

The Road to Qatar’s Construction of the 2022 FIFA World Cup Stadiums

Aarta Alkarimi, Partner at Chrysalis – International Legal Advisors

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INTRODUCTION

The scale and level of complexity associated with hosting a major international sports event such as the Commonwealth Games, the Olympics and the football World Cup imposes multi-faceted challenges on the organizers in several realms. These include political, legal, logistical, financial and security considerations; to name but a few.

Coupled with the intense scrutiny of the media and the highly emotive sentiments of sports enthusiasts, it is very common for the stakeholders of such events to be criticized for various aspects of their arrangements in the months and years leading up to the opening ceremonies.

Once the games proceed, a different level of scrutiny comes as a result of their very public nature; and the aftermath brings its own set of challenges, criticism and accountability as a result of legacy issues (for example, physical infrastructure conversion and use, financial performance and debt repayment, and the legacy left for the host community).

The 2012 Summer Olympics in London dealt with issues ranging from the minor controversy over the design of the logo to the serious issue of security preparedness that loomed heavily over the event from the hours after London’s win was announced through the closing ceremonies.^{1, 2}

The 2016 Summer Olympics in Brazil (Rio 2016), has had to contend with issues of competency related to timely venue completion, the tactics employed by Police Pacification Units in Rio

¹ The city’s public transport system suffered terrorist attacks within 24 hours of the Olympic Committee’s announcement that London had been selected as the host city for the games.

² Up until days before the opening ceremony, security arrangements for the 2012 London Olympics were criticized for being “totally chaotic” and a “farce”. Further, the security provider, G4S, was unable to provide the required number of security personnel for the event. The shortfall was addressed by police departments and the military. See Booth, Robert; Hopkins, Nick, “Olympic security chaos: depth of G4S security crisis revealed”, *The Guardian*, 13 July 2012.

de Janeiro's favelas, and the measures taken by Brazil to combat the spread of the Zika virus.^{3, 4, 5}

Qatar's hosting of the 2022 FIFA World Cup (Qatar 2022) has been no exception. In fact, strong criticism came immediately upon FIFA's announcement of Qatar's selection on December 2012; and the chorus of dissenting voices has been growing ever since.

Qatar, in its defense, has stated that much of the criticism has been particularly intense. In other areas, Qatar has acknowledged problems and has stated that it is taking measures to improve or correct matters.^{6,7,8}

The list of concerns reported in the media with Qatar's selection includes:

- allegations of corruption and rigging of the FIFA selection process,
- the appropriateness of the climate (extreme summer temperatures),
- a change in event timing from summer to winter (with the attendant effects on the schedules of various football leagues),
- the significant cost of hosting Qatar 2022 (compared to previous World Cups),
- a lack of existing infrastructure (including little to no existing public transport and inadequate affordable lodging),
- potentially overambitious plans for venues and infrastructure (including air-conditioned stadiums, completely new transit system),
- criticism of post-bid reductions in the number of venues, features and facilities (including reducing number of stadiums from 12 to 8 or 9),

³ International Olympic Committee (IOC) vice-president John Coates called Brazil's preparations for the games as "the worst that I've experienced" and noted that construction and infrastructure projects were severely behind schedule. To address the delays, the IOC formed a special task force to assist Brazil with completion of venues and infrastructure. See *Ransom, Ian, "Rio Olympics preparation "worst" ever – Coates", Reuters, 29 April 2014.*

⁴ Violence and intimidation of residents by gangs, and police tactics to pacify the favelas have been reported. See *"Brazil: Surge in killings by police sparks fear in favelas ahead of Rio Olympics", Amnesty International, 27 April 2016* and *Osborn, Catherine, "Rio de Janeiro's pacification program slips back to tactics from its bloody War on Drugs", PRI, 30 October 2015.*

⁵ *Attaran, Amir, "Off the Podium: Why Public Health Concerns for Global Spread of Zika Virus Means That Rio de Janeiro's 2016 Olympic Games Must Not Proceed", Harvard Public Health Review*

⁶ Hassan Al Thawadi, Secretary General of the Supreme Committee for Delivery and Legacy (SC), the Qatari body in charge of the building of the tournament's venues, stated that "We always expected criticism. There isn't a single major sporting event in the world that doesn't go through that journey, but I think ours has been particularly intense. We became the victim of a campaign that singled out Qatar and our successful bid without any shred of evidence. We've had to live with that for five years but there has still been no evidence to suggest our Bid Committee did anything wrong.", *Walker, Lesley, "Political climate makes World Cup in Qatar 'more necessary than ever'", Doha News, 15 December 2015*

⁷ *Townsend, Sarah, "Qatar pledges to investigate Amnesty abuse claims", Arabianbusiness.com, 31 March 2016*

⁸ The Supreme Committee for Delivery and Legacy (SC), issued "Workers' Welfare Standards" (edition 1) in January 2014 with a second edition published in March 2016

- concerns over readiness and lack of sufficient prior experience in handling large events,
- charges of exploitive labor treatment and poor working conditions,
- restrictive alcohol sale and consumption laws in Qatar,
- the rights of LGBT fans, and
- the ability of Israel to participate in the games, if qualified, given that Qatar does not recognize the state of Israel.

