

# THE QATAR BUSINESS LAW REVIEW

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# Qatar's New Foreign Investment Law: A New Regime Relaxing Foreign Investment Rules

**Q**atar's new Foreign Investment Law is, on paper, a major step in boosting the attractiveness of Qatar as an investment destination, to be considered together with other initiatives taken in the context of the land, air and sea blockade imposed on Qatar since 5 June 2017 by several of its neighbours. The way in which the Government will implement the new law

remains to be seen. While the new Foreign Investment Law is general in nature and likely to apply to many of foreign companies wishing to establish themselves in Qatar, it will not apply to all of them. It remains critical to obtain correct legal advice in order to ascertain the rules applicable in the particular circumstances.



**Arnaud Depierrefeu**  
Corporate and Projects Lawyer  
Paris Bar

On 7 January 2019, Law No. 1/2019 Regulating Non-Qatari Investment in Economic Activities, commonly known as the New Foreign Investment Law (the "New FIL"), was issued. It came into force on 24 February 2019 and repealed the previous Law No. 13/2000 (the "Old FIL").

The main feature of the New FIL is a spectacular reversal of principle: a foreign investor may now invest in *all* sectors of the economy up to 100% of the share capital of a Qatar registered company ("Company"), whereas the principle in the Old FIL was, subject to limited exceptions, that a foreign investor had to set up a Company in joint venture with a local partner holding at least 51% of its share capital.

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However, things are not so simple, as the New FIL does not apply in all situations. Moreover, the ability for a foreign investor to set up a Company where it is the majority or even the sole shareholder is conditional upon an administrative approval being given. Finally, its practical implementation is dependent on the issuance of executive regulations (the "Executive Regulations") which, at the time of writing this article (October 2019), had not been released.

The New FIL is, on paper, a major step in boosting the attractiveness of Qatar as an investment destination, to be considered together with other initiatives taken in the context of the land, air and sea blockade imposed on Qatar since 5 June 2017 by several of its neighbours (the "Blockade").<sup>1</sup>

The way in which the Ministry of Commerce & Industry (MCI), the authority in charge of implementing the law and of drafting the Executive Regulations, will implement the New FIL remains to be seen.

## A Wide-Ranging, But Not Universal Law

The New FIL is general in nature and applies in principle to any foreign investor (individual or corporate body) who wishes to carry out an economic activity in Qatar, whether in relation to a specific project or with a more long-term approach.

The New FIL (as per article 25-2) does not generally apply to companies incorporated by the Government of Qatar with foreign investors, where the Government is acting either through so-called "*public corporations*" (such as the Qatar General Electricity & Water Corporation, often referred to as KAHRAMAA) or through private companies in which the Government holds shares (such as Qatar Rail or Qatari Diar or the various joint venture companies where Qatari Diar is a shareholder).

This general exclusion extends to foreign companies exploiting natural resources by virtue of a special agreement with the State of Qatar (article 25-1).<sup>2</sup> It also does not apply to

*"companies and individuals licensed by Qatar Petroleum to conduct any petroleum operations or which aim at investing in the oil, gas and petrochemical sectors"* (article 25-3).

While the first part of this sentence seems to reiterate the exclusion of article 25-1, it remains to be seen if foreign companies that come to Qatar to work in the oil and gas sector without doing any exploration or production activities<sup>3</sup> will be governed by the New FIL or not.

The New FIL also defines (in its article 4) a limited number of sectors in which a foreign investor is prohibited from investing: banks and insurance companies;<sup>4</sup> commercial agencies; and any other fields determined by a decision issued by the Council of Ministers. The Old FIL also mentioned "*the purchase of real estate*" as another prohibited sector but it was removed from the list.<sup>5</sup>

These sectors are actually not the only ones where foreign investment is prohibited. Indeed, the principle of article 2 is not only subject to article 4 but also to "*any specific laws organising the conduct of business and professions by non-Qataris*".<sup>6</sup> For example, there are separate laws prohibiting foreign investment in the following fields: private security services, manpower supply, and insurance brokerage.

