

# DOING BUSINESS IN QATAR

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“Doing Business in Qatar” has been prepared by Patton Boggs LLP as a general introduction for those interested in business activities in Qatar and is not intended to provide comprehensive advice.

The information in this guide addresses only some of the principal elements of doing business in Qatar and we advise anyone who intends to establish a corporate presence in Qatar to obtain advice specific to their business. Also, it is worth noting that Qatar’s market is dynamic, and the rules and procedures for doing business in the State are constantly evolving. Due to the changing landscape, it is essential to seek professional advice when evaluating the market.

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## I. INTRODUCTION

### 1. Overview of the economic environment in Qatar

By 2030, Qatar aims to be an advanced society capable of sustaining its development and providing a high standard of living. As Qatar sets its eyes on an ambitious vision, the development of a competitive and diversified economy capable of meeting the needs of, and securing a high standard of living becomes a pillar of Qatar's vision.

Today, Qatar is categorized as one of the fastest growing economies in the world and one of the highest per capita income countries according to The Economist. In 2009, Qatar was globally ranked the sixth highest country for income per capita and the first among GCC countries. "Few nations in the world offer a more dynamic business environment than the State of Qatar" said Rex W. Tillerson, chairman and CEO, Exxon Mobil Corporation at the Business and Investment in Qatar Forum held in New York, USA on April 6, 2011.

The main economic stimuli in Qatar are oil, gas and related industries. Qatar's liquefied natural gas (LNG) industry has attracted tens of billions of dollars in foreign investment. Although oil is the main contributor and component of the gross domestic product (GDP), Qatar encourages investment in different sectors, such as petrochemical industries, and the financial, real estate, franchising, education, health and industrial sectors.

The government is heavily involved in Qatar's economy, although it strongly encourages international investment and promotes investment, innovation, free trade, open competition and access to resources that will continue to bring long-term economic development to Qatar and much-needed energy to the world's growing economies. Government initiatives to attract the flow of foreign capital into the State can be attributed to various investment incentives. The open market policy adopted by the government grants investors the opportunity to make good profits and the benefit of the freedom of unrestricted travel and movement of funds.

The State's commitment to this direction was translated by the updating of existing laws and the issuance of new laws, the creation of governmental bodies, financial centers and technology parks in furtherance of its open market policy.

### 2. Qatar's Investment Climate

Foreign investment in Qatar is governed by Law 13 of the Year 2000 on the Organization of Foreign Capital Investment in Economic Activity, as amended (the Foreign Investment Law). It allows non-Qatari investors to invest in all sectors of the Qatar economy, subject to the requirement that 51 percent of the share capital in the venture be held by a Qatari person, legal<sup>[1]</sup> or natural. Foreign investment is generally not permitted in banking and insurance activities (unless by Ministerial Resolution or if such activities fall under an applicable Free Zone) nor commercial agency or real estate activities. There are, however, certain exceptions with respect to real estate which allow for the provision of land necessary for government-approved investment projects.

A concession is made when the foreign component of the ownership in the new venture is made up of a GCC national or wholly-owned GCC legal entity. In this case, the GCC national or legal entity may own up to 50 percent of the share capital in the new Qatar venture with a Qatari counterpart holding the remaining share capital.

[1]For the purpose of this law, a Qatari legal person is restricted to an entity owned wholly by a Qatari national.

An exception to the foreign ownership rules may be granted to foreign companies or individuals who obtain a decision from the Minister of Business and Trade for carrying on business in Qatar as a 100 percent foreign-owned entity. The exception may be granted provided that the field of business falls within one of the following sectors of the economy: (i) agriculture; (ii) industry; (iii) health; (iv) education; (v) tourism; (vi) development and exploitation of natural resources; (vii) businesses of technical and information consultancy; (viii) cultural, sports and entertainment services; (ix) distribution services; and (x) energy or mining, provided that such projects match the development plan of the State of Qatar. Preference will be given to projects that may potentially achieve optimum utilization of local raw materials, industries set up for export of products, for introducing new products or employing new technologies, as well as projects aiming to localize worldwide leaders in industry or those who will train and qualify Qatari nationals.

In August of 2004, Law No. 25 of 2004 on the Combat of Covering up Illegal Practices Carried out by Non-Qataris (commonly called the "Proxy Law" in Qatar) was enacted. The Proxy Law prohibits non-Qatari nationals from exercising "any commercial, economic or vocational business except in sectors where they are permitted to do so in accordance with applicable laws" and makes it unlawful for legal or natural Qatari persons to "cover up" the business activities of any non-Qatari person thus enabling the non-Qatari person to carry on "any commercial, economic or vocational business in violation of applicable laws." "Covering up" is deemed to include any assistance afforded to the non-Qatari by the Qatari party by allowing the non-Qatari to unlawfully use the "name, license, commercial registration or otherwise" of the Qatari for the benefit of the non-Qatari, the Qatari or both.

