

# Construction

*Contributing editors*

**Robert S Peckar and Michael S Zicherman**



**2017**

GETTING THE  
DEAL THROUGH 

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DEAL THROUGH 

# Construction 2017

*Contributing editors*

**Robert S Peckar and Michael S Zicherman**  
**Peckar & Abramson PC**

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## CONTENTS

<b>Introduction</b>	<b>5</b>	<b>New Zealand</b>	<b>95</b>
Robert S Peckar and Michael S Zicherman Peckar & Abramson PC		Margaret A Helen Macfarlane, Christina Bryant, Nick Gillies and Michael O'Brien Hesketh Henry	
<b>Austria</b>	<b>6</b>	<b>Norway</b>	<b>103</b>
Stefan Artner and Klaus Pfeiffer Dorda Brugger Jordis		Espen R Hamar and Erik Brannsten Kvale Advokatfirma DA	
<b>Brazil</b>	<b>12</b>	<b>Qatar</b>	<b>109</b>
Júlio César Bueno Pinheiro Neto Advogados		Marcus Boeglin, Matthias Scherer, Marie-Anne Roberty-Jabbour and Sam Moss Lalive in Qatar LLC	
<b>Canada</b>	<b>23</b>	<b>Russia</b>	<b>115</b>
Bruce Reynolds, Sharon Vogel and Yvan Houle Borden Ladner Gervais LLP		Elena Gavrilina, Yuri Savvin and Anton Alekseev Egorov Puginsky Afanasiev & Partners	
<b>China</b>	<b>31</b>	<b>Singapore</b>	<b>121</b>
Helena H C Chen and Jean Zhu Pinsent Masons LLP		Shourav Lahiri Lahiri LLC	
<b>Denmark</b>	<b>38</b>	<b>South Africa</b>	<b>128</b>
Henrik Puggaard, Lene Lange, Kristian Skovgård Larsen and Frederik Læssøe Arendt LETT Law Firm		Tania Siciliano Fasken Martineau	
<b>France</b>	<b>44</b>	<b>Sweden</b>	<b>134</b>
Isabelle Smith Monnerville and Jean-Olivier d'Oria Smith d'Oria		Jacob Hamilton, Richard Sahlberg and Per Vestman Foyen Advokatfirma	
<b>Germany</b>	<b>52</b>	<b>Switzerland</b>	<b>139</b>
Stefan Osing Heuking Kühn Lüer Wojtek		Michael E Schneider, Matthias Scherer, Bernd Ehle, Sam Moss and Cédric Lenoir Lalive	
<b>Ghana</b>	<b>57</b>	<b>Taiwan</b>	<b>144</b>
David Ofosu-Dorte, Isabel Boaten and Ferdinand Adadzi AB & David		Helena H C Chen Pinsent Masons LLP	
<b>Indonesia</b>	<b>62</b>	<b>Turkey</b>	<b>150</b>
Mutiara Rengganis and Donny Fadilah Bahar & Partners		Ziya Akıncı and Cemile Demir Gökayla Akıncı Law Office	
<b>Ireland</b>	<b>67</b>	<b>United Arab Emirates</b>	<b>157</b>
Kevin Kelly McCann Fitzgerald		Sachin Kerur, William Marshall, Charmaine Khan and Luke Tapp Pinsent Masons LLP	
<b>Italy</b>	<b>73</b>	<b>United Kingdom</b>	<b>164</b>
Giuseppe Broccoli, Elisabetta Ventrella, Cecilia Laporta, Ludovica Citarella and Andrea Serrano BDA Studio Legale		Stacy Sinclair Fenwick Elliott LLP	
<b>Japan</b>	<b>79</b>	<b>United States</b>	<b>172</b>
Miho Niunoya and Masayuki Matsuura Atsumi & Sakai		Robert S Peckar and Michael S Zicherman Peckar & Abramson PC	
<b>Lithuania</b>	<b>84</b>		
Jovitas Elzbergas and Donatas Lapinskas Motieka & Audzevičius			
<b>Mexico</b>	<b>90</b>		
Roberto Hernández García and Adrián Roberto Villagómez Alemán COMAD SC			

# Preface

## Construction 2017

Tenth edition

**Getting the Deal Through** is delighted to publish the tenth edition of *Construction*, which is available in print, as an e-book and online at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

**Getting the Deal Through** provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes Austria, Denmark, Ireland, Japan, Norway and Singapore.

**Getting the Deal Through** titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

**Getting the Deal Through** gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Robert S Peckar and Michael S Zicherman of Peckar & Abramson, PC, for their continued assistance with this volume.

