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عيسى السليطي للمحاماة  
ESSA AL SULAITI LAW FIRM

# MODERN LAW



## LEGAL REVIEW OF PRIVATE-PUBLIC PARTNERSHIP (PPP) LAW



## TABLE OF CONTENTS

Content	Page No.
◆ Preamble	1
◆ Partnership Models	3
◆ PPP Project Selection, Tender and Bidding	5
◆ The Partnership Contract	7
◆ Project Company Obligations	9
◆ Conclusion	12



## Preamble

His Highness the Amir Sheikh Tamim bin Hamad al-Thani issued Law No. (12) of 2020 organizing the partnership between the Public and Private Sectors (the PPP Law) with the aim to develop the capabilities of Qatari private sector companies, encourage competition and enhance their role and contribution to economic development.

This law aims to give government agencies a modern framework for managing national projects and enhancing their sustainability at the lowest possible cost. Private-Public Partnership (PPP) are long-term contracts between the Public and Private sector widely used around the world by Governments that aim to develop public infrastructure and/or provide public services, using the expertise of the private sector, while sharing the responsibilities as well as the rewards.

The adoption of a clear legal framework provides the necessary basis and support in order to boost private interest for PPP initiatives.

By the newly approved PPP Law, Qatar aims to fast-track infrastructure projects and make the extra step towards the accomplishment of the Qatar National Vision 2030.

This article highlights the new main features of the Law No. 12/2020.



# Legal Review of Private-Public Partnership (PPP) Law

## Law No. (12) of 2020, on regulating the partnership between the Public and Private Sectors (the PPP Law)

The law stipulates that Private-Public Partnership (“PPP”) is an agreement between a government agency and the private sector to implement and finance works or provide services, under a Partnership Contract in accordance with the provisions of this law and the general policy of partnership approved by the Council of Ministers upon the proposal of the Minister.



## **The partnership can be governed by any of the following models:**

### **1- Allocation of lands through a lease or usufruct license to be developed by the private sector.**

This means that it is permissible to allocate a plot of land owned by the state to be leased to the private sector for development, or be constructed by the private sector and give it usufruct rights for facilities constructed, provided that it is managed by the private sector for the benefit of the public sector by agreement on the general policy of the partnership or management.

### **2- Build-Operate-Transfer (BOT) Model**

In this model, the public sector gives the private sector a public facility under the partnership contract, provided that the latter builds and operates the project, and in exchange obtains usufruct rights for a certain period. When the concession period ends, the project assets shall be transferred to the State of Qatar.

(Source: Periodical on development issues in the Arab countries – Volume No. 35/ November 2004 – P. 4)

### **3- Build-Transfer-Operate (BTO) Model**

In this model, the private sector builds for the benefit of the public sector and then transfers its ownership to the government. The private sector undertakes to operate the project for a specific period, or change the operator to another operator, based on the requirements of the public interest.



#### **4- Build-Own-Operate-Transfer (BOOT) Model**

This model is one of the forms of BOT Model, where the private sector receives a concession from the public sector to build, control, own and operate the project/building for a certain concession period. Once the concession period ends, the project full ownership shall be transferred to the public authorities. (Sources: Build-Own-Operate-Transfer (BOOT) Contract – Comparative Study – P. 56 Periodical on development issues in the Arab countries – Volume No. 35 / November 2004 – P. 6)

#### **5- Operation and Maintenance (OM) Model**

Under this model, the public sector grants the private sector under a partnership contract the right to operate and maintain certain equipment, for a specified period of time, which may be renewed based on the requirements of the public interest.

#### **6- Any other model approved by the Council of Ministers**

The Government Agency or the Competent Department may, unaccompanied or based on the proposal of the private sector, select a project for implementation through a PPP and recommend it to the Minister for analysis and eventual approval.

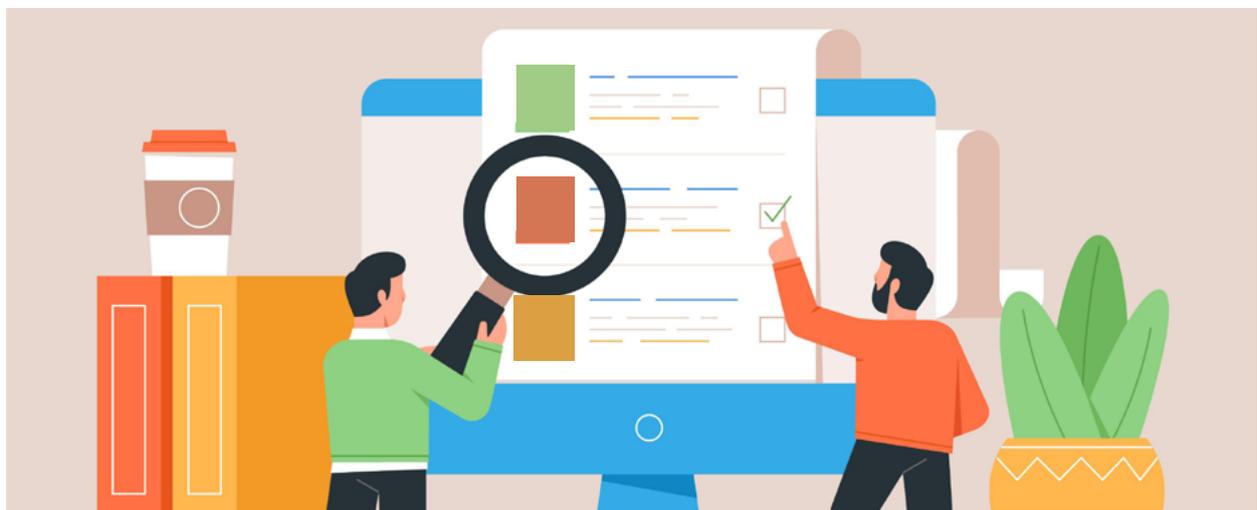
The PPP Law explicitly allows the Private Sector to identify and present to the Government Agency or the Competent Department Project proposals for implementation through Partnership (PPP Law, art. 4).



