

## Doing Business in the State of Qatar



*1st January 2016*

Qatar is currently the fastest growing economy on the globe and is attracting most of the biggest (as well as most of the reliable) small and medium size companies from Europe. The competition is reaching an impressive level in such a small country for such a small quantity of business.

On the one hand and business wise, for many small and medium size companies, it does not necessarily make sense to even try to participate in the current or near future tenders as this requires being either well connected to the decision makers, to have experience in the region or to be highly competitive regarding prices or quality. On top of this, even though the projects are varied and important, other emerging countries present in the long-run much more opportunities.

On the other hand (legally), the restrictions against foreign investments are high and should be taken into consideration with regards to the actual chance to be awarded with a contract, as contractor or subcontractor.

However, firstly, most of the companies already established via a distributorship agreement or via a company are not necessary the cheapest or highest quality of products provider.

Secondly, due to the chaos in the market structure, the urgency of the projects to be finalized and the difficulty to analyze the strength and weakness of a product or a service properly, the decision making process of the issuer of the tenders or of the contractors are precipitated and therefore accessible.

Finally, due to the fact that huge projects are handled by fewer entities and fewer representatives, once an award is granted, the chance to get a second or more is higher compared to in other countries.

These factors may be a source of opportunity for some companies. Indeed, the reputation of certain companies (proven with references and certifications), along with the known confidence and ability to negotiate and explain the products or the services effectively, are decisive and may make the difference between other companies.

As a result, the establishment of a presence in the State of Qatar should be analyzed carefully business and legal wise, but the decision, once made, should be implemented immediately in order to participate to the numerous mega projects the State of Qatar is leading.

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## **I. General legal environment**

Qatar is a civil code jurisdiction (unlike, for example, England which is a common law jurisdiction) although common law principles have some influences given Qatar was a British Protectorate.

The legal system and its key laws are modeled on those of Egypt which, in turn, are modeled on the Codes de Napoleon of France. Courts in Qatar do not rely on a formal or informal system of precedents. This, together with the fact that the laws in Qatar are not always extremely detailed, leads to an increased level of unpredictability in litigious matters.

With the exception of the QFC, all laws issued in Qatar are issued only in Arabic and formal translations are generally not made available by the Qatari authorities. Any proceedings before the Qatari courts proceed only in Arabic.

The judiciary is independent from the Government and is practically divided into two court systems: the first, the civil, commercial and criminal system, and the second, the Sharia'a system, which administers Islamic law, including matters pertaining to personal status such as marriage, divorce, child support, succession and to some criminal offences.

The Judiciary is independent, in both its religious and civil branches, exercising the authority vested in it by the country's constitution.

The parties to an international contract are free to choose the law and jurisdiction which will govern that contract. If they do not choose an applicable law, the contract may be governed by the Qatari Civil Code, depending on the situation. The parties may also agree in writing to refer disputes to arbitration.

## **II. Social and Business customs in Qatar**

Qatar is an Islamic state and the heritage of Islam is deeply rooted in the Qatari character. Islamic customs govern the general way of life; care must be taken to respect this, particularly in such matters as the dress code, and the observance of the times of prayer and the fasting month of

Ramadan, when food and drink may only be consumed between sunset and sunrise: violation is not only resulting in a moral judgment but in a fine or a short jail term.

The importation and consumption of alcohol is strictly regulated. However, liquor permits may be obtained by foreign employees in certain circumstances and the main hotels are allowed to serve alcohol in restaurants and selected bars. Qatar prohibits the brewing and trafficking in alcohol. Drunken behavior in public or driving under the influence of alcohol is an offence punishable by imprisonment, a fine or both, and revocation of the offender's driving license.

Qatar bans all pork products.

Qatar prohibits individuals from photographing airports, Government Ministry buildings or defense installations, and care should be taken to avoid taking photographs that might constitute an invasion of an individual's privacy.

As with all Arab peoples, the tradition of hospitality and generosity is strong. It is important to display courtesy and patience in negotiations.

### **III. Investing in Qatar – Main features**

Non-Qatari investors may only invest in Qatar in accordance with the provisions of the Foreign Investment Law (Law No. (13) of 2000).

Non-Qatari investors may invest in all parts of the national economy (other than those set out below) with a Qatari partner who must own at least 51% of any enterprise.

Non-Qatari investors are prohibited from being appointed as commercial agents under the Commercial Agencies Law (No. (8) of 2005) or from investing in real estate businesses (apart from in real estate designated areas).

Approval from the Council of Ministers is required for foreign investment in banking and insurance.

The Minister of Business and Trade may permit non-Qatari investors to own up to 100% of an enterprise in 6 specific sectors, being, agriculture, industry, health, education, tourism, and the

development of natural resources, energy or mining. Such permissions are granted at the discretion of the Minister.

