central Doha regeneration project for Msheireb Properties. In general, US Leadership in Energy and Environmental Design (known as LEED) standards are the prevailing rating system.

Labour laws

An employer must obtain permission from the Recruitment Committee at the Labour Department of the Ministry of Labour and Social Affairs to employ foreign employees. Once obtained, the employer must apply for a work visa so that the employee may enter Qatar. Within seven days of the employee's arrival in Qatar, the residence permit procedure must be commenced so that an employee may work and reside in Qatar. The permit will have to be renewed periodically during the course of the employment in Qatar.

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

Although not strictly a labour law, Law No. 21 of 2015 (essentially, the Residency Law) is also relevant in relation to employee residency arrangements. This applies to all non-Qatari nationals working and residing in Qatar, aside from those working under the auspices of the Qatar Financial Centre (see Section XI, *infra*). Law No. 21 of 2015 will come into force one year from being published in the Official Gazette on 27 October 2015, replacing the existing *kefala* (sponsorship) system in favour of a contract-based system that will give expatriates more freedom to move jobs in Qatar. Previously, if an employee was unable to get a no-objection certificate from his or her 'sponsor' while attempting a job transfer, he or she would be banned from the country for a period of two years before being able to come back in search of new employment. Articles 20 and 22 of the Residency Law allow employees

who have completed their contracts to seek new employment and move to another sponsor without the approval of their previous 'recruiter'. They are also able to change jobs before their contract finishes with the approval from their recruiter, the MOI, and the Ministry of Labour and Social Affairs (MOLSA). However, employees with open-ended contracts are able to seek approval for a change of job after five years of work. Nonetheless, if a company ceases to exist, the recruiter passes away, or the recruiter and the employee are in a lawsuit battle against each other, the employee is able to move to another recruiter or employer, subject to permission from the MOI and the MOLSA. The existing exit permit system has been replaced, allowing expatriates to freely leave the country without obtaining their employer's permission. Additionally, the penalty for withholding employees' passports will be increased from 10,000 riyals to 25,000 riyals.

Health and safety

Part 10 of the Labour Law imposes a range of health and safety-related obligations upon employers.

IX PPP AND OTHER PUBLIC PROCUREMENT METHODS

i PPP

So far there has not been any trend towards PPP procurement as generally understood in Europe and the United States. Consideration is currently being given to the possible future use of some kind of PPP-type arrangements. A report on the subject was prepared for the Qatar Ministry of Economy and Finance and the Qatar Financial Centre Authority in February 2012.

There is no legislation that applies specifically to PPPs but, as mentioned above, the Ministry of Economy and Finance has announced its intention to introduce new legislation to govern PPP vehicles in Qatar. It remains to be seen if this will prompt an upswing in the take-up of PPP arrangements in Qatar. In view of the very pressing deadlines for infrastructure delivery, the additional complexity of PPP arrangements and frequently prolonged negotiations prior to contract award are likely to argue against widespread use of PPP in the near future.

ii Public procurement

The principal law regulating public procurement is the Public Tenders Law (see Section VI, *supra*). On 18 November 2015, the Emir his highness Sheikh Tamim bin Hamad Al Thani issued Law No. 24 of 2015 to regulate public tenders and auctions.²² The new law took effect on 13 June 2016. The new law sets out to revamp and modernise the governmental contracting process by introducing competition as a method of procurement for technical works, including drawing and design. A two-stage tendering process has been instituted to assist bidders by defining the technical requirements and the scope of work. This should help secure appointments of the right contractor, agreed costs and an appropriate transfer of risk. The new law requires relevant government employees to declare any potential conflicts of interest direct or indirect, in any governmental contract to bring Qatar in line with international best practice. A dispute resolution committee has been introduced to hear all

22 As reported in the Qatar News Agency on 19 November 2015.

pre-contract disputes. This will be headed by a senior judge and provides a specialised forum to resolve disputes, in relation to government contracts. The new tenders law applies to most governmental and quasi governmental contracts of the State of Qatar. It can also extend to apply to private entities in receipt of state funding. The new tenders law is subject to specific by-laws, which have not yet been made available by the Ministry of Finance, as a result it is difficult to predict how the new law will work in practice.

The Public Tenders Law applies to all ministries and other government bodies and to public institutions and corporations except as otherwise provided in the law establishing them. The Public Tenders Law does not apply to the armed forces or police in the case of confidential procurements, nor does it apply to Qatar Petroleum.