Heavy penalties may result from the breach of the Proxy Law including imprisonment and/or a fine in addition to the confiscation of any monies generated by the "covered up" business for third parties' rights satisfaction. Penalties may also involve suspension or revocation of business licenses, commercial registration annulments and closing of business premises.

To lawfully conduct business in Qatar on a regular basis, foreign investors are required to establish a legal presence in the State through one of the available options. Here we provide key information which prospective investors should be aware of when considering doing business in Qatar. These include the vehicles available to foreign investors and general legal considerations.

## **II. ESTABLISHING A LEGAL PRESENCE IN QATAR**

The available establishment vehicles may be classified as follows:

1. Incorporating a local entity under the Commercial Companies Law No. 5 of the Year 2002 (Companies Law);
2. Establishing a foreign branch in light of Article 3 of the Foreign Investment Law (Foreign Branch);
3. Establishing a presence under Ministerial Resolution No. 142 of the Year 2006 regulating the establishment of representative trade offices (Representative Trade Office); and
4. Incorporation in the Financial and Technology Zones (QFC and QSTP).

### **1. Incorporating under the Companies Law**

Companies with foreign participation incorporated as local Qatari entities must be established under the Companies Law. Investors participating in local companies should abide by the following restrictions on foreign investment placed by the Foreign Investment Law:

- i. Percentage of Ownership: the Foreign Investment Law restricts foreign ownership to a maximum of 49 percent of a company's capital. However a higher percentage of up to 100 percent foreign ownership may be granted by way of an exemption as aforementioned
- ii. Projected Activities: a foreign investor may not act as commercial agent under Law No. 8 of the Year 2002 and may not invest in real estate businesses except in some designated areas. Approval from the Council of Ministers is required for foreign investors to invest in banking and insurance sectors.

The Commercial Companies Law provides for the following eight types of legal entities:

- Limited liability company;
- general partnership;
- simple limited partnership;
- limited partnership with shares;
- unincorporated joint venture;
- shareholding companies, also known as joint stock companies (public or private);
- one proprietorship company (one person company); and
- holding company.

The most adopted business medium by foreign investors is the limited liability company (LLC). Entering into a shareholding company (a Qatari Shareholding Company, or QSC as described on page 6) is as well a viable option for investors depending on the type of their projected commercial activity. A special type of company is also available under Article 68 of the Commercial Companies Law (the "Article 68 Company").

### 1.1 Limited Liability Company (LLC)

Foreign investors opt primarily for the LLC because it requires a relatively small amount of capital and it can be established reasonably quickly. The key features of an LLC are as follows:

- Minimum paid up capital requirement of QR 200,000.00;
- minimum of two shareholders but no more than 50;
- 51 percent Qatari equity ownership versus 49 percent foreign participation unless otherwise exempted;
- the profit shares do not necessarily have to be proportionate to equity shareholding;
- liability of the shareholders is limited to the amount of its percentage ownership in the LLC's capital;
- incorporation in the form of LLC is allowed in almost all sectors of the economy, excluding banking, insurance and funds investment activities.

A limited liability company may not raise capital by public subscription and may not issue freely transferable shares. Existing shareholders enjoy pre-emptive rights to purchase any shares offered for sale unless the right is expressly waived.

The corporate name of an LLC must derive from its objects and must be followed by "Limited Liability Company (LLC)."

Notwithstanding the 49 percent foreign shareholding cap, under regular circumstances, the foreign shareholder may preserve significant control over the management and operations of the LLC.

An LLC is established by the virtue of a memorandum of association (MOA) setting forth its terms of governance and related matters. The MOA must be drawn up in Arabic whether with or without a parallel English version, approved by the Ministry of Business and Trade and legalized before the Ministry of Justice. To carry on its business in Qatar once the MOA is signed and legalized, the new LLC must register with the Qatar Chamber of Commerce and Industry and obtain a commercial registration from the Ministry of Business and Trade, a municipal license, also known as trade license, from the Municipality and an immigration card (also known as company ID) from the Ministry of Interior. The establishment process is fairly straightforward; however, in certain circumstances, depending on the nature of the proposed activity, pre-approval(s) may be required from the relevant authorities in Qatar.