Foreign capital is guaranteed against expropriation (although the State may acquire assets for public benefit on a non-discriminatory basis, provided the full economic value is paid for the asset). Subject to Ministerial approval, a non-Qatari company which is performing a specific contract in Qatar may set up a branch office (Branch) if the project facilitates the performance of a public service or utility.

A non-Qatari company operating in Qatar under a Qatari government concession to extract, exploit or manage the State's national resources is exempt from the Foreign Investment Law. In practice this covers all the oil majors. A company formed by a non-Qatari entity with the government or a government entity (an Article 68 Company) will be subject to special rules.

#### **IV. The main primary investment vehicles**

##### **A. Company**

A company is the normal vehicle where an ongoing business is being set-up: various exemptions are available to attract foreign capital. In almost all cases a Qatari partner will be required.

##### **B. Branch**

Branches may be established where a non-Qatari company is performing a specific contract in Qatar. There is no requirement to have a Qatari partner. The subject matter of the contract must facilitate the performance of a public service or utility which the Ministry of Business and Trade (MBT) currently defines as having a contract with the Qatari Government or a quasi-government entity. Branch authorization is at the discretion of the Minister of Business and Trade. The Branch is only entitled to perform the specific contract for which it is registered and registration will only be given for the duration of the contract. The Branch will be fully taxable unless it is granted a special exemption.

A special regime applies to branches of non-Qatari engineering consultancy firms.

### **C. Commercial Agency**

In cases of a commercial agency, the non-Qatari company does not establish a presence in Qatar (nor should it have any physical presence in Qatar, for example, any employees operating in Qatar), instead a 100% owned Qatari entity or Qatari national is appointed as agent to market the relevant goods and services in Qatar.

Exclusive agencies may be registered in the Commercial Agents Register at the Ministry of Business and Trade and will then be subject to the Commercial Agencies Law. If it is not registered it will be governed by the Qatar Civil Code and Commercial Law (No. (22) of 2004). Under a registered agency, commission (up to 5%) is payable on all sales of the products within the territory, even if the sales are not due to the activities of the agent. It is difficult to terminate a registered agency. Compensation is payable upon the termination of the agency, including upon the expiry of a fixed term agency.

### **D. Representative Office**

A Qatari representative office is in fact a marketing platform or "shop window" which can ONLY be used to promote a foreign company in Qatar and try to introduce it to Qatari companies and projects. Any business must be carried out by a non-Qatari entity (where the contract can be performed substantially outside Qatar) or by a company or Branch authorized to do business in Qatar.

### **V. Main features of the primary investment vehicles**

The two forms of vehicle most likely to be of interest to non-Qatari investors are Limited Liability Companies (LLCs) and so-called Article 68 Companies. Other possible legal entities under Qatari law are the Simple Partnership, the Joint Partnership and the Qatari Shareholding Company (QSC), but non-Qatari participation is restricted. If the non-Qatari investor is permitted to own 100% of the company (by the Ministry of Business and Trade as a result of investing in certain specified sectors) the single shareholder company can be used as the vehicle for such investment.

### **A. LLC**

Characteristics include:

- a) minimum capital of QAR 200,000;
- b) must have at least 51% Qatari ownership unless an exemption has been obtained;
- c) the parties' profit shares do not necessarily have to reflect their shareholdings, for example, MBT will currently approve articles of association where the non-Qatari partner receives up to 97% of distributable profits;
- d) 10% of each year's net profits must be kept within an LLC until the reserve stands at 50% of the share capital;
- e) may not raise capital by public subscription and may not issue freely transferable shares or bonds;
- f) shares may only be transferred after they have first been offered to the other shareholders by way of pre-emption, unless the other shareholders have agreed to waive their right; and
- g) may not carry out banking or insurance business or provide investment advice or investment services to third parties.

### **B. Article 68 Company**

Characteristics include:

- a) formed by an investor, which may be non-Qatari, with the Government or the companies in which the Government holds shares provided they obtain the Council of Ministers' approval;
- b) the non-Qatari investor's share of the company is a matter for negotiation, but can be greater than 49%;
- c) corporate structure is of a "Qatari Shareholding Company with Government Participation"; and
- d) falls outside the Foreign Investment Law and, to a certain extent, the Commercial Companies Law.

### **C. Single Shareholder or Owner Company**

Characteristics include:

- a) minimum capital of QR200,000;
- b) may be 100% non-Qatari owned only if permitted by MBT; and



- c) subject to the laws relating to LLCs, unless any provisions are contradicted by the new single shareholder company legal and regulatory provisions.

