

Welcome to the Present-Future of Foreign Investment in Qatar

In this article, the authors review some of the features of two crucial laws to foreign investment in the State of Qatar, specifically Law No. 1/2019 on the Regulation of the Investment of Non-Qatari Capital in Economic Activity and Law No. 12/2020 on the Regulation of Partnerships Between Public and Private Sectors.

Dans cet article, les auteurs passent en revue certaines des caractéristiques de deux lois essentielles à l'investissement étranger dans l'État du Qatar, en particulier la loi n° 1/2019 sur la réglementation de l'investissement des capitaux non qatariens dans l'activité économique et la loi n° 12/2020 sur la réglementation du partenariat entre les secteurs public et privé.



Essa Al Sulaiti
Founder and Managing Partner
Essa Al Sulaiti Law Firm



Ricardo Cid
Senior Associate
Essa Al Associate Law Firm

In recent years, we have had witnessed a significant transformation of the foreign investment legal framework in the State of Qatar. Irrespective of the reasons encouraging the new foreign investment paradigm, the undeniable truth is that within just a few years, the Qatari legislator has issued several relevant laws, such as:

- Law No. 1/2019 on the Regulation of the Investment of Non-Qatari Capital in the Economic Activity;
- Law No. 12/2020 on the Regulation of the Partnership between Public and Private Sectors – PPP Law;
- Law No. 24/2018 Promulgating the Income Tax Law;
- Qatar Law No. 2/2017 Promulgating the Civil and Commercial Arbitration Law;
- Law No. 16/2018 on Non-Qatari Ownership and Use of Real Estate; and
- Law No. 20/2018 on the Regulation of Tourism.

These laws are evidence that the State of Qatar is creating procedures that allow foreign entities to invest with ease. In the long run, they may be pivotal to reshaping the Qatari economy and preparing it to be less dependent on oil and gas projects.

In this article, we review some features of two crucial laws to foreign investment in the State of Qatar, specifically Law No. 1/2019, on the Regulation of the Investment of Non-Qatari Capital in the Economic Activity and Law No. 12/2020, on the Regulation of the Partnership Between Public and Private Sectors – PPP Law.

1

Law No. 1/2019 on the Regulation of the Investment of Non-Qatari Capital in Economic Activity

Pursuant to Article 2 of Law No. 1/2019 (also referred to herein as the "Foreign Investment Law"), foreign investors may invest up to 100% of the capital in all economic sectors, excluding Banking, Insurance, Commercial Agency or any other sector specifically barred due to a decision made by the Cabinet.

The procedure to apply for a company in which the foreign partner retains more than 49% of the capital is explained thoroughly in the recent Qatar Ministerial Decision No. 44/2020 (issued on 8 June 2020¹) on the Implementing Regulation of Law No. 1/2019 on the Regulation of the Investment of Non-Qatari Capital in the Economic Activity.

The project activity must be among the list of activities approved by the Minister.

Pursuant to Article 2 of Ministerial Decision No. 44/2020, a non-Qatari investor must comply with the following cumulative conditions regarding the project activity:

1. the project activity must be among the list of activities approved by the Minister, based on the proposal of the competent department;
2. the foreign investor must describe the activity, provide project's business plan and financial plan; and
3. the non-Qatari investor must pledge in writing to bear all obligations arising from the project, and to commence the project no later than the period specified by the competent department, otherwise, the decision approving the project will be considered null and void.

The procedure for obtaining the approval of the Ministry of Commerce and Industry is determined in Ministerial Decision No. 44/2020, as follows:

- The investor must submit the application form, duly fulfilled along with the relevant documents (which will be different depending on whether the investor is a physical person or a legal person), and the evidence of compliance with the requirements regarding the project activity described above.
- The competent department will issue its decision on the application within 15 days of the date of completion of the required documents. The lapse of this period without a response may be considered an implicit rejection of the application.
- If the application is approved, the applicant will be notified to undertake the procedures for registering the company that will implement the project in the commercial register.

The foreign investor could be a physical or a legal person, but once the application is approved, the non-Qatari investor must establish a company to develop the relevant project.

Under Article 3 of the Law No. 1/2019, if the application is refused, the foreign investor may submit a grievance to the Minister within 15 days from the date of knowledge of the refusal decision or from the date on which his application is considered to be rejected. The Minister will decide on the grievance within 30 days from its filing date. The lapse of this period without a response will be considered an implicit rejection of the grievance. The Minister's decision is to be final.