### 1.2 Qatari Shareholding Company

Qatari Shareholding Company (QSC) is the corporate vehicle used for large-scale business enterprises, investment projects, and insurance and banking. A Qatari Shareholding Company is established by a Ministerial Resolution issued by the Minister of Business and Trade, between at least five shareholders. It is a company whose capital is divided into transferable shares of equal value. Shareholders of a QSC are not liable for the company's obligations except for the amount of nominal value of the shares for which they subscribe. The company's name must be followed by "Qatari Shareholding Company (QSC)" and its business shall be conducted by a board of directors. The Companies Law recognizes the following different variants of the QSC:

- i. Public QSC, whose shares can be traded on the Qatar Exchange with a minimum capital requirement of QR 10 million. Foreign investors are allowed to own no more than 25 percent of the Qatar Exchange's (QE) listed companies.
- ii. Private or closed QSC, whose shares cannot be traded on the Qatar Exchange. A closed QSC should have a capital of no less than QR 2 million.
- iii. A QSC incorporated under Article 68 of the Companies Law (Article 68 Company) (discussed below).

Documents required to establish and operate a QSC are the same as those required by an LLC with the exception that the MOA of a QSC must be published in the Official Gazette once signed and legalized by the Ministry of Justice.

### 1.3 Article 68 Companies

An Article 68 Company is a QSC formed by the government, other public corporation or authorities in which the government holds at least 51 percent of the share capital, either alone or with one or more local or foreign shareholders. An Article 68 Company is subject to the provisions of the Commercial Companies Law to the extent that such provisions do not contradict with its memorandum and articles of association or any arrangements or conventions concluded under such Company.

The steps of incorporation and registration of an Article 68 Company with the relevant ministries are the same as the steps pursued in the establishment of QSC and LLC companies.

Article 68 Companies tend to be used as joint venture vehicles for large government sponsored projects, particularly in the oil and gas and infrastructure sectors.

## 2. The Foreign Branch

The Foreign Branch is an exception to the general investment rule in Qatar under the Foreign Investment Law. A foreign company can conduct business in Qatar without the requirement of having a Qatari partner and without being regulated by the Companies Law through the establishment of a Foreign Branch.

In order to establish a Foreign Branch, the company should award a contract with the Qatari Government or a quasi-governmental entity, which according to Article (3) of the Foreign Investment Law "would facilitate the performance of a public service or utility."

Approval to open a Foreign Branch must be obtained from the Ministry of Business and Trade in the form of a Ministerial Resolution. The minister's approval is totally discretionary.

The Ministerial Resolution limits the Foreign Branch to carrying out the specific contract approved by the minister with further approval required for each additional contract or for registration of the renewed contract. The registration of the Foreign Branch is valid for the term of the contract for which it was granted approval. The Foreign Branch is subject to the Qatari Income Tax Law unless it is granted a special tax exemption.

In applying for a Foreign Branch License, a foreign company is required to provide the Ministry of Business and Trade with duly notarized, authenticated and consularized copies of its constituting documents generated in the country of its seat of registration. The documents include:

- Copies of the certificate of incorporation (or equivalent governmental document evidencing registration) and memorandum and articles of association (or other constitutional documentation);
- copy of the board resolution of the foreign company authorizing the establishment of the Foreign Branch;
- a power of attorney to a nominated person as the general manager of the prospective Foreign Branch setting forth his/her powers to establish and manage the Branch;
- a copy of the contract in respect of which the Foreign Branch is sought to be established.

In addition to the above, the applicant should produce (in Arabic) a cover letter addressed to each relevant department at the Ministry of Business and Trade and the standard ministry application forms.

## 3. The Representative Trade Office (RTO)

The RTO is as well an exception to the general investment rule in Qatar. The exception relevant to an RTO is contained in the Decision of the Minister of Economy & Commerce (now, know as the Minister of Business and Trade) No. 142 of the Year 2006, regulating the establishment of Representative Trade Offices (the RTO Law).

Foreign companies in good standing can apply to the Ministry of Business and Trade to open a RTO in Qatar, but the approval by the minister is by no means guaranteed.

The RTO is a platform to promote its parent company in Qatar and try to introduce it to the Qatari market. A RTO cannot conduct any financial transactions related to its parent company's commercial activities in Qatar, and its activities are limited to marketing and administrative functions. The ultimate purpose of establishing an RTO is to have a "shop window" to source business for its parent company.

The RTO is established for unlimited duration and its registration is renewable on a yearly basis. The RTO is not allowed to conduct any commercial activity, thus has no derivable profit and should not, in principle, be subject to taxation.

