

Qatar Foreign Direct Investment Law

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In line with Qatar National Vision 2030 which aims, among other things, to attract foreign direct investment (FDI) and to establish a knowledge-based and diversified economy, the Qatari government enacted Qatar Law No. 1/2019 regulating the investment of foreign capital in economic activity in the country. Qatar Law No. 1/2019, which came into force on 25 February 2019, repealed and replaced Qatar Law No. 13/2000. It is hoped that an increase in FDI will bolster economic growth and facilitate the spread of technology and know-how throughout the Qatari market. Many provisions of Qatar Law No. 1/2019 introduce significant improvements over Qatar Law No. 13/2000. For example, under Qatar Law No. 1/2019, foreigners can invest in any of Qatar's economic sectors save for a few exceptions; the fairness of the application process is ensured; foreign investors are eligible for significant incentives; and these investors have access to alternative forms of dispute resolution. By enacting Qatar Law No. 1/2019, Qatar has taken another step towards improving its legal framework for foreign investment and thereby creating a more business-friendly environment for foreign investors, as explained below.

Permission of foreign ownership

As a general rule, foreign investors are permitted, subject to certain exceptions, to conduct business in Qatar provided that they do so in partnership with at least one Qatari person or entity, and that they own no more than 49% of the share capital of a company incorporated in Qatar.

There is, however, an exception to the general rule under which foreign investors could hold more than 49% (and indeed up to 100%) of the share capital of a Qatari company. Obtaining this exception involves securing the approval of the relevant department within the Qatari Ministry of Commerce and Industry (the Competent Department) as well as, in the case of some activities, special licenses from other government authorities.

Qatar Law No. 1/2019 now allows complete foreign ownership of a Qatari entity in any economic sector subject to the rules set forth in the Executive Regulations and to the approval of the Competent Department. Qatar Law No. 13/2000, by contrast, allowed for complete foreign ownership only in specific sectors and subject to approval from the Minister of Economy and Commerce.

Qatar Law No. 1/2019 also allows foreign companies to register a branch in Qatar for the purpose of carrying out contracts concluded with a Ministry, government authority, public body or institution, or private company or institution in which the state owns a share. The requirement that such a contract confer a public benefit or provide a public service set out in Qatar Law No. 13/2000 is, therefore, no longer in force.

The application process

The details regarding the implementation of Qatar Law No. 1/2019 and the decision-making process are to be set forth in the Executive Regulations, which have yet to be issued.

A foreign investor may apply to own more than 49% of the share capital of a company by filing the relevant application form with the "Invest in Qatar" centre at the Ministry of Commerce and Industry (MOCI) (either online or in hard copy form) along with the required supporting documentation. The Invest in Qatar centre examines the application and forwards it along with a preliminary recommendation to the Competent Department, which then issues the decision. This one-stop-shop thus facilitates the application process and ensures efficiency.

Applicants are currently required to submit, along with the application form, a number of supporting documents, including a business plan that demonstrates the added value and knowledge transfer associated with the foreign investment and a corporate social responsibility statement. Preference is given, among other things, to investments that add value to the local economy, align with the country's national development plans, introduce new technologies, and/or offer training to Qatari nationals. The Executive Regulations are expected to ease the application process and loosen the requirements imposed on foreign investment.

The Competent Department must issue a decision within 15 days of receiving the application. If no approval is issued within that time period, the application is considered to have been denied. Qatar Law No. 13/2000, on the other hand, imposed no time frame for the processing of the application, with the result that the application process was lengthy. The 15-day period specified in Qatar Law No. 1/2019 represents, therefore, a considerable improvement over Qatar Law No. 13/2000.

When an application for approval to establish a wholly foreign-owned company has been rejected, the foreign investor has 15 days from receiving the rejection notice to challenge it by submitting a grievance to the Minister of Commerce and Industry. The Minister then has 30 days either to approve or reject the grievance; failure to respond constitutes rejection. Qatar Law No. 1/2019 stipulates that the Minister's decision in such cases is final.

Protective measures

Restrictions on FDI

Host countries often limit or closely regulate FDI in key protected industries and sectors.