The legislation establishing publicly funded bodies may apply special procurement procedures to those bodies in place of, or in addition to, the Public Tenders Law. The laws establishing the bodies must be looked at to determine what procurement procedures apply.

The Central Tenders Committee deals with tenders over 5 million Qatari riyals in value, and is attached to the Ministry of Economy and Finance. From 13 June 2016 the Local Tenders Committee will process all public tenders valued at 5 million Qatari riyals or less. The procedures are prescriptive and detailed.

X FOREIGN INVESTMENT AND CROSS-BORDER ISSUES

Regulation of foreign ownership of Qatari companies is referred to above, but the detail is outside the scope of this chapter.

i Removal of profits and investment

There are currently no exchange control restrictions in Qatar and subject to payment of taxes there are no restrictions on remittances of investment returns. However, under Law No. 21 of 2009 (the Income Tax Law) a withholding tax of 7 per cent is payable on interest payments made to non-residents. This is subject to important exceptions. Under Article 21(4) of the Executive Regulations of the Income Tax Law, the following, *inter alia*, are not to be regarded as subject to the withholding tax:

- a* interest on bonds and securities issued by the state and public authorities, establishments and corporations owned wholly or partly by the state; and
- b* interest on transactions, facilities and loans with banks and financial institutions.

Advice as to how the Income Tax Law is in practice applied by the tax authorities should always be sought before entering into transactions.

XI DISPUTE RESOLUTION

i Special jurisdiction

There are no specific courts or tribunals in Qatar dealing with project finance transactions or construction contracts. Such disputes will be heard in the Qatari courts unless referred to arbitration or unless the Qatar Financial Centre laws apply.

In 2005, the Qatar Financial Centre (QFC) was established under Law No. 7 of 2005 (as amended), the Qatar Financial Centre Law. The QFC perhaps can best be considered as a separate jurisdiction within the state of Qatar, for businesses established in the QFC (i.e., pursuant to the specific QFC laws and regulations). The QFC has to date had little impact

on the project finance or construction sectors, since the QFC objectives are to promote the establishment and conduct of international banking, financial services, insurance and associated businesses. The QFC has its own court, the Civil and Commercial Court of the Qatar Financial Centre, which has recently been restyled the Qatar International Court and Dispute Resolution Centre (QIC-DRC). The Court is staffed (on a visiting basis) by a number of very distinguished judges from various civil and common law jurisdictions. The Rt Hon the Lord Phillips, the immediate past president of the Supreme Court of the United Kingdom, is the current president of the QIC-DRC.

Since its establishment few cases have been heard by the QIC-DRC. The boundaries of its jurisdiction are as yet not tested. The QIC-DRC is currently promoting the use of its services, particularly for ADR, in the construction sector through a construction dispute resolution system known as Q-Construct, which is akin to construction adjudication in certain common law countries. So far, the public bodies now embarking on procurements have yet to show an appetite to provide in their contracts for use of services such as Q-Construct or dispute adjudication boards.

The language of the QIC-DRC may be Arabic or English and rights of audience are governed by Article 29 of the QFC Civil and Commercial Court Regulations and Procedural Rules (December 2010). The Court has extremely well-equipped modern facilities and hearings can take place by video link.

ii Arbitration and ADR

Arbitration

Construction contracts in Qatar, particularly in the private sector, commonly provide for disputes to be resolved by arbitration. In the public sector and oil and gas sector, some employers are willing to agree arbitration provisions, but others, such as Ashghal, are more traditional and their standard terms refer disputes to the Qatari courts. Traditionally, the courts and practising lawyers have been circumspect in their view of arbitration. However a significant development has taken place this year, with the passing of a new arbitration law to replace the law found at Articles 190 to 210 of Law No. 13 of 1990 (the Civil and Commercial Code of Procedure) (as amended)). Law No. 2 of 2017 (the New Arbitration Law) was enacted on 16 February 2017 and came into force on 13 April 2017.

This is the first significant update to the state's arbitration law since 1990. Historically, lawyers have tended to regard arbitration as merely adding a tier to the bottom of the court process. However, through the introduction of the new law, it is hoped that the New Arbitration Law will remove any lingering doubts about Qatar's approach to enforcement of arbitral awards, making arbitration a credible alternative to the local courts.

Some of the major developments from the introduction of the New Arbitration Law include: arbitration agreements can be made electronically; authority for a public entity to arbitrate must come from the Prime Minister; the Ministry of Justice will maintain a list of approved people who can act as arbitrators; and the New Arbitration Law sets out qualifications that must be satisfied if parties wish to nominate an arbitrator who is not on the Ministry's list.