Documentation required to file for an RTO are duly notarized, authenticated and consularized copies of the constituting documents of the parent company, generated in the country of its seat of registration, and include the following: its certificate of incorporation and memorandum and articles of association (or other form of governmental equivalent document); board resolution of the parent company authorizing the establishment of the RTO; a power of attorney to a nominated person as the general manager of the prospective RTO setting forth his/her powers to establish and manage the RTO; and an undertaking from the parent company acknowledging its liability of the activities of the RTO. Cover letters and standard ministry application forms make a part of the file.

#### 4. Incorporation in the Financial and Technology Zones

In 2005, Qatar enacted a law for the establishment of financial and technology zones to sustain and diversify the economy. Currently, Qatar hosts two zones: the Qatar Financial Center and the Qatar Science and Technology Park.

##### 4.1 Incorporating or Registering with the Qatar Financial Center (QFC)

The QFC was established by Law No. 7 of the Year 2005 to be a financial and business hub with the objective of attracting international financial services providers. The QFC aims to operate at international standards and provide a world class business and regulatory infrastructure for investors seeking to do business in Qatar.

It is organized into two authorities, a commercial authority and a regulator, the Qatar Financial Center Authority (QFCA) and the Qatar Financial Center Regulatory Authority (QFCRA), respectively. Both authorities are separate and independent of each other and of the Government of Qatar.

What makes the QFC unique when compared to other financial centers in the Middle East is that it has no physical boundaries. Entities registered under the QFC may operate internationally and any where throughout Qatar, subject to QFC approval of the desired location.

Entities established under the QFC can be fully owned by foreign investors. Repatriation of capital and profits is permitted with no restrictions. The QFC allows for various types of legal entities, including limited liability companies, general and limited partnerships and protected cell companies. All QFC entities must be licensed by the QFCA through the QFC's Companies Registration Office.

Entities wishing to work within or throughout the QFC must be engaged in specific activities and must obtain a license from the QFC authorities. The permitted activities fall into two categories:

- i. Regulated activities: Activities undertaken by financial firms, such as investment and retail banking; insurance companies; funds and wealth management firms; brokerage offices and securities operations. Undertaking these activities under the QFC requires approval of the QFCRA.
- ii. Non-regulated activities: These are activities that support financial firms, such as accounting, audit and law firms. Undertaking these activities does not require approval of the QFCRA.



Entities carrying out non-regulated activities have no minimum capital requirement. The minimum capital requirement for regulated activities is determined according to the proposed activity.

With limited exceptions, QFC entities are subject to tax.

#### **4.2 Incorporating or Registering in the Qatar Science and Technology Park (QSTP)**

The QSTP is a part of the Qatar Foundation. It is a center of research and commercial excellence for scientific development. The QSTP aims to be the Middle East's leading location for the development and commercialization of technology. It requires that any entity wishing to incorporate within the QSTP must undertake activities that contribute to the advancement of technology. Operating within the QSTP may occur through an entity established under the QSTP or a branch office of a foreign company. A license is required in both cases. The QSTP provides the following three tiers of licenses:

- i. Standard License: Entitles the licensed entity to all free zone benefits;
- ii. restricted License: Limited free zone benefits are provided at the discretion of the QSTP management; and
- iii. service License: Issued to entities providing services to QSTP tenants. No free zone benefits are granted.

QSTP companies are not taxed and can import goods and services free of any customs duties. The granting of a QSTP license is discretionary, and there is an iterative application and interview process. QSTP companies must dedicate at least half of their resources in Qatar to research and development activities.

### **III. OTHER WAYS TO DO BUSINESS IN QATAR**

If a foreign entity does not wish to establish a physical presence in Qatar, it may choose to enter the market through one of the following methods:

#### **1. Commercial Agency Relationship**

This type of business is regulated by Law No. 8 of the Year 2002 (the Commercial Agencies Law). A foreign entity wishing to sell its goods and products in Qatar may enter into a commercial agency relationship with a wholly Qatari-owned entity or a Qatari individual. The products, territory of the distribution and the duration of the agency should be agreed upon and specified in the agreement between the foreign entity (the Principal) and the Qatari person (the Agent).

Exclusivity, right to commission on sale and right to compensation for termination of the agency relationship are the benefits afforded to the Agent under the Commercial Agencies Law when the agency agreement is registered with the relevant department at the Ministry of Business and Trade. It should be noted that the Commercial Agencies Law mandates certain outcomes with respect to the expiration or termination of an agency contract and these provisions should be reviewed carefully when entering into an agency agreement.

## 2. Franchise Agreements

Doing business through Franchise Agreements is another popular alternative. It is a contractual relationship whereby the franchisor grants the franchisee the right to use one or more rights of the franchisor, such as the commercial name, trademark, patent and know how to produce or distribute the franchisor's goods or products under the brand name within specified territorial limits for a limited period of time against a material benefit or economical interest. The franchisee exercises the franchising rights under the control and supervision of the franchisor and pursuant to its instructions.