Article 4 of Qatar Law No. 1/2019 precludes foreigners from investing in (i) banks and insurance companies, except those exempted by a resolution of the Council of Ministers, (ii) commercial agencies, or (iii) any other areas as determined by a resolution of the Council of Ministers.

Under Qatar Law No. 1/2019, a foreign investor may own up to 49% of the share capital of Qatari joint stock companies listed on the Qatar Exchange subject to the MOCI's approval of the percentage of foreign ownership as stated in a firm's memorandum and articles of association. The limit of 49% foreign ownership may be exceeded based on a recommendation by the Minister of Commerce and Industry that is then approved by the Council of Ministers.

Qatar Law No. 1/2019 does not override other special laws and regulations concerning foreign engagement in commercial activities and the practice of various professions. By way of an example, Qatar Law No. 19/2005 Regulating the Practice of the Engineering Professions requires that Qatari shareholders own at least 51% of the share capital in local engineering consulting firms.

It should be noted that the restriction under Qatar Law No. 13/2000 that prevented foreigners from holding real estate in Qatar is no longer in force. Article 2 of Qatar Law No. 16/2018 on Non-Qatari Ownership and Use of Real Estate states that a “non-Qatari may own and hold usufruct rights in property in the areas and according to the rules, privileges, and procedures to be determined by a decision of the Council of Ministers based on a proposal of the Committee (...).”

Limits of Qatar Law No. 1/2019

Qatar Law No. 1/2019 does not apply to certain categories of companies and individuals listed in article 25 of Qatar Law No. 1/2019, such as those licensed by Qatar Petroleum to carry out petroleum operations and other companies that seek to invest in the industry of oil, gas and petrochemicals.

Supremacy of ratified bilateral investment treaties over Qatar Law No. 1/2019

Qatar has concluded some 58 bilateral investment treaties (BITs), 25 of which are currently in force. The precise scope and coverage of any given BIT depends mainly on the manner in which it defines investors and investments. To the best of our knowledge, there is no Qatari model BIT. Consequently, the definition of investors and investments in the treaties concluded by Qatar is the result of the negotiations carried out in each individual case. The level of protection granted by a BIT depends on its scope of application, its substantial provisions regarding the treatment of investments, and the dispute resolution mechanism available to the investor. In cases in which a ratified BIT exists between Qatar and another country, its provisions normally prevail over those of Qatar Law No. 1/2019.

Alternatives to establishing a wholly foreign-owned company with the MOCI

A foreign company may establish a Trade Representation Office in Qatar, without a Qatari partner, for the purpose of promoting its activities and introducing its products and services to Qatar. Such an office cannot, however, import, export or sell any product in Qatar.

A foreign company licensed to perform engineering consulting services abroad may also set up a branch (i.e., an international engineering consulting office) without a Qatari partner with the Committee for Accreditation of Engineers & Consultancy Offices of the Ministry of Municipality & Environment, provided that it meets the relevant legal requirements.

The Qatar Financial Centre (QFC), Qatar Science and Technology Park (QSTP), and Qatar Free Zones, also offer full foreign ownership, repatriation of profits, and numerous other incentives and are governed by laws and regulations that protect FDI.

Incentives for investment

Qatar Law No. 1/2019 offers a variety of incentives to foreign investors.

Fair expropriation and compensation regime

Under Qatar Law No. 1/2019, foreign investments are subject to neither direct nor indirect expropriation nor any similar action except when expropriation serves the public interest. Should expropriation occur, it must be non-discriminatory, must provide fair and adequate compensation, and must be conducted in accordance with the same procedures that apply to Qatari citizens. Under Qatar Law No. 13/1988 on the temporary expropriation and appropriation of real estate for the public benefit and subsequent amendments, compensation should reflect the market price of the property in question. Qatar Law No. 13/1988 also indicates the recourse available to the aggrieved parties against the decisions taken in application of that law.

Favourable remittance policies

Foreign investors are free to make transfers pertaining to their investments to and from Qatar without delay. Such transfers may include (i) investment revenues, (ii) proceeds from the sale or liquidation of investments, (iii) funds awarded as the result of an investment dispute, and (iv) compensation resulting from expropriation.