See in Annex 1 a recent update of the procedure for such a set-up.

## **VI. Establishment, registration and other formalities**

### **A. Government Liaison Officer**

Virtually all Qatari companies use a government liaison officer or a facilitator to carry out all the necessary registration formalities associated with establishment. Consequently, the steps set out below are only a brief high level guide to what is required. Such a facilitator will also be invaluable for obtaining residence permits, driving licenses and telephone, power and water connections etc.

### **B. Company formation**

The following are required in order to incorporate a company and obtain a Commercial Registration, where the non-Qatari shareholder is an entity rather than an individual:

- a) the initial approvals from the relevant authority (if required),
- b) a shareholders/director resolution specifying the setting up of the new company and the appointment of the future manager are required,
- c) the Memorandum of Association, approved by the MBT, in Arabic, notarized, legalized
- d) a notarized, legalized copies of the non-Qatari company's constitutional documents,
- e) a power of attorney from the non-Qatari company to its incorporation representative in Qatar,
- f) a letter from a bank indicating the deposit of share capital (in full) at the bank,
- g) the relevant specimen signatures of the manager and authorized representatives and other documents such as the Power of Attorney to the manager,
- h) lease contract for the office of the company and
- i) Chamber of Commerce Registration.

Once the company has been incorporated and the Commercial Registration issued, the share capital can be released to the company's general manager (or directors) for the purposes of running the company.

The following licenses must then also be obtained:

- a) Trade license and Signage license issued by the appropriate Qatar Municipality; and
- b) Employer's Immigration Department Identity Card (or Computer Card) issued by the Immigration Department.

### **C. Branch**

The following are required in order to establish a Branch and obtain a Commercial Registration:

- a) a shareholders/director resolution specifying the setting up of the Branch and the appointment of the future manager are required,
- b) notarized, legalized copies of the non-Qatari company's constitutional documents,
- c) a power of attorney from the non-Qatari company to its incorporation representative in Qatar,
- d) a copy of the contract in respect of which it is sought to establish the Branch;
- e) the relevant specimen signatures of the manager and authorized representatives and other documents such as the Power of Attorney to the manager,
- f) lease contract for the office of the company and
- g) Chamber of Commerce Registration.

Once the Branch has been approved and the Commercial Registration issued the following licenses must also be obtained:

- a) Trade license and Signage license issued by the appropriate Qatar Municipality; and
- b) Employer's Immigration Department Identity Card issued by the Immigration Department.

## **VII. Import and export**

### **A. Customs duties and procedures**

If applicable, the company/Branch will also need to be entered in the Importers' Register and/or Contractors' Register.

The import of goods into Qatar is regulated by the Customs Law (No. (40) of 2002) which implemented the regulations of the GCC Customs Union. In general a person wishing to import goods

into Qatar for sale must be registered in the Importers' Register and be approved by the Qatar Chamber of Commerce.

Goods (see exempt goods referred to below) can be imported through a registered importer with the payment of a standard rate of customs duty of 5% of invoice (Cost, Insurance and Freight) value. In addition to customs duty, legalization fees are payable on import documentation.

#### **B. Documentation requirements**

To release imports, the following documents are required:

- a) certificate of origin;
- b) invoice and shipping document;
- c) full description of goods; and
- d) health and quality certificate, if applicable.

#### **C. Duty exemptions**

The GCC States have approved a list of some 417 exempted goods, and have also approved new regulations providing for customs duty exemptions for imports for industrial projects. Exemptions from customs duty can be obtained for the import of equipment relating to a particular project as can exemptions from customs duty for the import of primary or semi-manufactured materials where they are not available locally.

#### **D. Personal effects and restrictions**

Once a non-Qatari employee is resident in Qatar there is normally no difficulty in importing personal effects free of customs duty. However, the import and sale of alcohol and pork products are prohibited and so any such goods may be seized.

#### **E. Exports**

No duties are levied on exports.

## VIII. Taxation

### A. Companies

Income tax is levied on businesses other than those wholly owned by GCC nationals. Income tax is charged on all profits arising in Qatar, including profits on the sale of the company's assets. The share of profits due to the Qatari or GCC partner in a business is exempt from tax.

### B. Withholding tax

Customers of companies registered outside Qatar (non-resident) must pay a withholding tax.

### C. Tax treaties

Some countries have double tax treaties with Qatar: if not unilateral relief may be available.

### D. Retention of final contract payments

Income tax practice directives issued in January 1993 and May 1995 require all ministries, government departments, public and semi-public establishments and other taxpayers to withhold final payments to subcontractors pending receipt of a tax clearance certificate issued by the Income Tax Department. Final payments are generally interpreted to be 5% of the contract price, but may be as high as 10% of each invoice value.