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In addition, one should note that the New FIL, like the Old FIL, does not apply throughout Qatar, namely in the Qatar Financial Centre (QFC), the Qatar Science & Technology Park (QSTP) and the new free zones administered by the Qatar Free Zone Authority (QFZA) (all of which allow 100% foreign ownership in any event).

Therefore, while the New FIL is general in nature and likely to apply to many of the foreign companies wishing to establish themselves in Qatar, it will not apply to all of them. It remains critical to obtain correct legal advice in order to ascertain the rules applicable in the particular circumstances.

## Open Questions Around the New Principle Established in Article 2

The possibility for a foreign investor to establish a 100% foreign-owned Company in Qatar is not new. There was a list of priority sectors under the Old FIL, which was extended through an amending law passed in 2010.<sup>8</sup> Several international companies, mainly in the field of industrial activities or new technologies<sup>9</sup>, managed to obtain an exemption under the Old FIL.

What the New FIL changes is first, the removal of a list of limited priority sectors and a new principle whereby foreign investment is welcome in *all* sectors without a local partner<sup>10</sup> and secondly, to provide for a process to obtain an exemption that appears efficient on paper.

As a matter of fact, an application to obtain approval for a foreign investor to exceed 49% of the shares in a Company must be submitted to a dedicated department of the MCI (the "Department of Business Development & Investment Promotion"), which must make a decision within 15 days of a complete application being submitted. In case of rejection, an appeal to the Minister in charge of the MCI is possible (provided that this is submitted within 15 days of the rejection) and the Minister must make a decision within 30 days of the appeal being submitted. The Minister's decision is considered final.

1. The Kingdom of Saudi Arabia, the Kingdom of Bahrain and the United Arab Emirates, supported by several countries including Egypt.

2. For example, when the State of Qatar, acting through Qatar Petroleum, enters into an EPSA (exploration and production sharing agreement) or a concession agreement with a foreign "major".

3. For example: engineering consultancies, EPC contractors, and service providers on the construction side of the oil and gas industry.

4. Except for those exempted by a decision of the Council of Ministers. Such an exemption already existed under the Old FIL and was already granted in the past to seven foreign banks: four from the Middle East and three from the West (HSBC, Standard Chartered and BNP Paribas).

5. However, there remain restrictions on foreign investors owning real estate in Qatar, which have however recently been relaxed (see footnote 20).

6. This comes from the wording of article 2. The same concept is reiterated in article 6.

7. For example, the Engineering Law No. 19/2005 (as amended) still mentions that a local engineering office needs to be set up in the form of a 51/49 joint venture. This will supersede the principle set in the New FIL, until the engineering law is eventually amended.

8. Sectors such as "*information technology*", "*business consultancy*" or "*sports*" were added to a list of "older" priority sectors: "*agriculture, industry, health, education, tourism, utilisation of natural resources*".

9. Such as, for example, Thales of France or Huawei of China.

10. Subject to obtaining an approval and to the exceptions as discussed above.

This is a welcome development. The Old FIL did not provide for any timeline and we are aware of exemption applications that could last, at the very least, for one year and sometimes several years, without any guarantee as to the final outcome. Obviously, such delays made the whole process unattractive to foreign investors.

Today, in the absence of the Executive Regulations, the MCI continues to deal with applications presented on the basis of the priority sectors of the Old FIL, although we understood there is more flexibility, especially where an application is presented by a global player. The reality however, for the moment, is that the New FIL is currently not being implemented as far as article 2 is concerned.

Once the New FIL is actually implemented, and subject to any further restrictions or conditions to be determined by the Executive Regulations, it will have implications for newcomers in Qatar, but also for entities that were set up under the old regime.

As a matter of fact, it was customary to include in the shareholders' agreement of a joint venture Company a clause whereby the 49% (foreign) partner had the option to acquire the shares held by the 51% (local) partner in case of a change of law. In the situation where a local partner agrees to exit pursuant to such a clause or to any other commercial agreement, then the New FIL provides, on paper, for a legal basis to allow the foreign partner to become the sole owner of the Company<sup>11</sup> (or to bring in another foreign partner as a shareholder).