Exemptions from taxes and customs duties

An entity that is entirely or partially foreign-owned and that derives income from sources within Qatar is subject to a flat corporate income tax rate of 10%. Article 10 of Qatar Law No. 1/2019 states that foreign investment projects may be exempted from income tax in accordance with the rules, procedures, and periods set out in Qatar Law No. 24/2018 Promulgating the Income Tax Law. Article 36 of Qatar Law No. 24/2018 stipulates that the Minister of Finance may grant a tax exemption for periods of up to five years. Longer exemptions are approved only by a decision of the Council of Ministers. Furthermore, the Council may, in response to a proposal by the Minister of Finance, issue a decision granting specific sectors or projects preferential tax rates owing to their nature or the areas in which they are located.

Furthermore, Article 4 of Qatar Law No. 24/2018 exempts from tax foreign investors' profit shares (i) in listed companies, (ii) in investment funds with units listed on financial markets, and (iii) derived from trading securities, including units of investment funds, listed on financial markets.

Foreign investment projects are also exempt from customs duties on imported machinery and equipment that are necessary to establish those projects. Such industrial projects are further exempt from customs duties on imported raw and semi-manufactured materials that are necessary for production but unavailable in the local market. Under Qatar Law No. 13/2000, such exemptions were optional and left to the discretion of the MOCI.

Right to import and export

Foreign investors may import whatever is required for the establishment, operation, and/or expansion of their investment projects in accordance with applicable Qatari laws.

Right to transfer shares

A foreign investor may transfer the ownership of an investment to any other investor, Qatari or otherwise, or assign ownership to a national partner in the case of partnerships. Qatar Law No. 1/2019 specifies that, in such cases, the investment continues to be treated in accordance with Qatar Law No. 1/2019's provisions provided that the new investor continues work on the project and substitutes the former investor's in terms of rights and obligations associated with the project. As per Qatar Law No. 11/2015 Promulgating the Commercial Companies Law, except for general partners, new investors' financial liability extends only to the amount that they have invested in the company and to debts incurred after the change in ownership unless the transfer of shares agreement states otherwise. General partners, however, are jointly and personally liable, along with the other general partners, for all of the company's debts, irrespective of when the debts were incurred. No agreement to the contrary is binding on third parties.

Further incentives

Land that is needed to establish an investment project may be allocated to a foreign investor. The allocation may be by way of lease or usufruct in accordance with relevant applicable laws. Qatar Law No. 13/2000 limited the rent period to 50 years, but this limitation has now been removed. Usufruct was added as an incentive under Qatar Law No. 1/2019 subject to the provisions of Qatar Law No. 16/2018.

The Council of Ministers may, in response to a proposal by the Minister of Commerce and Industry, grant investment projects incentives and benefits beyond those listed in Qatar Law No. 1/2019

As per Qatar Law No. 21/2015 on the Regulation of the Expatriates' Entry, Exit and Residence, the Minister of Interior may also issue visas and grant residency permits without the need for a recruiter for those investors whose activities are governed by the provisions of Qatar Law No. 1/2019.

Dispute resolution mechanisms

Except in cases involving labour disputes, Qatar Law No. 1/2019 states that a foreign investor may agree to resolve any dispute with any party through arbitration or any other method of dispute resolution provided for under the relevant laws. Qatar Law No. 1/2019 refers to alternative dispute resolution in addition to arbitration, whereas Qatar Law No. 13/2000 referred only to arbitration.

Investors in Qatar frequently choose binding arbitration as the method for dispute resolution. Qatar ratified the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) on March 15, 2003, pursuant to Qatar Emiri Decree No. 29/2003. As a member state, Qatar enforces foreign arbitral awards concluded in states that are parties to the New York Convention. The Convention is meant to display a "pro-enforcement bias" such that a court should only refuse to enforce awards that fall within the narrow categories that it defines. Qatar has also been a member of the International Centre for the Settlement of Investment Disputes (ICSID) since 2011 and accordingly enforces binding international arbitration in disputes between an investor and the state.