### E. Tax exemptions

The Tax Law No.11 of 1993 establishes the concept of tax exemption for specific projects where certain conditions apply. Application for tax exemption of projects is evaluated by a Committee reporting to the Ministry of Economy and Finance. The exemption periods range from 5 years on the sole approval of the Minister of Economy and Finance to 10 years on the approval of the Council of Ministers.

### F. Individuals

There are no personal taxes, social insurance, or other statutory deductions from salaries and wages paid in Qatar.

## **IX. Labor Law**

### **A. Qatarisation**

A Qatarisation initiative is in place which aims to increase the number of Qatari nationals in the public sector workforce. The Labor Law (Law No. (14) of 2004) introduces Qatarisation initiatives for private sector entities. The employment of Qatari nationals is one of the criteria taken into account when tax exemptions are granted.

### **B. Contract of employment**

All contracts of employment are governed by the Labor Law. They must be in Arabic and approved by the Labor Department.

Most of the usual clauses of an employment contract are quite well regulated by the law. For instance, the probation period, during which both parties may terminate the employment contract without reason but with a mandatory period of three days, shall not exceed six months. The non-competition clause must be restricted in its material scope (actual competition), its duration and place. The working time, the annual and sick leave are public policy and cannot be changed by the employer.

Employment of women is subject to specific rules and regulations regarding time of work, dangerous works and maternity leave.

### **C. End of service**

The termination shall be notified and a notice period shall be respected as defined in the law or in the contract.

An end of service gratuity is to be paid to employees based on the basic salary, except in few circumstances described in article 61 of the Labor Law. The cost of return to the place from where the employee has been recruited is also to be paid by the employer.

#### **D. Residence and work permits**

Companies will need to obtain residence and work permits for their expatriate staff. A Labor Department Committee has been established to supervise applications for bringing in foreign workers. All expatriate employees must be sponsored by their employer who is responsible for them while they are in Qatar.

#### **X. Real estate**

Ownership of land by non-Qataris, both individuals and companies is restricted. Land for projects can be given to non-Qatari investors on long term leases for periods of up to 50 years which may be renewed. Law No.(17) of 2004 permits non-Qataris to own freehold property in three new developments (West Bay, The Pearl and Al Khor) and leasehold property (usufruct rights) in a further 18 regions.

#### **XI. Special Economic Zone / Free Zone**

##### **A. General Free Trade Zones**

In September 2005, Qatar enacted a new law for the establishment of Free Zones in the State aimed at sustaining and diversifying the economy. Companies setting up in the free zones will operate and trade without a local sponsor or service agent, and may enjoy 100% non-Qatari ownership and many other benefits.

It is envisaged that there will be a free zone at the airport and the port.

Currently no free zones have been established.

##### **B. Qatar Science & Technology Park (QSTP)**

The QSTP was established pursuant to Law No. (36) of 2005. The QSTP has a special free zone status and is a center of research and commercial excellence for scientific development and regionally produced intellectual property for both Qatari and international partners. The QSTP promotes the research and commercialization of technology projects and training and requires sub-

stantial investment from its licensee, the execution of which is checked each year during the licensing renewal process.

Entities in these free zones will not pay tax; however, they are supposed to have activities only according to the license granted by the QSTP and usually not in the mainland of Qatar. Some exceptions exist.

### **C. Qatar Financial Centre (QFC)**

The QFC was established pursuant to Law No. (7) of 2005. The QFC attracts international financial institutions and multinational corporations to establish businesses in international banking, financial services, insurance, corporate head office functions and related services.

The QFC is organized into two authorities, a commercial authority and a regulator, the QFC Authority (QFCA) and the QFC Regulatory Authority (QFCRA), respectively. Both the bodies are independent of each other and from the Government of Qatar.

The QFCA permits regulated activities primarily related to financial, insurance, brokerage and fund management services. In addition, the QFCA licenses unregulated activities such as ship broking, professional services, for example, legal and accounting firms, and classification services.

The QFC has its own rules and regulations. The entities registered within the QFC may operate and trade without a local sponsor or service agent, 100% non-Qatari ownership, and will be governed by the QFC rules and regulations.

Tax is payable by QFC entities at 10%.

## **XII. Protecting the investment**

Traditionally, intellectual property rights were not as well protected in Qatar as in more developed jurisdictions, however Trademark and Copyright laws were enacted in 2002, the Design Law in 2005 and a New Patent Law in 2006.