Most of the countries around the world recognize "franchises" but rarely make legal provisions for them. Only the United States, China, Australia, various provinces within Canada, France and Brazil have explicit laws that regulate franchises.

As there is no specific franchising legislation enacted in the State of Qatar, the franchise structuring options and any actual franchise operations are dictated by, and need to comply with, a loose collection of laws and regulations, which regulate general issues of commercial law and trade, commercial relationships, foreign investment, shareholder rights and obligations, and so forth.

## **IV. GENERAL LEGAL CONSIDERATION**

In addition to the above, other general considerations are relevant to foreign investors wishing to enter the Qatari market. Some of the main considerations relate to the following topics.

### 1. Taxation

The Income Tax Law No. 21 of the Year 2009 imposes a flat rate of 10 percent on taxable income. Qatari and Gulf Cooperation Council companies are exempt from this tax. However, foreign investors in Qatari LLC's are subject to a 10 percent tax on their distributions of profit. For businesses without a permanent establishment in Qatar, Article 11 of the Income Tax Law imposes a withholding tax on five percent of the gross amount of royalties and technical fees or seven percent of the gross amount of interest, commissions, brokerage fees, director's fees, attendance fees and any other payments for services carried out wholly or partly in Qatar.

Agreements made between the State of Qatar and foreign investors in the oil and gas sector for the development of the State's natural resources are taxed at the rate specified in the agreement or otherwise a flat rate of 35 percent shall be applied.

Expatriates salaries are not taxable. Tax is imposed on income derived from sources in Qatar whether the taxable entity has a physical presence in Qatar or not. Tax exemption may be granted for a period of up to six years at the discretion of the Ministry of Economy and Finance. Qatar has entered into and ratified double tax treaties with several countries around the world, including France, Russia, India and China.

### 2. Immigration Law

The Qatar work force is a multi-national country. Almost 80 percent of the population is comprised of expatriates. Foreigners working, living and visiting Qatar are subject to Law No. 4 of the Year 2009, regulating the Expatriates Residence in Qatar. All expatriate employees must be sponsored by their employers who are responsible for them during the term of their employment relationship.

The QFC has its own immigration rules and regulations providing more benefits to expatriates employed by entities established under the QFC.

### 3. Qatarization Plan

The Qatarization plan is a part of the State's vision for 2030. The Qatarization initiative was undertaken by the industrial and oil and gas sectors in an aim to increase the number of Qatari nationals in the public workforce. Current policy is to extend this initiative into the private sector. The Qatari Labor Law No. 14 of the Year 2004 incorporates the principle of Qatarization, and it is applicable to entities of the private sector. The government's aim is to increase the proportion of Qataris in the industrial sector to 50 percent by 2020.

### 4. Labor Law

Employment in Qatar is generally regulated by the Qatari Labor Law No. 14 of the Year 2004, as amended, which imposes certain minimum standards on employees' rights, safety standards, workers collective committees and termination of employment. The implementation of the Labor Law is heavily connected with the Immigration Law. Employees excluded from the application of the Labor Law are those employed by ministries, other public institutions and bodies and those who are subject to special employment regulations, such as the employees of Qatar Petroleum. The QFC has its own employment regulations and is not subject to the Qatari Labor Law.

### 5. Dispute Resolution and Enforcement of Foreign Judgments and Arbitration Awards

Qatari laws have been significantly revised to cope with international best practices and standards; however for financial transactions, parties may select other laws, such as English law to govern part of the relationship. For matters involving real and personal property in Qatar, security of assets domiciled in Qatar, labor matters or the structuring of Qatari entities, the application of Qatar law is often mandatory regardless of what law has been agreed to by the parties. Foreign investors often select binding arbitration as the method of dispute resolution.

Alternative dispute resolution by arbitration and mediation are provided in Qatar through the Qatar Center for International Arbitration (QCIA), which is a part of the Qatar Chamber of Commerce and the QFC. The QCIA applies the provisions of the Civil and Commercial Procedure Law No. 13 of the Year 1990, while the QFC applies specific QFC arbitration regulations. The majority of foreign investors mostly have recourse to a well-established body of arbitral rules such as the UNCITRAL, ICC or LCIA rules.

In March 2003, Qatar acceded to and implemented the principles of the United Nations' New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Consequently, Qatar courts enforce foreign arbitral awards concluded in States that are party to the said New York Convention, in accordance with the convention.

Foreign judgments are enforced by Qatari courts to the extent that there is reciprocity between the two jurisdictions and certain other requirements have been met.

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