THE PROJECTS AND CONSTRUCTION REVIEW

EIGHTH EDITION

Editor
Júlio César Bueno

THE LAWREVIEWS

Chapter 16

QATAR

Andrew Jones, Zaher Nammour and Marcus Angell[1]

I INTRODUCTION

Qatar is a small peninsular country on the western side of the Gulf, with a population of around 2.68 million.[2] The country is primarily comprised of economic migrants with Qatari citizens making up only 12 per cent of the total population.[3] Although it has lost its mantle as the country with the highest net migration in the world to the third-highest this year,[4] its average population growth of 2.2. per cent[5] is still set to continue off the back of these high migration levels. Qatar's economy has also continued to grow despite the new geopolitical context in the Gulf Cooperation Council (GCC) and it is likely that Qatar's economy will only continue to do so for the foreseeable future. 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 (in power since July 2013) has brought a renewed focus to the country's domestic welfare through implementing the National Development Strategy, which includes not only ambitious infrastructure projects, but also extensive investment in healthcare and education. These projects will primarily be funded by government surpluses generated through Qatar's extensive liquefied natural gas (LNG), oil, gas and petrochemical exports. While Qatar has managed to achieve its impressive growth (including having the second-highest GDP per capita in the world[6]) primarily because of having the third-largest natural gas reserves in the world, it is now planning on diversifying its economy to ensure the sustainability of its growth.

II THE YEAR IN REVIEW

It would be remiss to review Qatar's economic strength without consideration of its levels of hydrocarbon production, which remain strong and the significant definer of its economy. While in 2017 there was a slight contraction in the hydrocarbon sector of 1.1 per cent[7] as a result of the Organization of the Petroleum Exporting Countries' (OPEC) output cuts and

1 Andrew Jones and Zaher Nammour are partners, and Marcus Angell is an associate, at Dentons.
2 Ministry of Development Planning and Statistics monthly figures on population; March 2018.
3 CIA World Factbook, updated 2 April 2018.
4 Ibid.
5 Ibid.
6 Ibid.
7 'Qatar Economic Insight' QNB report dated December 2017.

maintenance on LNG trains, this has been compensated by growth in the non-hydrocarbon sectors, which grew 4.2 per cent.[8] This is primarily because of Qatar's continued expansion of its construction, transport, communication and finance industries.

While reduction in hydrocarbon growth is mostly attributable to OPEC output cuts, after the discovery of a new field of 2.5 trillion cubic feet of natural gas in 2013, there was a general moratorium on further exploration and development in the much larger North Field (which holds approximately 900 trillion cubic feet of natural gas) therefore further deterring hydrocarbon exploitation there. However, this moratorium was lifted in April 2017, and hydrocarbon production is predicted to increase dramatically over the forthcoming years, with Qatar Petroleum announcing an increase of LNG production of 30 per cent within the next five to seven years.[9]

Oil production is also set to increase over the next five years as the price of oil is predicted to reach US$63 per barrel this year owing to OPEC's production arrangements and the increase in oil demand in the improving global economy.[10] Previously Qatar successfully accumulated a substantial buffer to prevent its economy from suffering during 2016. Further, it had expressed a desire to develop its economy sustainably by increasing its production in sectors other than hydrocarbons. However, in addition to this, it is aiming to increase production of oil to maximise profit with forecasts estimating Qatar to achieve production of around 608,000 barrels per day this year and trending to around 600,000 barrels per day by 2020.[11]

The slowdown of hydrocarbon growth is attributable to the large expansion of extraction and the processing of these resources coming to an end. This is part of the evolution of Qatar's hydrocarbon sector, as it moves from a phase of expansion into one of mature stability and lower growth. This is something that has been articulated in the National Development Strategy as Qatar aims to move to a less volatile and more sustainable economy. Although this is the long-term ambition and Qatar had reduced the rate of growth of its LNG exports in previous years, it is also looking to ensure revenue from these industries remains as high as possible in order to continue developing infrastructure for the World Cup in 2022 and to meet Qatar's National Vision by 2030.[12]

Growth in manufacturing, construction and financial services has pushed up the non-hydrocarbon sectors which now account for just over half of Qatar's nominal GDP.[13] Hydrocarbons account for 80 per cent of export earnings and 90 per cent of government revenues are derived from oil and gas.[14] Although much of the impetus and investment in infrastructure has been led by central government, Qatar is seeking to attract more private investment in forthcoming years, as shown in the Qatar National Strategy 2017.

With regards to national debt, despite the low oil price in 2016, Qatar was well positioned to withstand this as it had previously accumulated significant savings to finance its fiscal policy and corresponding deficit.[15] For example, the fiscal surplus in 2015 was 8 per cent[16] making

8 'Qatar Economic Insight' QNB report dated December 2017.
9 'Qatar Economic Insight', QNB report dated December 2017.
10 Ibid.
11 Trading Economics.com.
12 Qatar Economic Insight', QNB report dated December 2017.
13 CIA World Factbook, updated 2 April 2018.
14 Worldbank.org.
15 'Qatar Economic Insight', QNB report dated April 2017.
16 'Qatar Economic Insight', QNB report dated April 2017.