GETTING THE  
DEAL THROUGH 

London  
July 2016

# Qatar

Marcus Boeglin, Matthias Scherer, Marie-Anne Roberty-Jabbour and Sam Moss

Lalive in Qatar LLC

## Foreign pursuit of the local market

- 1 If a foreign designer or contractor wanted to set up an operation to pursue the local market what are the key concerns they should consider before taking such a step?**

A foreign designer or contractor must be aware of a number of key matters governed by the Organisation of Foreign Capital Investment Law (Law No. 13 of 2000), the Law Regulating the Entry and Exit of the Expatriate in Qatar and their Residence and Sponsorship (Law No. 4 of 2009), the Labour Law (Law No. 14 of 2004), the Income Tax Law (Law No. 21 of 2009), the Commercial Companies Law (Law No. 11 of 2015) and the Law Regulating the Practice of Engineering Professions (Law No. 19 of 2005) and its Executive Regulations (Decision No. 1 of 2006). In particular, a foreign company needs to be licensed and establish either a local engineering 'office' or an international engineering 'office' or a foreign branch. See question 2 for further details.

## Licensing procedures

- 2 Must foreign designers and contractors be licensed locally to work and, if so, what are the consequences of working without a licence?**

Foreign companies intending to perform design or construction work in Qatar will usually need to be licensed. Engineering work, which includes architectural services and various branches of engineering, is subject to the Law Regulating the Practice of Engineering Professions and its Executive Regulations.

The Engineering Professions Law sets out three options for conducting business in Qatar.

The first option is to enter into a local engineering office in the form of an unincorporated joint venture with a Qatari national (natural or legal person), in which the Qatari national must have at least a 51 per cent stake. Such a joint venture also has to be licensed by, and registered with, the Ministry of Municipality and Urban Planning and registered at the Local Engineering Offices Register at said Ministry.

The second option is to establish an international engineering office licensed by the Ministry of Municipality and Urban Planning and registered at the International Engineering Offices Register at said Ministry, which is fully owned by the foreign contractor or designer.

Both local and international offices must register all their engineers in the engineers' register of the Ministry of Municipality and Urban Planning, and must hold an engineering licence in Qatar.

The third option is to seek a licensing exemption for the establishment of a branch in Qatar under article 3 of the Foreign Capital Investment Law, which is available to foreign contractors or designers who have been awarded a contract in Qatar to render a service of public interest. The law does not define what type of contracts can be considered to be of public interest, and leaves it to the minister of municipality and urban planning to decide on a case-by-case basis whether contracts meet the requirement. It is to be noted that under this option, no licence is required from, and no registration is required at, the Ministry of Municipality and Urban Planning.

Any violation of these legal requirements will lead to the imposition of penalties on the entity (through its legal representative) as well as punishment for any individual working without a Qatari engineering licence. The maximum penalties are imprisonment for three years or a fine not exceeding 100,000 Qatari riyals, or both.

## Competition

- 3 Do local laws provide any advantage to domestic contractors in competition with foreign contractors?**

There is no legal advantage for local contractors in private or government tenders but, in practice, contractors (either domestic or foreign) with a seat in, and operating out of, Qatar are better positioned to obtain contracts as a result of their knowledge, previous experience and recognition in the local market. Although some public tenders have, in the past, been restricted to domestic contractors, this is a rare occurrence.

## Bribery

- 4 If a contractor has illegally obtained the award of a contract, for example by bribery, will the contract be enforceable? Are bribe-givers and bribe-takers prosecuted and, if so, what are the penalties they face? Are facilitation payments allowable under local law?**

Qatar ratified the UN Convention against Corruption in 2007, and Penal Code No. 11 of 2004 and the Law Organising Tenders and Auctions No. 24 of 2015 (replacing the existing Tenders and Auctions Law No. 26 of 2005, as of 12 June 2016) (the Public Tender Law) both prohibit bribery in the construction industry. Pursuant to the Penal Code, a public official who requests or accepts, whether for him or herself or another party, any money, benefit or promise in order to do or refrain from doing something related or unrelated to his or her position will be subject, along with the person who offers or pays a bribe, to imprisonment for up to 10 years and a fine not exceeding the amount of the bribe and not less than 5,000 Qatari riyals. In the event that the public official does not accept the bribe, the imprisonment sanction applicable to the bribe-giver is reduced to five years and the fine is capped at a maximum of 15,000 Qatari riyals. In addition, the amount or benefit that was offered as a bribe is confiscated.

Article 23 of the Public Tender Law further provides that, without prejudice to other liabilities provided by another law, any public contract is considered as terminated if the contractor commits fraud or deception in performing the contract or for being awarded the contract; or if the contractor bribes, directly or indirectly, a public official, causing damages to the governmental entity that awarded the contract. Furthermore, article 24 of the Public Tender Law provides that in the event of termination of the contract, the final deposit shall be forfeited in favour of the governmental party with the right to deduct any due penalties or losses caused to it from any amounts due to the contractor without the need of prior measure in this regard. It is also possible to cease, temporarily or permanently, any collaboration with the contractor.

The Qatari laws against corruption do not allow for facilitation payments.

