

Qatar Public-Private Partnership Law

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Public-private partnerships (PPPs) are long-term contracts between the public and private sector widely used around the world by governments aiming to develop public infrastructure and/or provide public services, using the expertise of the private sector, while sharing in the responsibilities and rewards. Through the newly approved Qatar Law No. 12/2020 on Regulating the Partnership Between Public and Private Sectors, Qatar aims to accelerate infrastructure projects and make another step towards the accomplishment of the Qatar National Vision 2030.

Qatar has a solid economic base, and a stable political system, both important factors that could guarantee the success of PPP projects. The adoption of a clear legal framework provides the necessary basis and support in order to boost private interest on the PPP initiatives. The Public Works Authority (Ashghal) has recently announced the preparation of a list of projects, mainly related to construction and infrastructure sector, in which the private sector can participate within the requirements of Qatar Law No. 12/2020. This commentary aims to highlight the main points introduced by Qatar Law No. 12/2020.

Key definitions

Article 3 of Qatar Law No. 12/2020 defines a partnership as an agreement between a government agency and the private sector to implement and finance works or provide services, concluded as per any of the forms outlined in Article 3 of Qatar Law No. 12/2020.

Key provisions of Qatar Law No. 12/2020

Qatar Law No. 12/2020 regulates the public-private partnerships (PPPs) in the State of Qatar. The provisions of Qatar Law No. 24/2015 on the Issuance of the Law on the Regulation of Tenders and Bids do not apply to the partnerships carried out in accordance with Qatar Law No. 12/2020, as per Article 27 of Qatar Law No. 12/2020.

Qatar Law No. 12/2020 provides the legal framework for the contractual relationship form between public and private parties. This framework is going to be developed through the adoption of Public Policy of the Partnership documents, approved by the Council of Ministers, based on the proposal of the Minister, where they will specify the details of every aspect of the aforementioned relationship, as per Article 2 of Qatar Law No. 12/2020. The solution of adopting an adaptable legal framework can assure quick answers to the challenges and changes that could be faced in the next years.

Article 3 of Qatar Law No. 12/2020 indicates the forms of public-private partnerships that can be concluded:

- allocation of lands through lease or usufruct licenses, for development by the private sector;
- build-operate-transfer (BOT) model;
- build-transfer-operate (BTO) model;
- build-own-operate-transfer (BOOT) model; and
- operation and maintenance (OM) model.

The title of every above-mentioned model describes the main characteristics of the agreement that can be made between the parties.

Qatar Law No. 12/2020 also provides for the possibility of using any other model approved by the Council of Ministers, based on the proposal of the Minister. The flexibility in the forms of collaboration will allow the selection of the most suitable plan for every project.

Private sector's proposals for implementation through PPP

Article 4 of Qatar Law No. 12/2020 explicitly allows the private sector to identify and present to the government agency or the competent department project proposals for implementation through partnership. The mechanism of such presentation will be specified by through a Ministerial decision, as per Article 29 of Qatar Law No. 12/2020.

Project selection, tender and bidding

Qatar Law No. 12/2020 provides the guidelines on the content of PPP projects to be put out to tender and of the related bids. The role of the different parties is specified.

Unlike the Tenders and Bids Committee competent to conduct different tenders and bids under Qatar Law No. 24/2015, Qatar Law No. 12/2020 does not provide for the establishment of a PPP Unit. On the contrary, a separate Committee for each project will be formed, as per Article 6 of Qatar Law No. 12/2020.

Qatar Law No. 12/2020 prescribes the procedure to be followed by the government entities before putting a PPP project out to tender. Full details of this procedure are provided in Project Proposal to Bid Submissions – Flowchart – Qatar.

Article 10 of Qatar Law No. 12/2020 provides the possibility for consortium consisting of more than one company to submit a bid.

The partnership contract

To establish a partnership between the public and private sector, a partnership contract should be stipulated under the provisions of Qatar Law No. 12/2020. Qatar Law No. 12/2020 describes how scope and structure of the contract between the parties will be defined.

The partnership contract draft should be submitted together with the Project Committee's recommendation as to the successful bid to the Prime Minister for approval of the award, before announcing the successful bid, as per Article 16 of Qatar Law No. 12/2020.

Article 17 of Qatar Law No. 12/2020 identifies the terms that should be included in the partnership contract. The responsibilities of each party should be outlined, and the risks clearly allocated. In the contract, among others, the following should be specified:

- the nature and scope of the works or services that the project company must perform and the conditions for their implementation;
- 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;
- the financial aspects of the agreement; and
- the duration of the contract, its early or partial termination, cases in which the contracting authority has the right to unilaterally terminate the contract, and related parties' rights and obligations.

The details of remuneration must also be included in the contract. Articles 21 and 25 of Qatar Law No. 12/2020 provide that remuneration can be granted through collecting fees or by availability payments paid for an agreed period by the government, when the availability and performance criteria of the asset are met. In PPP projects including an operating phase run by the private company, the availability payments can stimulate a more efficient management of the project, in terms of construction quality and adequate maintenance.

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 an acceptable and sustainable revenue. In this perspective, Article 18 of Qatar Law No. 12/2020 determines that the duration of the agreement must not exceed 30 years, explicitly providing the possibility of an extension based on the requirements of the public interest.

It is important to mention that as PPP projects are long-term contracts and several changes can occur during the contract's lifetime, Article 22 of Qatar Law No. 12/2020 states the possibility to proceed with amendments of the partnership contract, in case unforeseen circumstances arise after the conclusion of the contract, including amendments to the legislation in force at the time of its conclusion. Article 22 of Qatar Law No. 12/2020 can help to prevent the project's failure determined by the contract's financial distress caused by unexpected changes.

The project company

According to Article 19 of Qatar Law No. 12/2020, the bidder who won the partnership contract can opt to execute the project (a) by establishing the project company, the only purpose of which will be the implementation of the project or (b) in its existing condition, with prior permission from the Contracting Authority, if they have the ability to implement the project with its available financial and technical capabilities. The contracting authority may participate in establishing the project company.

A really important incentive for the foreign investors could come from the possibility, provided by Qatar Law No. 12/2020, for the project company to 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.

Be aware that the project company cannot pledge its shares. However, under certain requirements, they can obtain financing from banks operating inside or outside the State by guaranteeing its contractual rights and assets, as per Articles 20 and 24 of Qatar Law No. 12/2020.

The project company is not allowed to dissolve, change its legal form, or reduce its capital without the approval of the Minister. Article 24 of Qatar Law No. 12/2020 sets strict rules regarding the possibility of trading the project company's shares.

Jurisdiction and dispute resolution mechanisms

Article 28 of Qatar Law No. 12/2020, given the importance of the public interests involved, subjects the partnership contract to the Qatari Law, establishing the jurisdiction of Qatari Courts over related disputes. However, Article 28 of Qatar Law No. 12/2020 grants contractual freedom to the parties in relation to the choice of another dispute resolution mechanism that can be included in the contract.

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Biography

Paraskevoula is an experienced Italian lawyer, based in Perugia (Italy). During the past two years she had the opportunity to spend a lot of time in Qatar supporting the interests of the international clients. She is an of-Counsel collaborator of Essa Al Sulaiti Law Firm, sharing the vision of the firm to provide high quality legal services. She speaks English, Greek and Italian.