Qatar the only GCC state not to have suffered a deficit that year. While its fiscal deficit was 5.5 per cent of GDP in 2017,[17] with predicted increased energy prices this should reduce in the coming years.[18]

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 2018 budget, the Minister of Finance confirmed that the budget allocated to major projects in Qatar has increased by 2.4 per cent from the budget plan for 2017, to US$55.8 billion.[19] This is in order to ensure the implementation of development projects, which mainly revolve around health, education and transport.[20] Allocations for the health sector were 22.7 billion Qatari riyals, representing 11.2 per cent of the total expenditure in 2018 whereas the education sector has an allocation of 19 billion Qatari riyals in the 2018 budget, up by 19 per cent compared with 2017. However, transport continues to be the most significant sector in public projects with allocations of 42 billion Qatari riyals, 21 per cent of total expenditure.

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

a Sports sector and 2022 FIFA World Cup Stadia: construction costs to amount to between US$8 billion and US$10 billion. In addition, up to US$200 billion is being spent on wider infrastructure required to host the 2022 World Cup. These are primarily focused on the completion of stadiums in Lusail, Qatar Foundation, Al Rayyan, Al Wakrah and Al Khor in addition to other sport projects. Qatar completed the Khalifa International Stadium, its first stadium, in May 2017;

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. These include the Al Bustan Highway, Orbital Expressway, Al Rayyan–Dukhan road and the Al Khor Coastal Road in order to relieve traffic congestion;

d 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;

e Hamad International Airport Expansion: the project budget is US$15.5 billion for an additional 400,000 square metre extension of the existing airport terminal;

f Lusail City Development: a residential and commercial waterfront development valued at US$45 billion;

g Msheireb Downtown Doha Regeneration project valued at US$4.5 billion. Msheireb will be the first fully sustainable downtown regeneration project, conserving yet modernising the historical downtown of Doha in a mixed-use development;

h New Port : design and construction of food security facilities and warehouses valued at US$439 billion;

17 *Gulf Times* article dated 2 March 2018.

18 QNB Qatar Monthly Monitor March 2018.

19 *Gulf Times* article dated 12 December 2017.

20 http://www.projectqatar.com/market-insights.

i 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

j Barzan Gas Development: the US$10.3 billion Ras Gas project to increase gas supply to the domestic market.

Of these projects, the Qatar Rail 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 largest tunnel boring machines on its underground metro development. Eleven multibillion-dollar contracts had been 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.[21] 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 scheduled for completion in January 2019.[22] In conjunction with these major civil engineering contracts, Qatar Rail 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. Discussions on Qatar's plan to enact a new law to facilitate the use of public-private partnerships (PPPs) are still ongoing. 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.

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. However, the projects related to the health and education sectors are part of the Qatar National Strategy, which aims for a greater standard of living for its citizens whilst holding sustainability in high regard.

The deadline of 2022 is fast approaching, 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,[23] together with a new law, enabling Qatar Rail to acquire

21 www.qr.com.qa.

22 www.qdvc.com.

23 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.

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. At 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, such access 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.

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 the Qatar Rail Company to pre-qualified consortiums for the first four large tunnelling contracts and one railway station 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 given 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

In both the public and private sectors, 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 slowed to 0.4 per cent throughout 2017. However, it is set to increase 2.4 per cent in 2018 with the introduction of VAT.[24] Food prices increased by 3.9 per cent from June 2017 to November 2017 owing to the impact of the blockade from other GCC nations, resulting in Qatar having to import food from further afield. However, there was deflation in house prices by an average of 2.8 per cent owing to the increasing amount of accommodation becoming available in preparation for the World Cup.

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 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 last of these 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 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.

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

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. Article 266 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

Despite the current geopolitical context in the GCC, progress on Qatar's ongoing construction projects has continued. In mid 2017, Saudi Arabia, the United Arab Emirates, Egypt and Bahrain elected to begin a blockade against Qatar. As a result of this, Qatar's existing alliances with trading partners (e.g., Turkey and Oman) have been strengthened. This boosted import levels to pre-blockade levels by August.[25] Despite the inevitable challenges of the blockade, with Qatar's new established trading partners and routes, Qatar remains in a strong position for the World Cup in 2022. That said, long-term project finance lenders have been more cautious. Qatar's long-term debt presently enjoys a credit rating from Moody's of AA3, which is a decline from Moody's credit rating score of AA2 in March 2016. Standard & Poor's has also maintained Qatar's credit rating from of a AA- and A-1+ short-term foreign and local currency sovereign credit rating.[26]

25 'Qatar Economic Insight', QNB report dated December 2017.

26 www.standardandpoors.com.

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.

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, lenders 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.

V BONDS

Public sector bodies are 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 described in Section VIII.ii. Under this 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.

VI 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; 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.

VII SOCIO-ENVIRONMENTAL ISSUES

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 telecoms 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, electro-mechanical, 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 engineer's licences and amend the make-up of the committee that approves the registration of engineers and engineering firms in Qatar.

i 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. Three 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;
- *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; and

c Law No. 8 of 2017 regulating Maritime Business in the Water of the State of Qatar provides that Qatari and non-Qatari maritime ships may not engage in maritime business in the waters of the state of Qatar, except upon the obtaining of a licence from the competent department in accordance with the provisions of this law.