## Reporting bribery

- 5 Under local law must employees of the project team members report suspicion or knowledge of bribery of government employees and, if so, what are the penalties for failure to report?**

Pursuant to the Penal Code, any person who fails to report to the competent authorities, without acceptable reason, his or her knowledge of another person's crime or of a planned crime that can be prevented, shall be subject to imprisonment for up to three years or a fine not exceeding

10,000 Qatari riyals, or both. These provisions do not apply to the spouse, ascendants and descendants of the criminal.

The same sanction will apply to the public official who is in charge of controlling crimes and who has neglected or postponed the reporting of his or her knowledge of a crime that has been committed. In the event that such failure to report is committed by a public official who is not in charge of controlling crimes, the sanction shall be a fine not exceeding 10,000 Qatari riyals.

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### Political contributions

#### 6 Is the making of political contributions part of doing business? If so, are there laws that restrict the ability of contractors or design professionals to work for public agencies because of their financial support for political candidates or parties?

There are no laws that directly prohibit contractors or design professionals from working for public agencies because of their financial support for political candidates. In any event, political election is limited to the members of the Advisory Council; there are no government elections in Qatar. However, international contractors or professionals may also have to comply with the corruption and bribery laws in their home countries, such as the Foreign Corrupt Practices Act 1977 (US) and the Bribery Act 2010 (UK).

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### Other international legal considerations

#### 7 Are there any other important legal issues that may present obstacles to a foreign contractor attempting to do business in your jurisdiction?

Qatar imposes a strict immigration policy that includes restrictions on the numbers and nationalities of foreign workers. On the other hand, the entry of skilled and technically qualified expatriates has facilitated rapid economic growth and diversification and provided significant on-the-job training for Qatari nationals.

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### Construction contracts

#### 8 What standard form contracts are used for construction and design? Must the language of the contract be the local language? Are there restrictions on choice of law and the venue for dispute resolution?

There are no officially adopted or prescribed standard-contract forms and conditions. However, large public employers, such as Qatar Petroleum, the Public Works Authority and Qatar's General Electricity and Water Corporation, will often use their own standard contracts, which are usually based on the FIDIC suite of contracts, with special conditions developed for each project.

The scope for negotiating the terms of these forms is very limited, but in larger projects, and depending on the industry, a contractor may be able to negotiate modifications to standard-contract forms.

Although Arabic is the official language of Qatar, there is no requirement for construction contracts to be in Arabic, and in practice, they are usually drafted in English. However, if a dispute arises and the matter is brought before the Qatari courts, the contract must be officially translated into Arabic, since the language of the proceedings will be Arabic.

The parties are free to choose the governing law of their contract and to submit their disputes to a foreign court or arbitral tribunal; however, in the case of a contract signed with a governmental entity governed by the Public Tender Law, settlement of disputes through arbitration requires the approval of the minister of finance upon recommendation by the head of the governmental entity. The Public Tender Law also provides for the establishment of one or several dispute settlement committees at the Ministry of Finance to settle all urgent administrative disputes arising prior to entry into the contract and related to the application of the provisions of said law and its executive regulations. The decisions of the said committee may be challenged before the Court of Appeal.

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### Payment methods

#### 9 How are contractors, subcontractors, vendors and workers typically paid and is there a standard frequency for payments?

Main contractors and construction professionals are paid in accordance with the payment provisions in their contract, which can vary. Payments are usually made on a monthly basis by electronic transfer, by cheque, or

in cash (for small projects or residential works), depending on the arrangements made with the employer. In practice, subcontractors and vendors are often paid only once the main contractor is paid by the employer, regardless of the payment mechanisms in their contracts. There are no laws prohibiting 'pay when paid' or 'paid if paid' clauses, but many employers take an active role in ensuring that all parties are paid along the contractual chain so as to avoid delays or suspension of the works, and to avoid subcontractors bringing claims against them, as subcontractors under Qatari law, and within specific limits, have direct recourse against an employer for unpaid works.

According to Law No. 1 of 2015 amending article 66 of the Labour Law, payments made by an employer to its employees should be made by direct wire transfer to the employee's bank account in Qatar. The purpose of such amendment is to ensure adequate remuneration of workers, in a timely manner. The penalties for violations of this article are imprisonment of not more than one month or a fine of between 2,000 and 6,000 Qatari riyals, or both.

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### Contractual matrix of international projects

#### 10 What is the typical contractual matrix for a major project in your jurisdiction in terms of the contractual relationships among the various construction project participants?

Qatar is undergoing a major construction boom with a substantial number of infrastructure, industrial and private building projects being undertaken, including extremely large projects such as the underground railway and stadiums to be built for the 2022 World Cup. There does not appear to be a typical contractual matrix; it rather depends on the type of the project and the entity developing it. Many government projects are, however, divided into three main packages, namely as follows:

- design and planning by architects, engineers and a team of other professional consultants;
- construction of the project by a main contractor and its subcontractors, suppliers and vendors; and
- management of the project by an engineer or project manager.