**A. Trademark Law (No.(9) of 2002)**

Trademarks can be registered at the Trademark Office and are valid for 10 years from the date of filing. Registration may be renewed and may also be cancelled where a trade mark has not been used for 5 consecutive years. Where the international classification of goods and services is used, a separate application must be made for each class. Non-Qataris have the same rights as Qataris provided that their country treats Qatar reciprocally. When the Trademark is in Latin, Chinese or other than Arabic alphabets and depending on the use of the trademark, a protection of a transliterated or translated Trademark in Arabic may or not make sense.

**B. Copyright Law (No.(7) of 2002)**

The Qatari copyright law protects original literary and artistic works including computer programs and databases which are creative in the selection and arrangement of their subject matter. Materials are registered at the Qatar Copyright Office in order to be protected. Protection lasts during the life of the author and for 50 years after his or her death.

Protection extends, inter alia, to non-Qataris whose work is first published in Qatar or is published in another country and then published in Qatar within 30 days of the first publication date, and to works protected by international agreements.

**C. Design Rights Law (No.(6) of 2005)**

Inventive designs or industrial models can be registered under the Trademark Law. Protection lasts for 10 years.

**D. Patent Decree (Law No.(30) of 2006)**

Inventions and foreign patents may be registered at the Qatar Patent Office. Protection lasts for 20 years. A Gulf Cooperation Council patent can be obtained by filing at the Patent Office in Riyadh, Saudi Arabia.



## ANNEX 1

### **The foreign owned company in the State of Qatar Procedure of Incorporation**

The present document intends to summarize two of the available legal forms for doing business in the State of Qatar to help decision makers of foreign companies to understand the legal aspects of a decision to develop business in the State of Qatar.

Apart from a distributorship agreement which has a cost in term of commissions to the distributors, one other solution consists of setting up a limited liability company with or without a local partner.

As per Article 3 of the Qatari Commercial Companies Law (Law No. 5 of 2002) each Qatari company shall be of Qatari national.

This general principle has an exception which is detailed in the Law No. 13 of 2000 on Organization of Foreign Capital Investment in the Economic Activity, as amended by Law No. 1 of 2010 ("Foreign Investment Law") organizing the investment of non-Qatari capital in the economic activity.

As per this law, foreign companies or foreign individuals may invest in Qatar as shareholder(s) of a Qatari company.

However, if this exception is generally granted for a 49% foreign owned Qatari company upon provision of various requests and documents, a more than 49% foreign owned Qatari company up to 100% is more difficult to incorporate and requires substantial conditions to be fulfilled.

A "Foreign Investors" is defined in the Foreign Investment Law as a non-Qatari whether they are natural or judicial who "invest their money in any of the projects in which direct investment is permitted by the State" in accordance with provisions of the aforementioned. A Qatari company partially owned by a Foreign Investor is considered as well as a Foreign Investor.

However, as per Article 12 of the Foreign Investment Law, as amended, the provisions of this law shall not apply to companies and individuals assigned by the State to mine, exploit, or manage the natural resources or companies founded by or shared by a public and/or governmental entity in association with Foreign Investors but is regulated by a special contract and eventually by other laws and regulations.

**A. The procedure required to set up a 49% foreign owned company**

Almost all business may be up to 49% foreign owned, with the exception of banking, insurances, commercial agencies and trading in real estate.

The normal step by step procedure is to be followed for such a company (*see below B, Step 3*). However, for some business (*see below B, Step 1*), the Ministry of Business and Trade may ask for a prior approval of the relevant authority.

The structures of the shareholders relationship may be legally arranged to an extent through, for instance, the following documentation:

- a) Articles of Association;
- b) Memorandum of Understanding: clarifying the scope of interference of each partner in the company's business;
- c) Letter of Understanding: clarifying the compensation and profit sharing (Legal, Practice; leonine clause or adapted profit-sharing);
- d) Management Agreement: clarifying the decision making process between the partners;
- e) If relevant, PoA to the foreign partner's representative by the local partner for certain matters;
- f) Side Letter: if relevant, clarifying the interest free loan given from the foreign investor to the local partner for paying up his share of nominal capital.

**B. The procedure required to set up a foreign owned company with more than 49% of the shareholding**

Only a few sectors are exempted from the 49% limit for foreign shareholding in a Qatari company.

As per Article 2.2 of the Foreign Investment Law, Foreign Investors may, upon the Minister's of Economy and Commerce's decision, increase their share from 49% up to 100% in the fields of "agriculture, industry, health, education, tourism, development and exploitation of natural resources, energy or mining" provided that such projects match with the Development Plan of the State and since January 2010 in businesses such consulting, technical, IT, culture, sport, entertainment and distribution services, although such permission is not granted frequently.

Three steps are required and may be time consuming to prepare and to follow up with the relevant authorities.