Qatar Law No. 2/2017 on the Issuance of the Arbitration Law in Civil and Commercial Matters applies to any arbitration that takes place in Qatar and any international commercial arbitration outside the country involving parties that have agreed to abide by it. Article 34(1) of Qatar Law No. 2/2017 clearly states that "an arbitration award, irrespective of the country in which it was issued, shall acquire the status of res judicata and be enforceable according to the provisions of this Law". The Enforcement Judge in Qatar must recognize and enforce a foreign award irrespective of the country in which it was issued unless it is in breach of any of the cases listed in article 35 of Qatar Law No. 2/2017, an example being awards that threaten the public order in Qatar.

The Enforcement Judge may also enforce foreign judgments and orders in Qatar in cases (i) in which reciprocity exists between the two jurisdictions and (ii) that meet the requirements set out in article 380 of Qatar Law No. 13/1990 on the Issuance of the Civil and Commercial Procedure Law. The Enforcement Judge should verify, for instance, that a foreign judgment or order is final in accordance with the law of the issuing court and that Qatari courts have no exclusive jurisdiction over the dispute in question.

Violations and penalties

Because Qatar Law No. 1/2019 is deemed to be part of the public order, no agreement that contravenes its provisions is valid in Qatar. Thus, for example, in the absence of an approval from the Competent Department allowing complete foreign ownership of a Qatari entity, a side agreement between a foreign investor and a Qatari partner in which the latter acknowledges that the former is the actual owner of the entire company would be invalid.

In a decision on a case involving a breach of Qatar Law No. 13/2000, the Court of Cassation of Qatar affirmed in QCC 11/2015 that "the legislator prevented non-Qataris from trading without a Qatari partner. This restriction is imposed in order to protect national commercial activity from damages resulting from foreign competition. Therefore, such a restriction is deemed to relate to public order as it concerns a general economic interest that prevails over the private interests of individuals. Such individuals are enjoined against breaching the restriction by their agreements even when said agreements serve their interests. A breach of this sort completely invalidates any contract, and an invalid contract can neither generate obligations nor produce any effect, and anyone with standing, whether a contracting party or third party, may assert its invalidity. Further, the court must itself declare its invalidity."

Qatar Law No. 25/2004 on Fighting Concealment of Commercial Economic and Professional Activities Carried Out by Non-Qataris in Violation of the Law, which forbids the covering up of illegal practices carried out by foreigners, also restricts foreign investors' use of a Qatari national or a Qatari entity in order to circumvent restrictions and requirements applicable to foreign investors under Qatari law. More specifically, Qatar Law No. 25/2004 makes it unlawful for legal or natural Qatari persons to cover up any commercial, economic, or professional activity by a foreigner that violates any law currently in force. Breach of Qatar Law No. 25/2004 may be punished with stiff penalties above and beyond confiscation of any monies generated by the business in question, including imprisonment, fines, revocation of business licenses, annulment of commercial registrations, and the closing of business premises.

In the event of a breach of any of the provisions of Qatar Law No. 1/2019, the Competent Department is to notify the foreign investor involved. If the latter fails to rectify the breach within a period of three months, the Competent Department is to revoke its license and strike off the company, or branch, as the case may be, from the Commercial Registry. The fact that Qatar Law No. 1/2019 does not provide for a range of penalties, such as temporary suspension of a firm's license or revocation of incentives, may lead to a reluctance of the Competent Department to revoke a foreign investor's license automatically for every failure to remedy a breach within the stipulated period.

Qatar Law No. 1/2019 also imposes a fine of not more than QR 500,000 on any person who engages or participates in an economic activity in violation of the provisions of Qatar Law No. 1/2019.

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Areas of expertise

Dispute resolution; Corporate; Foreign Investment

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- LL.B., St. Joseph University, Lebanon
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Biography

Marc has extensive experience in dispute resolution, having worked on complex litigation and arbitration matters in Qatar, Lebanon and across the Middle East. His experience extends to foreign investment, corporate and regulatory matters. Marc has a deep understanding of Qatari laws and is fluent in English, French and Arabic.