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### PPP and PFI

#### 11 Is there a formal statutory and regulatory framework for PPP and PFI contracts?

There is no formal statutory or regulatory framework for PPP and PFI contracts. Due to the country's wealth, infrastructure projects have been generally funded and operated entirely by the government.

Qatar is aiming to enact a law covering the use of PPPs by the end of 2016, as part of the state's efforts to boost its fledgling private sector and to accelerate the development of key infrastructure projects. It is expected that the government will create a centralised PPP unit and a fund to facilitate such projects.

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### Joint ventures

#### 12 Are all members of consortia jointly liable for the entire project or may they allocate liability and responsibility among them?

The liability of consortia members is based on the contractual arrangements between consortia and their clients, as well as between consortia members. In Qatar, consortia are more likely to be established in the form of a company, with the consortia members as shareholders. They may then allocate responsibility among themselves in the company constitution and in the shareholders' agreement. In practice, when consortia enter into contracts, consortia members are usually required to be jointly and severally liable. Consideration should also be given to the form of the joint venture, and whether it is incorporated with or without limited liability. In addition, consortia often required to provide additional security, such as on demand bonds, directors' guarantees, parent company guarantees and insurance policies.

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### Tort claims and indemnity

#### 13 Do local laws permit a contracting party to be indemnified against all acts, errors and omissions arising from the work of the other party, even when the first party is negligent?

The Civil Law (Law No. 22 of 2004) allows the contracting party to seek compensation for any direct, foreseeable damage from the defaulting

party. In the event of gross misconduct or gross negligence, the contracting party can even seek compensation for indirect damage from the defaulting party. However, negligence of one party may reduce the liability of the other party, as well as the amount of any damages awarded. The parties may agree on the amount of damages, provided that it does not amount to a penalty. A party may also agree by contract to indemnify the other party even when the first party is negligent, although such contractual provisions should be carefully drafted in order to avoid the other party being able to rely on the Civil Law provision providing for a reduction of damages in cases of contributory negligence.

### Liability to third parties

#### 14 Where a contractor constructs a building that will be sold or leased to a third party, does the contractor bear any potential responsibility to the third party? May the third party pursue a claim against the contractor despite the lack of contractual privity?

Under the Civil Law, contracts are binding only on the parties that sign them. Consequently, contractual claims by third parties are not possible. However, under the Civil Law, the contractor and architect or engineer are subject to decennial liability, that is, they are liable for 10 years for defects in the building or structure that are serious enough to make it unfit for its intended purpose, or that pose a threat to its structural integrity and safety. These provisions of the Civil Law do not apply to any right of recourse the contractor may have against subcontractors. The designer's liability is limited to faults arising due to the design, if the designer's role is limited to providing the design, with the exception of defects caused by the method of execution. If execution of the works is entrusted to the architect or engineer, they will be held liable for any defects caused by their failure to supervise the method of execution. The right to bring a claim lapses three years from the time of the discovery of the defect. Any attempt to contract out of these provisions of the Civil Law will be deemed null and void.

### Insurance

#### 15 To what extent do available insurance products afford a contractor coverage for: damage to the property of third parties; injury to workers or third parties; delay damages; and damages due to environmental hazards. Does the local law limit contractors' liability for damages?

With increased business activity and a continued forecast of positive economic growth for the next decade, Qatar's insurance market has been growing and developing into a leading and sophisticated sector of the type one would find in western Europe. Insurance products are readily available to provide a contractor with appropriate coverage, including for damage to the property of third parties and injury to workers or third parties. The availability of coverage for delay damages and damages due to environmental hazards depends on the insurance company involved. Local laws do not limit contractors' liability except in the case of force majeure or fault of their clients or a third party, unless otherwise agreed by the parties.

### Labour requirements

#### 16 Are there any laws requiring a minimum amount of local labour to be employed on a particular construction project?

There are no provisions in the laws of Qatar that require a minimum number of local employees to be employed on a particular construction project.

### Local labour law

#### 17 If a contractor directly hires local labour (at any level) for a project, are there any legal obligations towards the employees that cannot be terminated upon completion of the employment?

The Labour Law provides that employment contracts may be of either limited or unlimited duration. If the employment contract is of unlimited duration, either party may terminate it without giving reasons for the termination. In the event of termination, the terminating party needs to notify the other party in writing, subject to the relevant notice periods. If the employment contract is of limited duration, the contract expires at the termination date unless there is a breach of contract. If an employee has successfully completed his or her probation period, which cannot exceed six months, then notwithstanding termination, an employee will be

entitled to end of service leave (if employed for more than one year), will have a right of repatriation in cases where labour is sourced internationally, can claim a certificate of employment and seek the return of any certificates or documents that the employee deposited with the employer, and is entitled to any outstanding amounts such as holiday pay, unpaid salary or overtime.

In addition to Law No. 1 of 2015 (see question 9) regarding the method of payment of the employees' wages, the Qatari government is also taking steps to build new and better accommodation for workers, and to ensure the health and safety of construction workers by increasing the number of safety inspectors at construction sites.