When a foreign investor is contracting with the State of Qatar (meaning ministries, government agencies, public institutions and entities, or companies and entities in which the State participates), such a project must be undertaken through a branch, as determined in Article 5 of the Law No. 1/2019. The branch is part of the foreign entity; therefore, the latter is ultimately responsible for any liability arising out of a business performed by the branch.

A branch may not engage in any business outside of the scope of the contract entered with the State of Qatar.

A branch may not engage in any business outside of the scope of the contract entered with the State of Qatar. Once the contract has been fulfilled, the branch will cease to exist, since its purpose has been satisfied.

Law No. 1/2019 details several investment incentives that may be granted to non-Qatari investors, such as but not limited to:

- Lands made available by lease or usufruct.
- Exemptions from custom duties for machinery and equipment necessary for setting up the project.
- In the field of industry, an exemption from customs duties on raw materials and semi-manufactured products necessary for production and not available in the Qatari market.
- Exemption from income tax, according to the rules, procedures and time limit set in the Income Tax Law (Law No. 24/2018).
- Freedom to transfer the investment and/or to transfer the ownership to another investor (provided that the new investor pledges to continue the project and comply with the rights and duties assumed by the previous investor).

Finally, we would like to highlight that Law No. 1/2019 is not applicable to:

- companies or individuals assigned by the State of Qatar to explore natural resources under concession or special Agreement (including government-established companies or those in which the government or other public entities participate);
- companies in which the State participates by a percentage of not less than 51%; and
- companies and individuals licensed by Qatar Petroleum to invest in the oil, gas and petrochemical sectors.

1. Available in Arabic and English at www.lexismiddleeast.com

2

Law No. 12/2020 on the Regulation of Partnerships between Public and Private Sectors – the PPP Law

On 31 May 2020, the government issued Law No. 12/2020 on the Regulation of the Partnership between Public and Private Sectors (the “PPP Law”). The PPP Law defines Private-Public Partnership (PPP) as an agreement between the government agency and the private sector to implement and finance works or provide services, under a Partnership Contract in accordance with the provisions of the PPP Law and the general policy of any partnerships approved by the Council of Ministers upon the proposal of the Minister.

Article 2 of the PPP Law specifically states the different forms of partnership between the Public and Private Sector, which are:

- Allocation of lands through a lease or usufruct licenses to be developed by the private sector.
- Build-Operate-Transfer (BOT) Model.
- Build-Transfer-Operate (BTO) Model.
- Build-Own-Operate-Transfer (BOOT) Model.
- Operation and Maintenance (OM) Model.
- Any other model approved by the Cabinet.

The Project Committee assumes several crucial responsibilities, such as preparation of the Project Policy Document, bid evaluation recommending the best bid, and negotiating contracts.

In order to approve the Projects under a PPP, the PPP Law stipulates a specific procedure, 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 recommends it to the Minister for analysis and eventual approval (PPP Law, art. 4).
2. The Contracting Authority prepares a report on the project idea, including a summary of the project, assessment on the advantages of implementing it, and a definition of the roles and responsibilities of each party (PPP Law, art. 5).
3. The Minister of Commerce and Industry receives the report for submission to the Prime Minister for possible approval (PPP Law, art. 5).
4. In coordination with the relevant government agencies, including representatives of the Contracting Authority, the Competent Department, and the State Audit Bureau forms a Project Committee for each project. The Project Committee assumes several crucial responsibilities, such as preparation of the Project Policy Document, bid evaluation recommending the best bid, and negotiating contracts (PPP Law, art. 6).
5. The Contracting Authority in coordination with the Project Committee prepares the project study to be presented to the

Minister of Commerce and Industry for submission to the Prime Minister.

6. Once approved, the project is announced by the Competent Department with its bidding process for the private sector, including the bidding documents prepared by the Contracting Authority.

We want to highlight that the PPP Law allows the private sector the initiative of finding projects that may be beneficial for the State of Qatar, and therefore propose such projects to the competent government agency. This possibility is excellent for the private sector—which can highlight important opportunities to the Qatari authorities and enable the relevant company to be in the “pole position” to obtain the award if approved—and for the public sector—which can benefit from advanced technologies and techniques developed by the private sector without searching for them.