1. Step 1: The request to the competent authority

The first step is required for the following activities:

- a) Health Care Institutions: The documentation should be submitted to the Department of Medical Licensing at the Qatar Supreme Council of Health
- b) Industrial Companies: The documentation should be submitted to the Department of Industrial Development at the Ministry of Energy and Industry
- c) Educational Institutions: The documentation should be submitted either to the Education Institute or to the Higher Education Institute, both at the Supreme Education Council
- d) Tourism, Leisure, Entertainment and related companies: The documentation should be submitted to the Qatar Tourism Authority

The documentation to be submitted may vary from an institution to another but always contains a detailed request letter justifying the exception to be granted, a business plan and various references and/or certificates in the concerned business.

The set-up of a 100% foreign owned company is an exceptional measure which would affect four major principles of the Qatari legal system and economy that the 51% local ownership guarantees:

- a) Control over the foreign investment by the Qatari nationals

- b) Increase of incomes of the Qatari nationals
- c) Limit of the repatriation and outflow of cash resulting from local activities
- d) Educate the Qatari nationals by a transfer of know how

To demonstrate to the relevant authorities that such an exception must be approved, the interest to have such a company set up in the state of Qatar must be exceptional as well. This demonstration is somehow similar to the sales of the company to an investor or the research of a 51% shareholder who would invest in the company. Therefore, the preparation of such a request may be as long and complex as the sales of a company and requires a full knowledge of the targeted industry in Qatar, an accurate financial statement and forecast of the projected company's business plan, a set of marketing tools and a coordinator belonging to the legal team.

In most of the concerned administration, this procedure is not a priority and is not handled by specific people or specific committee: as a result, trying to establish such a vehicle without the support of professionals in permanent contact with the authorities leads most of the time to a failure and a waste of time.

## 2. Step 2: The request to the Ministry of Business and Trade (MBT)

The second step is required for almost all activities. The documentation mainly contains

- a) the initial approval from the relevant authority (if required: Step 1),
- b) a request letter top Investment Promotion Department, very similar to the one eventually addressed to the authority aforementioned in Step 1,
- c) an investment licensing application
- d) a business plan similar to the one provided to the authority aforementioned in Step 1
- e) all the supportive documents provided in Step 1 (references letters, copy of contracts with the government and major Qatari companies, marketing tools such as brochure, etc.)
- f) attested financial statement for the last 3 years of the parent company
- g) the passport copies and a CV of the partners or the corporate documents of the parent company, notarized, legalized, authenticated and translated,
- h) ISO certificate (if any)
- i) various other documents

In most of the situations, if the first authority gave the approval, the MBT is inclined to do the same.

However, the procedure in the MBT is sophisticated and requires the respect of the legal procedure as well as a pragmatic and adapted approach.

Indeed, once the documents are provided to the Investment Promotion Department, they are internally checked. Various meetings may be required by the head of Investment Promotion Department, Dr. Khaled Yousef Alderbesti (in Sept. 2012) in order to clarify some aspects of the industry targeted or of the business plan.

If the request is approved by the administrative body of the MBT, it is provided to the Special Committee for Foreign Investments, composed of 6 to 8 members, which shall decide within a period of 1 month. It happened that a meeting was requested by the Special Committee in order to clarify or agree on some terms of investments.

### 3. Step 3: Drafting and registration of the new company corporate documents

In case the said committee approves the request, it is then to be provided to the Ministry of Business and Trade:

- a) the initial approvals from the relevant authority (if required) and from the Special Committee for Foreign Investment,
- b) a shareholders/director resolution specifying the setting up of the new company and the appointment of the future manager are required,
- c) the Memorandum of Association, approved by the MBT, in Arabic, notarized, legalized
- d) a notarized, legalized copies of the non-Qatari company's constitutional documents,
- e) a power of attorney from the non-Qatari company to its incorporation representative in Qatar,
- f) a letter from a bank indicating the deposit of share capital (in full) at the bank,
- g) the relevant specimen signatures of the manager and authorized representatives and other documents such as the Power of Attorney to the manager,
- h) lease contract for the office of the company and
- i) Chamber of Commerce Registration.

For some activities, such as industrial companies, foreign entities involved in a government contract, further steps are required.

#### 4. Remarks

It should be noted that only a few number of foreign companies received the ministerial approval.

Indeed, the set-up of a 100% foreign owned company is an exceptional measure which would affect four major principles of the Qatari legal system and economy that the 51% local ownership guarantees:

1. Control over the foreign investment by the Qatari nationals
2. Increase of incomes of the Qatari nationals
3. Limit of the repatriation and outflow of cash resulting from local activities
4. Educate the Qatari nationals by a transfer of know how

To demonstrate to the relevant authorities that such an exception must be approved, the interest to have such a company set up in the state of Qatar must be exceptional as well and overcome the interests of the four major principles aforementioned.