### Labour and human rights

#### 18 What laws apply to the treatment of foreign construction workers and what rights do they have? What are the local law consequences for failure to follow those laws?

The Qatari law, including the Labour Law (Law No. 14 of 2004) provides some protections granted to employees (including foreign construction workers) and imposed on their employers. For instance, these protections include the maximum working hours during summer time and some health and safety measures at work. The Labour Law provides for the establishment of the Labour Inspection Authority responsible for the supervision of the proper application of the legislations related to employees' protection. For instance, article 138 of the Labour Law authorises the said Authority to enter the employees' accommodation to inspect their conformity with the health requirements. The applicable sanctions for violation of these protections are mostly fines.

Qatar has introduced changes in its law in order to provide more efficient protection to foreign construction workers. Some of these changes have already come into effect and others are expected to come into effect by the end of 2016. The changes are mainly the following:

- imposing the payment of wages through local bank transfers, imposing the wages protection system on all companies operating in Qatar and granting control to the Ministry of Labour over payments of proper wages (violation of this obligation is sanctioned by imprisonment of up to one month or a fine of between 2,000 and 6,000 Qatari riyals, or both);
- increasing the applicable fine for confiscating passports of foreign workers (increase from 10,000 to 25,000 Qatari riyals). This change is expected to come into force by the end of 2016; and
- authorising a change of job, without the employer's approval in some cases. As of the end of 2016, a foreign employee should be able to change jobs if his or her contract is for a definite term and has expired, provided that approvals of the Ministry of Interior and the Ministry of Labour are obtained. In the case of foreign employees with open-ended contracts, they can seek this approval after five years in their initial job.

### Close of operations

#### 19 If a foreign contractor that has been legally operating decides to close its operations, what are the legal obstacles to closing up and leaving?

The process of winding down a foreign contractor's operations in Qatar differs depending on its adopted corporate structure. If the entity is an international engineering office or a local engineering office, it may be closed according to the process set out by the Ministry of Municipality and Urban Planning, through the submission of a winding down request. If the entity is a branch of a foreign company and has accordingly been registered in Qatar based on a contract with the government for the implementation of a project of public interest, then the registration of this branch will normally lapse at the date of expiry of the contract, which is specified in the branch registration document. The process of winding down a branch is not governed by the law and is determined by the practice adopted by the Ministry of Economy and Commerce. Furthermore, as a prerequisite for winding down (of a local or international office) or cancellation of registration (in the event of a foreign branch), an income tax clearance certificate from the Public Revenues and Taxation Department at the Ministry of Finance must be obtained, evidencing payment of income tax on the profits of its operations in Qatar and clearance from the Ministry of Labour providing that the company or branch has fulfilled all of its financial obligations to its employees sponsored in Qatar.

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**Payment rights**


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**20 How may a contractor secure the right to payment of its costs and fees from an owner? May the contractor place liens on the property?**

The safest mechanism for the contractor to ensure that it receives payment of its costs and fees is a clean progress payment schedule under the contract, with adequate advance and progress payments. Bank guarantees are also an option, but in practice are rarely provided. Liens for contractors and suppliers are available under articles 1,184 to 1,186 of the Civil Law.

Depending on the dispute settlement provisions in the contract, claims for payment can be made in arbitration or in the state courts. In addition, the contractor may apply for an attachment order on the property under construction. The attachment order, if obtained, must be validated by the contractor within a time period specified by the court, by initiating proceedings on the merits against the employer.

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**Contracting with government entities**


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**21 Can a government agency assert sovereign immunity as a defence to a contractor's claim for payment?**

Even though there is no immunity from suit, government entities or agencies are, *prima facie*, entitled to immunity from execution. It should be noted, however, that under Qatari law such immunity may be waived in respect of the state's public and private properties invested in financial, commercial or industrial activities. Under no circumstances would a foreign party be entitled to execute against any assets or properties of the state necessary for its proper functioning as a sovereign power. In practice, the state, enterprises held by the state or organisations controlled by the state almost always abide by the terms of any bargain agreed with a party, and resort to the contract or local laws for the interpretation and performance of the same. The rule of law is recognised and enforced in Qatar.

In the French *Creighton v Qatar* case, Qatar claimed sovereign immunity from execution against a foreign arbitral award rendered under the International Chamber of Commerce (ICC) rules in France; however, the French Court of Cassation denied such immunity (*Creighton v Qatar*, 6 July 2000, Rev arb 2001, 114). The court ruled that an arbitration agreement referring to the ICC Rules, which provide that the parties shall comply with all awards, amounted to a waiver of immunity from execution. In other jurisdictions, an arbitration agreement may be construed as a waiver of immunity from jurisdiction, but not from execution.