The PPP must be established through a contract entered between both parties. Article 17 of the PPP Law identifies several elements must be included in the Partnership Contract, namely:

- The nature and scope of the works or services that the Project Company must perform and any relevant implementation conditions.
- The ownership of the Project’s funds and assets, parties’ obligations related to delivering and receiving works and the assets, and also the provisions for transfer of ownership.
- The financial aspects of the agreement, namely the remuneration to the private partner, which can be through collecting fees or by availability payments for an agreed period, when the availability and performance criteria of the asset are met (PPP Law, arts. 21 and 25).
- 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 PPP Law also mentions a relevant new concept under this Law, which is the Project Company. According to Article 1 of the PPP Law, the Project Company is the existing company or the company established to implement and pursue the project.

The Contracting Authority and the private successful bidder may collectively establish the Project Company.

The Contracting Authority and the private successful bidder may collectively establish 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. The Contracting Authority has the power to allow the execution of the Project without establishing the Project Company if the Private entity has the capacity to implement the Project in its existing condition and with its available financial and technical capabilities (PPP Law, art. 19).

Pursuant to Article 24 of the PPP Law, the Project Company must abide by the following:

- Not 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 that owns its capital after this date without the approval of the Minister of Commerce and Industry.

- Preserve and maintain the project's assets and holdings, taking care of them and using them for their purposes only.
- Not sell the facilities, assets, and movable and immovable property owned by the Project Company in accordance with the terms of the PPP contract, unless it is for the purpose of implementing the replacement and renewal program according to the conditions outlined in the PPP contract and after the approval of the Competent Department.
- Provide all the documents, information and data requested by the Competent Department or the Contracting Authority, cooperate with its employees, and allow them to enter their sites for inspection at any time.
- Develop environmental, health and safety requirements for project workers and beneficiaries.
- Not contract with subcontractors without the approval of the Contracting Authority, provided that this does not

prejudice the obligations of the Project Company, the decisions issued to enforce the obligations, 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 (PPP Law, art. 23).

Given the importance of the public interest involved, the PPP Law submits the Partnership Contract to Qatari Law, also establishing the jurisdiction of Qatari Courts over related disputes (PPP Law, art. 28). Conversely, the same Article allows for other dispute resolution mechanisms.

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.

يستعرض المؤلفون في هذه المقالة بعضاً من ملامح أكثر قانونين مهمين بالنسبة للاستثمار الأجنبي في قطر وهما القانون رقم 1/2019 حول تنظيم الاستثمار من قبل رأس المال غير القطري في النشاطات الاقتصادية والقانون رقم 12/2019 المتعلق بتنظيم الشراكة بين القطاعين العام والخاص.

BIOGRAPHY

ESSA MOHAMMAD AL SULAITI is a Qatari attorney and arbitrator, certified by the GCC Commercial Arbitration Centre and the Qatar International Centre for Conciliation and Arbitration (QICCA). He is a member of the Qatar Lawyer's Association.

Drawing on prior experience under reputable Welsh and Qatari law firms, Essa founded the Essa Al-Sulaiti Law Firm in 2015 to effectively align his practice with a personal mission: addressing the emerging legal demands of Qatari and international businesses operating in his home country.

Essa's work includes corporate and commercial advisory services with a focus on dispute resolution. He has also worked closely with various local and international companies to advise on Corporate, M&A and Construction matters.

Essa Al Sulaiti is the author of the book, "Individual Employment Contract: A Guide for Employers and Workers" that guides employers and employees in Qatar on employment rights.

Essa Al Sulaiti can be contacted at essa@eslaa.com

RICARDO CID is Senior Legal Counsel at Essa Al Sulaiti Law Firm. He specialises in corporate & commercial, construction, labour and sports law. He has more than 15 years' experience as a Legal Counsel and as a lawyer for several Portuguese and European companies operating in various including construction, freight transport, agency and distribution, governmental institutions, as well as Sport Bodies and athletes in international legal proceedings. Ricardo is fluent in four different languages, including Portuguese, which is his mother tongue, English, French and Spanish, and can be reached at ricardo@eslaa.com.



Qatar – Foreign Investment Law –
Public-Private-Partnerships
*Qatar – Droit des investissements
étrangers – Partenariats public-privé*