Public sector employers who do accept arbitration provisions require Qatar to be the seat of the arbitration. This is also usual, but not universal, in arbitration agreements between private sector bodies (e.g., between main contractor and subcontractor).

The International Chamber of Commerce (ICC) is the most commonly accepted international arbitration institution. The London Court of International Arbitration

is occasionally an agreed choice. The Qatar International Centre for Conciliation and Arbitration operates under the auspices of the Qatar Chamber of Commerce and Industry and publishes its own rules for mediation and arbitration. The QIC-DRC also has its own procedural regulations for arbitration,²³ which apply when the QFC is the seat of arbitration.

Apart from arbitration, the use of formal ADR is not widespread. A small number of projects have adopted FIDIC dispute adjudication boards, but others using FIDIC contracts have deleted these provisions. As noted above, the QIC-DRC is promoting its services for ADR in the construction sector through its proposed Q-Construct scheme.

Where construction disputes are referred to the courts, they are almost invariably referred by the judge to a court-appointed expert who will investigate the facts and merits of the case and report to the judge. All proceedings in the Qatari courts are in Arabic and all documents referred to must be translated into Arabic. It would be difficult to predict with confidence the outcome of a large and complex construction dispute, heavy on documentation, as to the court's judgment and the time and cost involved.

Qatar became a signatory to the New York Convention in 2003. There have been few, if any, applications since then to enforce foreign awards. A small number of foreign awards had been enforced in Qatar on other grounds prior to Qatar's accession to the Convention. However, a decision in 2014 has indicated a 'positive step towards a full recognition and enforcement of foreign awards' in the Qatari courts.²⁴ In this instance, at a hearing in early April 2014, the Qatari Supreme Court (the highest jurisdiction of Qatar) overturned the judgment of the court of appeal that set aside an ICC arbitral award as being in violation of the Qatari public policy.

XII OUTLOOK AND CONCLUSIONS

As Qatar continues to prepare itself for the 2022 FIFA World Cup, it will undertake an extraordinary and ambitious programme of infrastructure development, which will be almost entirely publicly funded rather than project financed. In the oil, gas, petrochemical and IWPP sectors there have been successful project financings and further development in these sectors could be expected to be project financed. When Qatar agreed to host the 2022 FIFA World Cup, it signed up to fixed deadlines for delivery of a number of major infrastructure projects. Those time limits were ambitious even in December 2010 when Qatar won the bid; since then almost six years have passed without significant physical progress on a number of key projects. The next six years will be a period of great change in the built environment of Qatar and its transport systems, and one of great challenge to contractors, developers, designers, planners and logisticians. The anticipation of great opportunities has attracted keen interest from international contractors. Ensuring contracts have a successful financial outcome for those participants will, as always, need skill and patience in navigating the risks involved.

23 Regulation No. 8 of 2005.

24 Kluwer Arbitration Blog, 'A Half-tone Application of the New York Convention by the Qatari Supreme Court', by Minas Khatchadourian, posted 14 April 2014.

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Most recently Andrew has been involved in cases regarding issues arising from delay to projects, loss and expense, termination issues, final account disputes, professional negligence and defects.

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Zaher has practised law in the Middle East for over 14 years, including 12 years in Qatar. Zaher has extensive experience in corporate joint ventures, mergers and acquisitions, restructuring, corporate governance, public offerings, private placements and the related regulatory framework. Zaher has advised on restructuring and acquisition of multimillion-dollar companies in Qatar and abroad. He is also specialised in the field of regulatory compliance associated with funds, sukuk, IPOs and state bonds.

In addition to his corporate expertise, Zaher is also recognised for his real estate experience. Over the years, he has counselled both foreign investors as well as local entities (private and governmental) on a number of large-scale infrastructure projects including the Pearl, Lusail and the Qatar Integrated Railway Project.

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Sarah Sage is a senior associate in the construction team at Dentons' Doha office. She previously worked in London prior to moving to Doha in 2013. Sarah principally specialises in construction and infrastructure development and also advises on local and international arbitration.

Sarah has acted for many UK-based clients, including funders and finance institutions, private sector developers and public sector bodies. She also has experience acting for contractors, developers and consultants in the Middle East (Dubai and Doha) on infrastructure development projects, as well as in bringing and defending claims in arbitration.