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**Statutory payment protection**


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**22 Where major projects have been interrupted or cancelled, do the local laws provide any protection for unpaid contractors who have performed work?**

Any contractual provisions dealing with interruption, suspension, cancellation or termination take precedence. If these matters are not addressed in the contract, contractors can fall back on the Civil Law.

The Civil Law distinguishes between the annulment of contracts for failure by a party to perform its obligations under the contract, which requires court approval, and contracts the performance of which becomes impossible, or which are incapable of being performed, where neither party is at fault.

In the first scenario, if the employer fails to perform its obligations under the contract, then subject to the contract, the contractor may apply to the court for annulment with compensation. The requirement for obtaining court approval can, however, be waived by clear agreement of the parties. Once a contract is annulled, the Civil Law provides for the parties to be put in the same position they would have been in before entering the contract and, if this is not possible, compensation may be granted. Therefore, if the contractor has performed work, the employer must compensate the contractor for the expenses incurred and the works completed.

In the second scenario, where the performance of the agreed works in a contract becomes impossible due to a cause not of either party's making, the contractor will have the right to demand from the employer compensation for such expenses incurred for any works performed and any fee that is due, within the limits of any benefit that has accrued to the employer.

The contractor, in its capacity as a creditor of its employer, may also assert the financial rights of its employer, in its capacity as creditor of a third party, in the employer's name, if the contractor can prove that the employer did not exercise its rights and that not exercising them may result in its insolvency or increase its insolvency.

The contractor can acquire lien over the employer's real property for a judgment debt, and has a right to record a lien over the real property for the increase in value due to building works.

If the contractor is a subcontractor it may claim directly from the employer instead of the head contractor. The subcontractor can also seek to attach amounts due by the employer to the contractor.

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**Force majeure and acts of God**


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**23 Under local law are contractors excused from performing contractual obligations owing to events beyond their control?**

Article 21 of the Public Tenders Law provides that in the event a contractor is late in the performance of the work, the governmental entity may grant an extension of time provided that a penalty for late performance will apply. The contractor will be partially or fully exempted from such penalty if proven that the delay in performance is due to reasons that are out of the contractor's hands.

In general, the provisions of the contract addressing force majeure and acts of God dictate the rights between the parties without prejudice to the provisions of the above-mentioned article 21. However, if the contract does not contain any provisions in this respect, the Civil Law applies. Article 188 of the Civil Law provides that contracts are terminated if they become impossible to perform for a reason that is out of the hands of the parties. Articles 148, 187 and 402 deem a contract null and void if the object of the obligation is impossible. Similarly, article 704 of the Civil Law, applicable specifically to contracts for work (including construction), provides that, in the event of the impossibility of performance due to a reason beyond the control of the parties, the contract is terminated. However, article 258 of the Civil Law provides that the parties may agree that the debtor (that is, the debtor of an obligation that is subject to a force majeure) will be liable for the consequences of a force majeure. The contractor is compensated for the work within the limits of the enrichment of the employer. Further, under article 171(2) of the Civil Law, if exceptional incidents occur that could not have been anticipated and the occurrence of which makes fulfilment of a contractual obligation, although not impossible, extremely difficult and threatens grave loss to the party, a court may, at its discretion, reduce the party's obligations.

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**Courts and tribunals**


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**24 Are there any specialised tribunals that are dedicated to resolving construction disputes?**

Urgent administrative disputes arising prior to entry into the contract and related to the application of the Public Tender Law and its executive regulations are settled by the dispute settlement committees at the Ministry of Finance (see question 8).

Construction disputes may be heard before the Qatari courts, initially before the court of first instance, then on appeal before the court of appeal, and finally before the Court of Cassation.

The Qatar International Court and Dispute Resolution Centre (QICDRC) houses a fully operational civil and commercial court (comprising a first instance and appellate circuit), a regulatory tribunal and an alternative dispute resolution (ADR) centre that caters for arbitrations, mediations and a number of adjudication schemes. The jurisdiction of the court and tribunal is defined by Qatar Financial Centre (QFC) Law No. 7 of 2005 (as amended), and covers civil and commercial disputes that arise between QFC-registered companies (including their employees), the QFC itself (and any of its institutions), entities which the QFC, or a QFC-registered company, has contracted with, as well as those parties who have consented to the court having jurisdiction to hear their disputes. The ADR facilities are available to host ad hoc arbitrations and mediations for parties who wish to use them.

Arbitrations that are conducted pursuant to the QFC Arbitration Regulations 2005 will also take place at the facilities of the QICDRC but will be supervised by the QFC court. Current legislative proposals will, when enacted, bring about a number of important changes to the way in which the QICDRC operates, the most important of which is the ability to create and supervise adjudication schemes.

One such adjudication scheme, Q-Construct, has already been established, with the regulations underpinning the scheme having been drafted and a specialist construction judge of the QICDRC appointed to oversee the scheme. Once the legislative amendments are implemented, the scheme will become operational.