In general, as an essential remark, it should be noted that each document mentioned in Steps 1 and 2 related to the business and the experience as an asset to the Qatari economy and a crucial input for the Qatari Development Plan shall be highly detailed. Moreover, references of prior business, certificates, business plan and feasibility study shall be carefully prepared.

A senior Qatari official is used to say: *“The relevant authorities and the MBT are like investors who may want to buy shares in the applicant’s company: they must be convinced that Qatar has more interest to waive the rights of its nationals to have at least 51% in the company than to not have the applicant’s company in Qatar”.*

The main criteria taken into consideration by the State of Qatar are therefore related to the business of the company which shall be innovative, creative or shall bring a special business idea to Qatar. In any case, it shall lead to an exceptional enhancement of business or create new jobs in Qatar and shall match the „Qatar 2030 Vision“ regarding Human, Social, Environmental and Eco-

conomic development: references of the „Qatar 2030 Vision“ in the documentation are recommended.

If the approval has been given, the form of the company should be a Single Shareholder or Owner Company which is subject to the laws relating to LLCs, unless any provisions are contradicted by the new single shareholder company legal and regulatory provisions, and should have a minimum paid up capital of QR 200.000. The MBT has indicated that it will prioritize applications for 100% LLCs or Single Shareholder Companies where the single shareholder is non-Qatari, if the share capital of the company is in excess of the minimum and where the company's activities will add value in terms of employment, training, technology, etc. to the Qatar market.

### **C. The Investment Incentives**

In any case, a foreign owned company is or may be granted with the following incentives:

- a) Corporation tax on foreign companies (as shareholder in a Qatari company) is 10% as of January 2010
- b) It may be granted with a land;
- c) It has the right to import the materials and equipment required for the establishment, operation or expansion of projects;
- d) It may be beneficiary of a 2 to 10 years exemption from income tax effective from the date of commercial commissioning of projects;
- e) It may be beneficiary of a duty-free imports of equipment and machinery required for projects;
- f) It should not be expropriated without a prompt and reasonable compensation;
- g) It should have the right to bank
- h) The foreign investors have the right to transfer the ownership of the company;
- i) The foreign investors have the rights to fully repatriate of capital and any profits out of the business of the company overseas in foreign currency;
- j) Any dispute arising between an investor and a third party shall be settled by an arbitration tribunal.

## ANNEX 2

# The practice of side agreements in Qatar in relation to the Articles of Association in a Limited Liability Company

### A) Theoretical aspects

Foreign investors in the State of Qatar (hereinafter „Qatar“) have frequently endeavored to circumvent the effects of the 49/51% ownership requirements of the articles 3 and 13 of the Qatari Commercial Companies Law of 2002 as amended (hereinafter „the Law no. 5 of 2002“) and the article 2.1 of the Foreign Investment Law no. 13 of 2000 („the Foreign Investment Law“), by entering into „side-agreements“ or „shareholders agreements“ with one or many Qatari nationals or entities 100% owned by the latter (hereinafter the „Qatari majority shareholder“) which have the effect of systematically limiting or removing the powers and rights of the Qatari majority shareholders leaving the foreign investor (hereinafter the „minority shareholder“) as the „real“ owner of the business and of the material and immaterial assets of the company. By some estimates, up to 85 per cent of businesses in the Qatari with foreign investors may be presently operating on the basis of such agreements.

This type of arrangement is often enshrined in a form of shareholders agreement under which the Qatari majority shareholder is systematically stripped of his shareholders and management rights and proportionate share of the company's profits while the registered ownership is reflected in the company's Articles of Association and trade license. The same type of arrangement may be accomplished through other forms of agreements such as trust declarations in favor of the foreign party or through loan and pledge arrangements.

#### I. Enforcement of Shareholder Agreements in the Qatari Courts

Unlike many jurisdictions, entering into a unanimous shareholders' agreement in Qatar does not bind the parties to the exclusion of the company's Articles of Association. Under the Law no. 5 of 2002, where there is a discrepancy between these Articles of Association and the terms of a



unanimous shareholders agreement, with few exceptions, the provisions of the Articles of Association will prevail.

While common, these types of arrangements are not favored in the Qatar. Indeed, although the validity of such agreements has been acknowledged by the Qatari Courts, available jurisprudence suggests that the existence of any such shareholders agreement, if they are in contravention of the legislation, will result in an order for the dissolution of the LLC according to the Articles of Association and such shareholders agreements.

Recent precedents whereby the Qatari Courts have recognized the existence of such shareholders agreements taking into consideration their wording and structure, in addition to testimonials from third parties with respect to the ownership of the 51% shareholding, and enforced them.