It remains to be seen how the MCI will deal with any such applications. It is interesting to note that article 15 mentions the possibility for the foreign investor "to transfer the ownership of his investment to any other investor or transfer it to their national partner in case of a partnership", but not the other way around.

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## Other Useful Developments under the New FIL

In addition to article 2, the New FIL contains a number of useful provisions, a selection of which are discussed here.

First, the New FIL lists a number of protections available to a foreign investor, such as:

- protection against unlawful expropriation (article 13);
- freedom to transfer proceeds from their investments (article 14);

11. The Commercial Companies Law No. 11/2015 allows in particular an LLC (which is the most common form of commercial company used in Qatar) to be owned by one shareholder only.

- freedom to transfer their shares (article 15); and
- freedom to resort to arbitration to resolve disputes (article 16).<sup>12</sup>

These are useful confirmations to have, in conjunction with treaties to which Qatar is a party.

The New FIL also lists a number of incentives that may be available to a foreign investor, such as:

- the allocation of land for a project (article 8);
- the ability to import the goods and equipment required for a project (article 9);
- the exemption from income tax (article 10) and customs duties (article 11); and
- any other incentives and benefits which the Council of Ministers may grant to a specific project (article 12).

All these incentives are subject to applicable provisions under relevant laws.<sup>13</sup> Such incentives already existed under the Old FIL and to the best of our knowledge, were very rarely awarded even for major industrial or power projects. It remains to be seen if a new practice will emerge under the New FIL.

While focussing on companies to be established with an element of foreign investment, the New FIL, under article 5, also deals with the ability for a foreign investor to establish a branch in relation to a specific project. This is a confirmation of a principle contained in the Old FIL whereby a foreign company which signed a "contract of public utility" could establish a presence for the purpose of performing such a contract, without the need to set up a Company with a local partner. The New FIL clarifies that such a contract will be understood as a contract signed with the State (acting through a Ministry or a public corporation) but also with commercial companies wholly or partly owned by the State. This is welcome confirmation of a previous constant practice.

The New FIL, however, changes the process of a branch establishment: an exemption to be issued by the Minister in charge of the MCI will not be required any more, as the text now mentions a mere "registration in the commercial registry", which is a welcome simplification.

The new text also provides that the branch must be set up after the contract has been awarded but before it is signed. It is unclear how this will work in practice as a branch was typically set up under the Old FIL only after a contract had been signed. Pending the issuance of the Executive Regulations, the MCI still follows the prior practice.

*If the Executive Regulations do indeed open up most sectors of the economy to wholly foreign-owned subsidiaries, then the attractiveness of setting up a project branch will probably progressively fade away.*

12. The freedom to resort to arbitration does not apply to labour disputes. It does apply to commercial relations with third parties, including with a local partner in a joint venture Company. It should be noted, however, that there are restrictions on the ability for public entities, which are often the clients in major projects, to resort to arbitration, as the Public Procurement Law (Law No. 24/2015) requires the approval of the Minister of Finance which, in practice, is only granted in respect of the largest of projects or in special cases.

13. In particular, the Income Tax Law (Law No. 24/2018) sets out a procedure to request a tax exemption.

If the Executive Regulations do indeed open up most sectors of the economy to wholly foreign-owned subsidiaries, then the attractiveness of setting up a project branch will probably progressively fade away.<sup>14</sup>

## Looking at the Big Picture: What Does this New Law Tell Us about Qatar Today?

The New FIL was issued around 18 months after the start of the Blockade.

It would be wrong to consider that the New FIL was only prompted by this event: the drafting of a New FIL was in progress before the Blockade as Qatar regularly revisits its key laws as part of its legislative process.<sup>15</sup>

However, it is probable that the Government took into consideration the need to improve the attractiveness of Qatar in the context of the Blockade, the difficult economic situation in the region since the sharp drop in oil prices in 2014, and what neighbouring countries do to boost their own attractiveness to foreign investors.<sup>16</sup> This may explain why the New FIL has broadened significantly the numbers of areas that are open to full foreign ownership.