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**Dispute review boards**


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**25 Are dispute review boards (DRBs) used? Are their decisions treated as mandatory, advisory, final or interim?**

There is no provision for DRBs or dispute adjudication boards (DABs) in the Public Tender Law, but the law does not exclude the use of DRBs or DABs. If dispute boards have been used, it has typically been through FIDIC's suite of contracts, which is regularly used within Qatar's construction industry.

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**Mediation**


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**26 Has the practice of voluntary participation in professionally organised mediation gained acceptance and, if so, how prevalent is the practice and where are the mediators coming from? If not, why not?**

There is no statutory definition of mediation, nor does Qatari law provide for or regulate it. Mediation is nevertheless used in Qatar, especially in the context of public sector contracts, the parties of which often informally meet to discuss points of contention or any issues affecting the project and try to finally settle disputes out of court or arbitration.

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**Confidentiality in mediation**


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**27 Are statements made in mediation confidential?**

In the absence of any applicable statutory regime or a carefully worded clause in a mediation agreement, confidentiality of any mediation is not guaranteed, as local rules do not impose an obligation of confidentiality. However, mediation will be confidential if the parties adopt certain generally available mediation rules, such as the ICC ADR rules, the mediation rules of the Swiss Chamber of Commerce, the UNCITRAL Conciliation Rules or the London Court of International Arbitration (LCIA) mediation rules.

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**Arbitration of private disputes**


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**28 What is the prevailing attitude towards arbitration of construction disputes? Is it preferred over litigation in the local courts?**

Qatari construction disputes, especially those relating to large projects, are, more often than not, submitted to arbitration. It is difficult to assess whether arbitration is preferred over litigation in the local courts in Qatar. That said, foreign entities do prefer arbitration because it is a process they are usually familiar with, whereas proceedings before the local courts are conducted in the Arabic language, which requires all evidence, including documents and any witness testimony, to be adducted in Arabic or translated into Arabic.

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**Governing law and arbitration providers**


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**29 If a foreign contractor wanted to pursue work and insisted by contract upon international arbitration as the dispute resolution mechanism, which of the customary international arbitration providers is preferred and why?**

Given the confidential nature of the contracts, it is difficult to give a reliable answer to this question. It would seem that the most popular arbitration rules are those of the ICC. The use of other rules, such as the Swiss Rules of International Arbitration or the Rules of the LCIA, depends on the preferences and experience of the parties and the lawyers or engineers assisting them in the preparation of the tender documents or in the negotiation of contracts.

Regional arbitration centres, in particular the Cairo Regional Centre for International Commercial Arbitration and the Dubai International Arbitration Centre, appear to be gaining in popularity. The arbitration centres of the QFC and the Dubai International Financial Centre (in cooperation with the LCIA) are also players within their jurisdictions. Finally, the Qatar International Centre for Conciliation and Arbitration is developing its activities and has had some success with local and certain foreign users.

It is equally difficult to assess whether there are any preferences in Qatar regarding the place of arbitration. Doha, Geneva, London and Paris appear to be the most frequently chosen. In disputes concerning public infrastructure projects, the seat of arbitration is usually Doha.

Concerning the law applicable to the contract, there is a strong preference for the law of Qatar.

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**Dispute resolution with government entities**


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**30 May government agencies participate in private arbitration and be bound by the arbitrators' award?**

Article 34 of the Public Tender Law provides that the parties to a contract with the government or any public entity may agree to arbitration, but they require the approval of the Minister of Finance. The provision expressly requires that, pending the arbitration, the parties must continue performing their obligations under the contract.

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**Arbitral award**


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**31 Is there any basis upon which an arbitral award issued by a foreign or international tribunal may be rejected by your local courts?**

Enforcement of foreign arbitral awards is governed in Qatar by the 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), which Qatar ratified in 2003. The Convention considerably limits the grounds on which enforcement of international arbitral awards may be refused. Qatar adopted the New York Convention subject to reciprocity; in other words, only awards from states that are also party to the New York Convention are enforced on the basis of this Convention. As regards awards from states that have not ratified the New York Convention, article 381 of the Civil and Commercial Procedure Law (Law No. 13 of 1990) applies.

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**Limitation periods**


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**32 Are there any statutory limitation periods within which lawsuits must be commenced for construction work or design services and are there any statutory preconditions for commencing or maintaining such proceedings?**

The general time limit for contractual and civil claims is 15 years, except in cases where the Civil Law specifically provides for a shorter period.

The contractor and engineer hold a joint decennial liability for any destruction or defect, total or partial, in buildings that they have constructed or structures that they have erected, even if such destruction or defect is the result of a fault in the land itself or the employer has approved defective buildings or structures. Liability will cover any defects appearing in the building or structure that threaten their strength and safety (article 711 of the Civil Law).

Such decennial liability will lapse three years from the moment that the destruction occurs or the defect is discovered (article 714 of the Civil Law). Further actions relating to building defects arising under the 10-year defect period (see question 14) lapse three years from the time of the discovery of the defect.