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. EIAs may be required for some projects.

Sustainable development is also gaining increasing attention in Qatar. Several projects are aiming to meet sustainable standards, such as the central Doha regeneration project for Msheireb Properties. The importance of sustainability was further expressed within the National Development Strategy for 2018–2022. This sets out plans for more food to be produced domestically and for optimising hydrocarbon sources to maximise their economic and strategic value to the nation. This is coupled with an intention to be more environmentally friendly with a smaller carbon footprint. The plan also includes increasing renewable energy sources, for example, through the issuing of Decree No. 19 of 2018 for Qatar General Electricity and Water Corporation to allocate land for a solar power plant.

ii 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. 15 of 2016 (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 X). Law No. 21 of 2015 came into force one year after being published in the Official Gazette on 27 October 2015, replacing the existing *kefala* (sponsorship) system in favour of a contract-based system that gives expatriates more freedom to move jobs in Qatar. Previously, if an employee was unable to get a no-objection certificate (NOC) from their 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 allows 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 Ministry of Interior (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 dies or the recruiter and the employee are involved a legal battle against each other, the employee is able to move to another recruiter after 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 Qatari riyals to 25,000 Qatari riyals.

Qatar recently enacted Law No. (13) of 2017 amending certain provisions of the Labour Law and Law No. 13 of 1990 (the Civil and Commercial Procedures). The Law sets out a specific procedure for an employee to appeal a penalty imposed by an employer before the Committee for the Settlement of Labour Disputes. Disputes between the employee and employer are also regulated under the Law.

iii Health and safety

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

VIII PPP AND OTHER PUBLIC PROCUREMENT METHODS

i PPP

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 dampen widespread use of PPP in the near future.

ii Public procurement

The principal law regulating public procurement is the Public Tenders Law (see Section V). 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.[27] The new law took effect on 13 June 2016. It seeks 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 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 law applies to most governmental and quasi-governmental

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

contracts of Qatar. It can also extend to apply to private entities in receipt of state funding. The new 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 it 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. It 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 such 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.

IX 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.

X 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). To date, the QFC has had little impact on the project finance or construction sectors, as its objectives are to promote the establishment and conduct of international banking, financial services, insurance and associated businesses. The QFC has its own court, the Qatar International Court and Dispute Resolution Centre

(QIC-DRC), formerly the Civil and Commercial Court of the Qatar Financial Centre. 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, 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 untested. The QIC-DRC is currently promoting the use of its services, particularly for alternative dispute resolution (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 Qatar'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 may be made electronically; authority for a public entity to arbitrate must come from the Prime Minister; the Ministry of Justice is to maintain a list of approved people who can act as arbitrators; and qualifications must be satisfied if parties wish to nominate an arbitrator who is not on the Ministry's list.

Public sector employers who accept arbitration provisions require Qatar to be the seat of the arbitration. This is also the norm (although 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,[28] 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.[29] 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.

XI 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 independent water and power plant 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 eight years have passed with limited physical progress on a number of key projects. The next four 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 ever, need skill and patience in navigating the risks involved.

28 Regulation No. 8 of 2005.

29 Kluwer Arbitration Blog, 'A Halftone Application of the New York Convention by the Qatari Supreme Court', by Minas Khatchadourian, posted 14 April 2014.

Appendix 1

ABOUT THE AUTHORS

ANDREW JONES

Dentons

Andrew heads up the construction practice at Dentons in Doha. He specialises in the resolution of engineering and construction disputes. His practice involves all forms of dispute resolution varying from litigation in the Technology and Construction Court to statutory and contractual adjudication, ADR (including mediation and expert determination) and national and international arbitration.

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.

ZAHER NAMMOUR

Dentons

Zaher has practised law in the Middle East for over 20 years. He 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 experienced in the field of regulatory compliance associated with funds, *sukuk*, IPOs and state bonds.

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

MARCUS ANGELL

Dentons

Marcus is an associate in the construction team at Dentons' Doha office. He worked in a construction practice in London prior to moving to Doha in 2018. He principally specialises in construction and infrastructure development and also advises on international arbitration.

Marcus has extensive experience in acting for clients in a wide range of construction disputes including those related to delay, defects and professional negligence. Marcus is experienced in running such matters to settlement or determination by adjudication, arbitration, and technology and construction court litigation.

DENTONS

Floor 15, Al Fardan Office Tower
61 Al Funduq Street
West Bay, PO Box 64057
Doha
Qatar
Tel: +974 44 598 960
Fax: +974 44 598 961
andrew.jones@dentons.com
zaher.nammour@dentons.com
marcus.angell@dentons.com

Dentons Tashkent
58 Bobur Street
Tashkent
100022 Uzbekistan
Tel: +998 71 150 3105
diyora.abdurakhmanova@dentons.com
ulugbek.abdullaev@dentons.com

www.dentons.com

Law
Business
Research

ISBN 978-1-912228-41-6