

Government projects in Qatar

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The number and size of government projects either being tendered or already under way in Qatar is staggering. The Qatar Port, the Metro project, the 2022 stadiums, water and power projects, road works and Lusail City are just some of the key projects that are driving the construction sector in Qatar.

Contractors and sub-contractors that are awarded contracts are provided financing by both local and foreign banks on the basis of the cash flow they are expected to generate from these projects. Banks providing credit to contractors typically require the contractor to assign the receivables that are generated from such construction contracts to them. Once the receivables are assigned, the bank can have direct recourse to the government authority sponsoring the project (the "Government Authority"). Once these receivables are assigned and are ring-fenced for the benefit of the bank, the bank typically treats these receivables as a form of quasi-security and accordingly its cost of funding the credit facilities is reduced given the favorable risk weightings. This in turn makes the pricing of such credit facilities more attractive to contractors.

This article seeks to clarify what banks are looking for when providing credit facilities backed by receivables. The article is specific to receivables emanating from government contracts although the sections on Assignment of Receivables and Invoice Discounting equally apply to private contracts.

Assignment of Receivables

The Civil Code (Law No 22 of 2004) sets out specific provisions relating to the assignment of rights. Article 324 of the Civil Code states that a creditor may assign its rights except where a specific provision of law or contract restricts such assignment. Typically, the contractor and the bank will enter into an assignment agreement to document the terms of the assignment of receivables arising from a construction contract. Clear reference to the construction contract should be made in the contract. Where there is no restriction placed on the assignment of rights (including receivables), the contractor may assign the receivables under a construction contract to a bank without the Government Authority's approval. However, where a restriction is imposed by law or by contract, the contractor requires the express permission of the Government Authority prior to assigning its receivables to a bank.

Article 326 of the Civil Code requires that the assignor notify the debtor (i.e. the Government Authority) of the assignment in order for the assignment of receivables to take effect. While the requirement for such a notification is not unusual, Article 326 goes on to state that the effectiveness of assignment vis-à-vis third parties shall only occur if the acknowledgement or acceptance of the notice of assignment from the debtor is "date certain". Date certainty effectively gives priority to the assignee (bank) in respect of the assigned receivables. However, making the assignment date certain is an administrative burden and requires the acknowledgement or consent received from the debtor to be stamped by the Authentication Department at the Ministry of Justice.

In addition to the requirements noted above, the Government Authority should also agree to route the receivables into an account over which the bank exercises control. This can be achieved by noting the account details of the contractor in the assignment notice sent to the Government Authority and creating a pledge over that account in favour of the (assignee) bank.

Ministry of Economy and Finance Regulations

In addition to the requirements under the Civil Code, the Ministry of Economy and Finance has also issued regulations relating to the assignment of receivables where the receivables emanate from a 'government authority' (the "Regulations"). The term 'government authority' has not been defined in the Regulations. It is understood that the Regulations would be applicable to various Ministries and other bodies such as Ashghal (Public Works Authority) and KAHRAMAA (Qatar General Electricity and Water Corporation). However, the Regulations would not be applicable to companies which are largely owned by the government but are primarily carrying out private functions (e.g. Qatar Petroleum).

The Regulations impose a higher standard of compliance. The significant additional requirements are:

- the Government Authority and the assignee bank are required to notify the Government Auditing Department at the Ministry of Economy and Finance of the assignment;
- the assignment agreement is required to be notarised at the Authentication Department (note that this is not a requirement under the Civil Code); and
- banks are required to verify that the Government Authority has not agreed to assign the proceeds to any other party including to a sub-contractor.

The above requirements, especially the requirement to notarise the assignment agreement is not required under the Civil Code and creates an additional administrative burden. It can be argued that a failure to comply with this requirement would not invalidate the assignment itself; however, it may be viewed as a regulatory breach.

Invoice Discounting

The Commercial Transactions Law, Law No 27 of 2006 (also known as the 'Commercial Code'), deals with discounting of 'commercial papers' such as promissory notes. An invoice does not fall under the definition of a commercial paper and the provisions relating to discounting of commercial papers would not be applicable.

Banks typically adopt a variance of the assignment of receivables structure discussed above in order to achieve an arrangement that resembles invoice discounting. The bank and contractor will enter into a master assignment of receivables agreement. Each time the contractor wishes to discount certain invoices, these invoices are submitted to the bank. The assignment notification is set out in the invoice itself thereby doing away with the need for a separate notification to the Government Authority. The bank will advance the face value of the invoice to the contractor after deducting its fee or discount. These arrangements are structured both on a recourse and on a non-recourse basis.

Conclusion

Assignments of receivables and invoice discounting are both critical to the construction sector. Banks typically look to the credit rating of the Government Authority rather than just the contractor in determining if the project should be financed. Credit departments are therefore more likely to approve such credit facilities. Having said that, some of the administrative procedures required to be complied with for assigning receivables including date certification and notarisation of assignment agreements (in certain cases) are burdensome both for contractors and banks. Nevertheless, receivables emanating from government projects will continue to be a critical piece of contractor financing in Qatar in the near future as construction activity in the country picks up steam.

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