## PPP Project Selection, Tender and Bidding

In order to approve the Projects submitted to partnership between the public and the private sectors the PPP Law stipulates a specific procedure, which is as follows:

1. The Government Agency, on its own or based on the proposal of the private sector, selects a project for implementation through a PPP and recommend it to the Minister for analysis and eventual approval.
2. The Contracting Authority shall prepare a report on the idea of the project including a summary of the project, analysis on the advantages of implementing the project, and a definition of the roles and responsibilities of each party.
3. The report shall be provided to the Minister of Commerce and Industry for submission to the Prime Minister, together with his recommendations, for possible approval.
4. A committee shall be formed for each project in coordination with the relevant government agencies, including representatives from the Contracting Authority, the competent department, and the State Audit Bureau.





5. The Project Committee shall prepare the Project Policy Document and present the same to the Minister for approval. The Project Committee is responsible for evaluating bids, negotiating the project contracts and recommending a successful/preferred bidder to the Contracting Authority.
6. The Contracting Authority in coordination with the Project Committee shall prepare the project study to be presented to the Minister of Commerce and Industry for submission to the Prime Minister for possible approval.
7. Once approved, the project shall be announced by the Competent Department with its bidding process for the private sector, including the bidding documents prepared by the Contracting Authority.

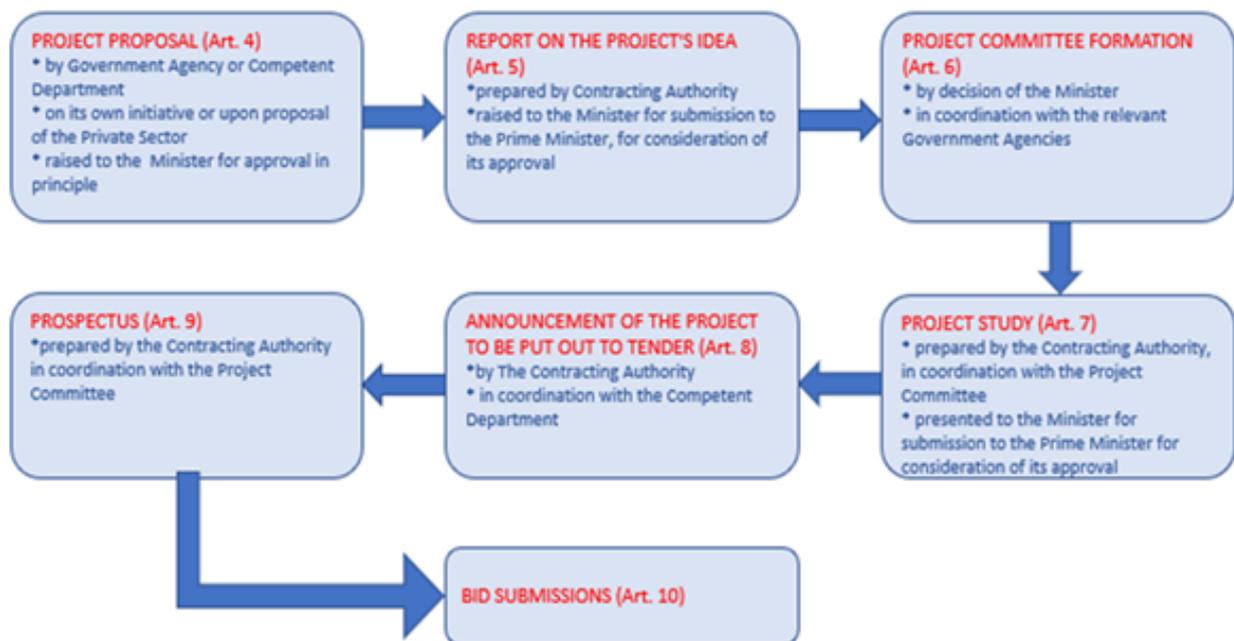


Figure 1. Workflow from Project Proposal to Bid Submissions according to the Qatar Law n. 12/2020.



