Positive, progressive and promising: Qatar introduces a PPP law

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Law No. 12 of 2020 on the Regulation of Public Private Partnerships ('PPP Law') was recently promulgated in Qatar. The PPP Law aims to develop the Qatar private sector and encourage competition in order to boost the role and participation of the private sector in developing the local economy. The PPP Law also aims to allow the public sector a new perspective in managing national projects in order to enhance the proficiency, productivity and sustainability of such projects and handling the same in a cost efficient manner.

The PPP Law defines a Public Private

Partnership ('PPP') as an agreement between a governmental body and the private sector to implement and finance works or provision of services, in one of the following forms:

- allocation of land by way of lease or usufruct in order for development by the private sector;
- build, operate and transfer ('BOT');
- build, transfer and operate ('BTO');
- build, own, operate and transfer ('BOOT');
- operate and maintain ('OM'); and
- any other form approved by the Council of Ministers.

Generally, a PPP will be carried out by the government body and the private sector participant under the terms of a PPP agreement, which must be in accordance with the provisions of the PPP Law and the PPP policy approved by the Council of Ministers. However, certain projects may be exempt from the PPP Law provided that the Council of Ministers' approval is obtained.

PPP regulators

The PPP Law provides for the establishment of a PPP Administration Unit at the Ministry of Commerce and Industry ('MOCI') as well as project specific committees, which will comprise representatives of the relevant government contracting party, the PPP Administration Unit and the State Audit Bureau. These project specific committees will be responsible for:

- preparing the project policy and presenting the same to the Minister of Commerce and Industry for approval;
- examining tenders;
- negotiating project agreements; and
- issuing its recommendation concerning the winning bidder.

Tendering for PPP projects

The PPP Law sets out the following method for inviting bids on PPP projects:

- two-stage tender;
- selective tender according to lists of awarding specifications;
- by practice;
- by contest;
- open bidding process;
- direct agreement; or
- any other form of contract that the Council of Ministers approves.

The PPP Law permits tendering through a consortium of companies provided that none of the consortium members submits any separate bid alone or with another consortium for the same project, unless tender documents provide otherwise. Upon the recommendation of the Minister of Commerce and Industry and the request of the government contracting party, the Prime Minister may cancel tendering procedures in any of the following events:

- if only one bid is submitted or only one bid is left after elimination of other bids;
- if all bids contain reservations, assumptions or conditions that are not in line with the tender documents or will
- render the bids impossible to evaluate; or
- pursuant to specific events set out in the tender documents.

In this context, the Prime Minister may cancel tender procedures for public interest reasons. Bidders may not claim any damages for cancellation of a tender unless the tender documents provide otherwise.

Furthermore, the Prime Minister will issue an approval of award upon the recommendation of the project specific committee.

A PPP agreement must cover the following aspects:

- the nature and scope of works or
- services that the project company must provide and the conditions of the same;
- the ownership of the project assets and the obligations of each party in relation to delivery and receipt of works and assets and the provisions of transfer of ownership;
- responsibilities for obtaining licenses, permits and approvals;
- mutual financial obligations and method of financing;
- determining the price of the products or services that the project may produce and the criteria determination of price increases and decreases, the method of dealing with inflation and the need to change interest rates’
- quality assurance and methods of supervision and audit of finances, management and technical operations of the project and its maintenance;
- granting the relevant government contracting party the right to make variations to the building, preparation, operation and maintenance of the project and other obligations of the project company;
- the entitlement of a project company to compensation upon variations, the criteria of which shall also be set out in the PPP agreement;
- insurance provisions and performance guarantees;
- risk management issues in terms of change of law, sudden accidents and force majeure and the compensation for such events;
- the term of the agreement, early termination or de-scoping and the rights of each party in such events;
- the events that entitle the relevant government contracting party to terminate the agreement and the financial consequences of such termination’ and
- handing back or transfer of the project to the relevant government contracting party at the end of the

term of the agreement or upon termination.

The PPP Law sets a maximum limit for the term of the PPP agreement, being 30 years, which may be permitted to be extended on an exceptional basis or in the public interest subject to the approval of the Prime Minister upon the recommendation of the Minister of Commerce and Industry.

The project company

The government contracting party may co- found a project company with participation of the private sector. If the relevant government contracting party does not wish to co-found the project company, the successful bidder of the PPP agreement must incorporate the project company as a special purpose vehicle for the sole purpose of implementing the PPP project pursuant to the underlying PPP agreement. However, the PPP Law provides that the government contracting party may permit, in accordance with the tender documents, the awarded bidder to implement the project without incorporating a specific project company provided that it has the capability to perform the project financially and technically.

Subject to the approval of the relevant government contracting party and provisions of adequate security, a project company may finance the project through banks provided that it secures its rights and assets contractually.

The PPP Law further provides that the Prime Minister may exempt a project company from certain restrictions on foreign owned companies, including ownership, usufruct or lease of real estate.

In addition to the obligations set out in the PPP Law and the executive regulations to be issued by virtue of the same, and subject to the terms of the PPP agreement, a project company has the following required obligations pursuant to the PPP Law:

1. not to dissolve the project company, change its legal form or reduce its capital without the approval of the Minister of Commerce and Industry. The project company's articles of association must make provision for prohibition of trading of its shares before the completion date of building, fit-out or development work of the project, as well as providing for a prohibition on trading shares owned by its majority shareholder after such date without the approval of the Minister of Commerce and Industry. Furthermore, the project company's shares may not be pledged for a purpose other than the finance or refinance of the PPP project. Any action or disposal made to the contrary will be void;
2. keep, maintain and take care of the assets of the project and use them for the intended purpose;
3. not to sell facilities, assets and moveable and immovable property related to the project that the project company may own, pursuant to the PPP agreement except for a sale made in respect of carrying out a replacement and renovation programme and pursuant to conditions set out in the PPP agreement and following the approval of the PPP Administration Unit at MOCI
4. submit all documents, information and data required by the PPP Administration Unit at MOCI or the government contracting party, along with co- operating with the officials and allowing access to the project sites for inspection by them at any time;
5. provide environmental, health and safety requirements for the project's staff and any beneficiary of the project; and
6. not to enter into any subcontracting arrangements without the approval of the government contracting party, without prejudice to the project company's obligations set out under the PPP Law and any executive regulations to be issued by virtue of the PPP Law and the PPP

Final notes

The PPP Law provides that the ownership of the project and its assets and facilities shall be transferred to the State at the end of the term of the PPP agreement without payment of any compensation or damages unless the PPP agreement provides otherwise.

The tendering process under the PPP Law will not be subject to the Tenders and Auctions Law nor the State Budget. The PPP agreement must be governed by the laws of Qatar and any agreement to the contrary will be void. Also, Qatari courts shall have the jurisdiction in resolving disputes resulting from the PPP agreement unless the Prime Minister approves an alternative dispute resolution method.

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