However, as explained above, the New FIL is today technically in force but not implemented, pending the issuance of the Executive Regulations. One can hope these regulations will be released in the not too distant future and will not restrict too much the principles contained in the law, which would inevitably limit the instances where a joint venture would need to be set up with a local partner.<sup>17</sup>

The intention of Qatar to promote its attractiveness through the enactment of the New FIL should also be considered with other initiatives introduced since the Blockade, for example:

- allowing nationals from 80 countries to obtain a visa on arrival at Hamad International Airport;<sup>18</sup>
- removing the exit permit system;<sup>19</sup>
- opening more widely real estate ownership to foreigners;<sup>20</sup>
- developing free zones through the newly established QFZA;<sup>21</sup> and
- finalising a long-awaited PPP law.<sup>22</sup>

In parallel with these initiatives and even before the Blockade, one should also mention the progressive opening up by the QFC and by the QSTP of their list of eligible activities in order to allow more foreign investors to set up in these investment areas.<sup>23</sup>

These developments give more options to foreign investors in Qatar, which is a good thing. However, a degree of coordination would be useful to avoid unnecessary competition and overlaps between these various authorities so that each one can cater to the needs of different types of businesses.

The concrete application of the New FIL, together with other initiatives, will surely be watched very closely by the World Bank, by rating agencies, and by the business community at large before giving Qatar full credit for its laudable intentions.

14. Especially since a project branch attracts a 3% contract retention tax on the contract amount, on top of the 10% income tax applicable on locally generated profits, whereas a company only has to pay income tax.

15. For example: a first FIL was issued in 1980, then superceded by the Old FIL of 2000, which was amended through a law of 2010. Other important laws have regularly been amended such as the commercial companies' law, the tax law or the labour law.

16. In particular, the UAE announced in September 2018 the enactment of the Foreign Investment Law (through Federal Law No. 19/2018) that would also reverse the 51/49 principle applying onshore UAE. Interestingly, at the time of drafting of this article and as for Qatar, the concrete implementation of the new UAE law is still on hold and subject to executive regulations being issued (a cabinet resolution has identified 13 sectors that would fall under the new law but each emirate of the UAE will have some flexibility on how to implement the law to these sectors).

17. In this respect, it should be noted that even if the New FIL allows a foreign investor to establish a Company without a local partner, there might be very good commercial, technical or strategic reasons to nonetheless establish a Company in joint venture with a local partner. However, arguably, it is appealing for foreign investors to be able to operate their local subsidiary without a joint venture partner.

18. One of the first measures taken after the blockade, in August 2017. Only around 30 nationalities were eligible to that sort of visa before.

19. In September 2018, a Law No. 13/2018 amended a specific article of the immigration law, which was previously issued in 2015 but fell short at that time to remove the exit permit system. Only some limited exceptions remain in place today requiring an employee to request from his employer a permission to leave Qatar.

20. In March 2019, executive regulations of Law No. 16/2018 were enacted although we are not sure if they are effectively implemented. They allow foreigners to have freehold ownership of property in ten areas, while 16 areas have been identified where foreigners may lease property for up to 99 years.

21. Decree-Law No. 21/2017 enabled the reactivation of a Law No. 34/2005 on Free Zones which had never been implemented in practice. The QFZA has taken over the development of three free zones from Manateq.

22. Which has been in the works since 2012 but seems to be now close to promulgation.

23. The activities permitted in the QFC are today broader than the initial ones focussed on banking, insurance and professional services. Similarly, the QSTP has recently allowed companies in the field of defence, which was not a sector initially considered for development in this zone dedicated to R&D activities.

### BIOGRAPHY

**ARNAUD DEPIERREFEU** is a Corporate & Projects lawyer who specialises in the Middle East region and in particular in Qatar, where he has been practising since 2009. He advises on major projects in the field of transport infrastructure, defence & security as well as energy & environment. Over his more than 20 years of private practice, he has developed two main skillsets:

- Corporate structuring in emerging markets: establishing, transforming and liquidating legal entities, whether project related or permanent, in particular when it involves joint venture agreements.
- Projects development in emerging markets: assessing the risks associated to a tender and to a complex contract (engineering consultancy, design & build, turnkey, operation & maintenance, DBOM and other types of complex contracts), setting up the project entity, assisting the client in the negotiations and during the mobilization phase of a project.