## The Partnership Contract

A Partnership between Public and Private sector must be established under a Partnership Contract entered according to the provisions of the PPP Law. The new PPP Law describes the scope and structure of the Partnership Contract.

Article 17 of the PPP Law identifies several terms that must be included in the Partnership Contract. Among others, the contract should specify:

- a) The nature and scope of the works or services that the Project Company must perform and the conditions for their implementation.
- b) The ownership of the Project's funds and assets, the obligations of the parties related to delivering and receiving works and assets, and the provisions for transfer of ownership.
- c) The financial aspects of the agreement.
- d) The duration of the Contract, its early or partial termination, cases in which the Contracting Authority has the right to terminate the Contract unilaterally, and related parties' rights and obligations.





The private party particulars of remuneration shall also be included in the Contract. The PPP Law provides that remuneration may be granted through collecting fees or by availability payments for an agreed period by the government, when the availability and performance criteria of the asset are met (PPP Law, art. 21 and 25).

The long-term nature of the PPPs is linked to the necessity of balancing the effective management responsibility and risks transferred to the private party with the provision of the possibility of acceptable and sustainable revenue. In this perspective, article 18 of the PPP Law determines, that the duration of the agreement shall not exceed thirty (30) years, explicitly providing, in the same time, that longer contracts are permitted based on the requirements of the public interest after the approval of the Prime Minister based on the proposal of the Minister of Commerce and Industry.

It is important to mention that, as PPP projects are long-term contracts and several changes can occur during the contract's lifetime, the new PPP Law states the possibility of amending the Partnership Contract, in case of unforeseen circumstances arising after the conclusion of the Contract, including amendments to the legislation in force at the time of its conclusion (PPP Law, art. 22).

This provision can prevent project's failure determined by contract's financial balance distress caused by unexpected changes.

Upon the expiry of the PPP contract, ownership of the project, the establishment and all its assets shall be transferred to the State of Qatar without any compensation unless otherwise agreed in the PPP contract.



## Project Company Obligations

According to Article No. 1 of PPP Law, the Project Company is the existing company or the company that is established to implement the project.

The Contracting Authority and the Private successful bidder may establish together the Project Company. In the event that the Contracting Authority does not wish to participate in the Project Company, the successful bidder must establish the Project Company, provided that its sole purpose is to implement the Project, subject-matter of the Partnership Contract.

### **Project Company is committed to the following:**

1- On no account will it dissolve, change its legal form, or reduce its capital without the approval of the Minister of Commerce and Industry. The articles of association of the Project Company must include a ban on its shares being traded before the date of completion of building, preparation or development works, as well as a ban on trading the shares owned by the majority without the approval of the Minister of Commerce and Industry.

In all cases, the shares of the Project Company cannot be mortgaged except for the purpose of financing or refinancing the PPP project, and every procedure or action that is made in violation of the provisions of this clause shall be null and void.

2- Preserving and maintaining the project's assets and holdings, taking care of them and using them for their purposes only.



- 3- The Project Company may not sell the facilities, assets, and movable and immovable property of the project that it may own in accordance with the terms of the PPP contract, unless it is for purpose of implementing the replacement and renewal program in accordance with the conditions set forth in the PPP contract and after the approval of the Competent Department.
- 4- Submit all the documents, information and data requested by the Competent Department or the Contracting Authority and cooperate with its employees and allow them to enter their sites for inspection at any time.
- 5- Provide environmental, health and safety requirements for project workers and beneficiaries.
- 6- The Project Company may not contract with subcontractors without the approval of the Contracting Authority, provided that this does not prejudice the obligations of the Project Company established under this Law, the decisions issued to enforce it, and the PPP contract.





Foreign investors should be aware that the Project Company may be exempted from all or some restrictions imposed under the legislation in force on companies owned by non-Qataris, including the ownership, use or lease of land (article 23, Law No. 12/2020).

Given the importance of the public interests involved, the PPP Law subjects the Partnership contract to the Qatari Law, establishing the jurisdiction of Qatari Courts over related disputes (PPP Law, art. 28).

Conversely, the same article allows for other dispute resolution mechanisms.





## Conclusion

We applaud the efforts of the Qatari legislator in issuing this law in line with the best international practices.

After comprehensive legal scrutiny, it is clear the importance that the PPP Law will have in order to enhance the partnership between the public and private sectors and attract foreign investment to the State of Qatar.

The PPP Law assembles the origin and fundamental elements, to be the foundation and therefore a cornerstone for foreign entities who are willing and eager to invest in the State of Qatar. We sincerely hope that the implementation of this Law will be a success, and the State of Qatar considered a role model concerning the partnerships between the Public and the Private Sector.



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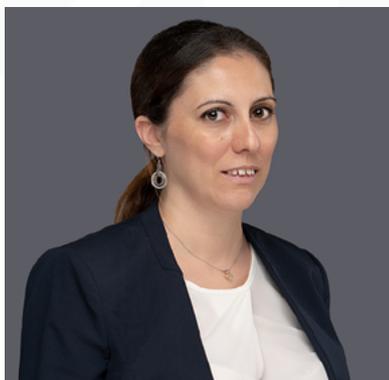
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