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**International environmental law**


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**33 Is your jurisdiction party to the Stockholm Declaration of 1972? What are the local laws that provide for preservation of the environment and wildlife while advancing infrastructure and building projects?**

Qatar is not a signatory of the Stockholm Declaration. However, Decree No. 47 of 1996 approved the Accession to the UN Framework Convention on Climate Change. The main law providing for environmental protection is Law No. 30 of 2002 for Environmental Protection, which provides for, inter alia, clean air and waterways, the safe disposal of hazardous waste and materials, and penalties for any transgressions. In 1998, a permanent Committee for Environmental Protection was established by a cabinet resolution. The Supreme Council of the Environment and Natural Reserves issued Decision No. 4 of 2005, which requires environmental impact assessments for all public and private development projects. Other areas of interest to the Supreme Council include climate change, wildlife preservation and clean development.

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**Local environmental responsibility**


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**34 What duties and liability do local laws impose on developers and contractors for the creation of environmental hazards or violation of local environmental laws and regulations?**

The applicable environmental laws require the relevant governmental authority to impose conditions as part of the approval of a development. Environmental laws also impose strict anti-pollution measures. Penalties

### Update and trends

A significant change has been introduced by the new Public Tender Law authorising a contracting governmental entity, for purposes of public interest, to amend the number or volume of a contract without the contractor's right to request any indemnity in this regard (while the old Public Tender Law provided for a limitation on any similar amendment whereby its value could not exceed 20 per cent of the contract price).

Furthermore, Qatar is continuously focused on the role of small and medium enterprises in the construction sector and has authorised, under the new Public Tender Law, the full or partial exemption of such enterprises' participation in tenders from submitting the required temporary bond, final bond and advance payment performance bond, provided that an undertaking is provided by Qatar Development Bank.

for breaching environmental laws range from fines of between 1,000 and 500,000 Qatari riyals or imprisonment from one to 10 years, or both. In addition, a court may order the closure of the offending enterprise, banish foreign developers or contractors, confiscate the tools or equipment used in committing the offence, order rectification and deport an offending foreign national.

### International treaties

#### 35 Is your jurisdiction a signatory to any investment agreements for the protection of investments of a foreign entity in construction and infrastructure projects? If so, how does your model agreement define 'investment'?

Qatar has signed 51 bilateral investment treaties (BITs), although only 18 have entered into force, namely those concluded with Belarus, Bosnia and Herzegovina, China, Costa Rica, Egypt, Finland, France, Germany, India, Iran, Italy, Korea, Macedonia, Morocco, Romania, Russia, Switzerland and Turkey.

To the authors' knowledge, there is no Qatari model BIT. Consequently, the definitions of 'investment' in the treaties concluded by Qatar depend on the models of other states or the result of negotiations in individual cases. The term investment is, however, generally defined as every kind of asset invested by investors of one contracting party in the territory of the latter, and, in particular, though not exclusively, includes the following:

- moveable and immoveable property, and other property rights such as mortgages and pledges;
- shares, stocks and any other kinds of participation in companies;
- claims to money or to any other performance having an economic value;
- copyrights, industrial property rights, know-how and technological process; and
- concessions conferred by law, including concessions to search for or exploit natural resources.

The BITs concluded by Qatar typically offer investors the option to initiate the International Centre for Settlement of Investment Disputes arbitration or other forms of international arbitration, such as ad hoc arbitration (eg, the French-Qatari BIT) against the host state.

### Tax treaties

#### 36 Has your jurisdiction entered into double taxation treaties pursuant to which a contractor is prevented from being taxed in various jurisdictions?

According to the Ministry of Finance, Qatar has double taxation treaties with 58 other states including Armenia, Azerbaijan, Barbados, Belarus, Belgium, China, Croatia, Cuba, Cyprus, France, Guernsey, Hong Kong, India, Indonesia, Italy (reciprocal exemption from port fees), Jordan, Korea, Lebanon, Macedonia, Malaysia, Mexico, Morocco, Nepal, Pakistan, Portugal, Russia, Romania, San Marino, Senegal, Seychelles, Singapore, Sri Lanka, Switzerland (Air Transport Exemption Agreement), Syria, Tunisia, Turkey, the UK, Ukraine, Venezuela and Yemen.

In addition, Qatar continues to try to increase the number of these agreements and routinely revises the Qatari model agreement for the avoidance of double taxation, in order for it to be in line with legislative and economic developments in the state.

### Currency controls

#### 37 Are there currency controls that make it difficult or impossible to change operating funds or profits from one currency to another?

Qatar has a stable currency, the riyal, which is freely convertible and has been pegged to the US dollar (US\$1 = 3.64 Qatari riyals) since 1980. The country imposes no foreign exchange controls or regulations.

### Removal of revenues, profits and investment

#### 38 Are there any controls or laws that restrict removal of revenues, profits and investments from your jurisdiction?

There are no controls or laws that restrict the removal of capital, profits and investments from Qatar.

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