Also, shareholders agreement will be enforced as binding contracts by the Qatari Courts but the remedies for a breach of contract are limited. The general practice of the Qatari Courts is to award financial damages after the loss making event. However, the remedies for a breach of contract are limited. The general practice of the Qatari Courts is to award financial damages after the loss making event. In general terms, the Qatari Courts do not make interim orders, e.g.:

- Restraining orders (e.g. injunctions); or
- Mandatory orders compelling a party to take specified action;
- Other involuntary means of performance.

## II. Enforcement of Shareholder Agreements in the Qatar outside the Courts

Although shareholder agreements are usually enforceable through the Qatari Courts, because they are merely private contracts it can be difficult to rely on them in dealings with government authorities and third parties. In these situations it is better if minority shareholder rights are actually embedded and reflected in the company's Articles of Association and trade license. If there is a serious shareholder dispute, unless the shareholder's rights are "mirrored" in the Articles of Association those rights will be "invisible" to, and will likely be disregarded by, important outside parties and authorities, e.g.:

- The company's bankers;
- The Department of Economic Development;
- Other government departments (e.g. Ministry of Labour); and

- Free zone registries.

## **B) Suggestion on how to proceed**

### **I. School 1. Concealment of the Qatari Federal Commercial Companies Law**

The following clauses are declared void by the Qatari Courts.

1. The Qatari majority shareholder is the actual agent with respect to distribution agreements and commercial agencies of the company;
2. The Qatari majority shareholder is the custodian and trustee with regard to the 51% shares registered in his name;

Under certain conditions, the following clauses are considered valid by the Qatari Courts but may certainly lead to the dissolution of the company based on article 4 of the Law no. 5 of 2002 which requires, for a company to be valid, that the shareholders commit „*to participate in profit making economic venture (...) and to divide between them profit or loss arising from such venture*“.

1. The Qatari majority shareholder will waive/give up any shares held by him in the share capital of the company in case of liquidation of the company (whether in the form of in kind dividends or public auction proceedings or amicably);
2. The entire profits and losses in the company will be earned/borne by the minority shareholder except for an agreed percentage of the net profits of the company (hereinafter the „agreed percentage“);
3. The Qatari majority shareholder will not claim any right to the profits generated by the company except for the agreed percentage;
4. The Qatari majority shareholder is entitled to an annual fixed fee (fixed fee) at the beginning of each financial year for acting as the „local sponsor“ for the company in addition to the agreed percentage.

### **II. School 2. Consistent set of shareholders agreements: Management, Service and Loan Agreements (Silent partner only)**

The most reliable structure is often made as follow:

1. Articles of Association is not affected: the Qatari majority shareholder is owner of 51% of the shares and the minority shareholder is owner of 49% of the shares – the profit/loss sharing should not be specified;
2. Loan Agreement: the Qatari majority shareholder paid its share thanks to a loan from the minority shareholder and will reimburse the loan ONLY with dividends paid;
3. Management Agreement and Memorandum of Understanding:
  - a. the minority shareholder provides services (management of the business) to the company and is remunerated with a management fee calculated at the end of the financial year but before the accountability is finalized on the balance sheet available to the shareholders and therefore before the potential distribution of dividends;
  - b. the minority shareholder has also full power to conclude contract with the company and to invoice the company for the said management fees and other fees;
  - c. the minority shareholder is owner of all assets, intellectual and industrial property as well as of the Trademark of the company;
  - d. the Qatari majority shareholder provides services (obtain and renew the licences, visas and work permits relating to the company and its employees) to the company and is remunerated with a service fees calculated at the end of the year before the potential distribution of dividends.
  - e. The management fees will amount 100% of the potential profit minus the 30,000 AED paid to Qatari majority shareholder for the service fees and the mandatory 10% to be put in the reserve of the Company
4. As a result, there is no profit left and no distribution of dividends as per the Articles of Association;
5. As a result as well, there is no reimbursement of the loan;
6. In case of liquidation, the Qatari majority shareholder has limited rights on the assets and on the profits of the company.

This structure limits the powers and rights of the Qatari majority shareholders but does not deny its rights and ownership on the shares, its participation in the company and is in accordance with the Shariah law since the Qatari majority shareholder does not take any risk and should not be paid for more than what is done.

### III. School 3. Minority Protection (Active partner)

A properly drafted shareholders' agreement together with a compatible company Memorandum can be structured so as to protect the minority shareholder and include the following clauses:

- Monitor the business operations of the company.
- Special majorities
- The Board Seat
- Control over "Corporate Actions"
- Control of Directors' Remuneration
- Access to Confidential Corporate Information
- Agreement for Cash Exit
- Shareholder Litigation

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