The wider corruption scandal and indictments of FIFA officials has brought even greater scrutiny of the hosts of the next two World Cups (Russia in 2018 and Qatar in 2022), including calls to reconsider the selections of the two host nations.⁹

In the face of unprecedented negative sentiment towards FIFA, recent indictments of FIFA officials, and persistent questioning of its selection process going back decades, Qatar has sought to distance itself from the football body's alleged corruption.

Qatar has sought to make a clear distinction between it as a bidding party and FIFA as an organization responsible for its own workings. As a result, the organizers of Qatar 2022 have become guarded in their public engagement and have placed restrictive confidentiality clauses in agreements with consultants and contractors. These non-disclosure agreements are strictly enforced.

ESTABLISHMENT OF COMMITTEE TO MANAGE THE QATAR 2022 WORLD CUP

On 27 January 2014, the Emir of Qatar established the Supreme Committee of Delivery and Legacy (SC) through Emiri Decree 3/2014. The SCs mandate is to manage the design and construction of all Qatar 2022 infrastructure.

The SC oversees all aspects of the design and construction of the stadiums and other buildings (hotels, training facilities, broadcasting centers, support and management offices) for the event including:

- pre-qualification of consultants, project managers and contractors,
- project packaging,
- tendering and procurement,
- design/engineering oversight,
- contract administration,
- construction oversight,
- schedule oversight (design and construction),
- budget oversight (design and construction),
- delivery and commissioning oversight, and
- post-event/legacy use and handover of facilities.

⁹ Gibson, Owen, "Russia and Qatar may lose World Cups if evidence of bribery is found", *The Guardian*, 7 June 2015.

The same decree also established the Qatar 2022 Local Organizing Committee (LOC) which is tasked with:

- event organization, operations and logistics,
- coordinating with FIFA, and
- ensuring that event hosting obligations are met.

FACILITY PACKAGING AND PROCUREMENT STRATEGY

The SC is tasked with delivering 8 or 9 major stadiums (originally 12 were proposed by Qatar during their bid to host the games; the final number of stadiums shall be determined in coordination with FIFA).

The stadium venues can be categorized into two types:

- significant refurbishment and expansion of existing stadiums, and
- new construction.

In addition to the stadiums, the SC is also tasked with delivering on-site retail and F&B facilities, hotels, training facilities, broadcasting facilities, provisional offices for FIFA management, associated utilities plants, and services buildings.

With several projects to deliver and a variety of typologies and conditions to contend with, the SC is deploying various different procurement methods. In regard to the stadiums, we understand the packaging strategy generally, though not exclusively, to be organized as follows:

- Early Works – comprised of site preparation (site containment and access, site grading and light excavation)
- Enabling Works – comprised of excavation and shoring, dewatering and piling (where required)
- Main Works – comprised of foundations, substructure, superstructure, MEP systems, lighting, audio visual systems, building envelope, stadium seating, football pitch, finishes and fittings, landscaping, parking facilities

Each of these major packages is tendered separately as to each facility, and each successful contractor contracts directly with the SC. Further, there is the possibility that the SC will procure certain sub-packages directly and then novate them to the Main Works contractor.

FORMS OF CONTRACT

The SC has developed a suite of contracts for the works packages that is based on FIDIC form agreements (Yellow, Silver and Red Book).

The SC has elected to procure some of the new stadiums using the traditional design-bid-build method (where design and construction are procured separately by the SC), while in other cases the design-build method (D&B) method is being used.

Further, the SC is exploring the use a Public-Private Partnership (PPP) procurement mechanism for a couple of the stadiums that have not yet been contracted. THE SC is

apparently also considering PPP procurement for public transport and utilities infrastructure, and perhaps other remaining elements of work. It is thought that PPP structures are being explored as a means of addressing costs concerns arising in light of the drop in oil prices.¹⁰ Currently, however; Qatar has no PPP-specific legislative framework, though a PPP regime is under development.¹¹

With the high level of confidentiality imposed on SC employees, consultants and contractors, it is impossible to determine, much less disclose, the procurement and progress details of the specific contract packages. It is clear, however, that the SC has not adopted a rigid, top-down procurement system to be applied across all facilities and packages. Rather, several different procurement methodologies are being employed concurrently.

While the inconsistent approach may suggest that the SC is aware of its limitations and the relatively early stage of development of project management and implementation structures in Qatar, it is not unreasonable to be concerned that the administrative difficulties and confusion that may result from what some could describe as a haphazard procurement approach.

INTERNATIONAL CONTRACTOR PARTICIPATION

Large or complex projects, such as the stadiums, require expertise and capacity not available locally. The SC has recognized this and has freely engaged international contractors.

a. Transactional structure

To participate in Qatar 2022 procurement, international contractors must comply with Qatar's Law (13) of 2000 for the Regulation of Foreign Capital Investment in Economic Activity which requires Non-Qatari companies to form partnerships with Qatari entities to bid for and perform work. The structure may be through:

- the formation of a single company (a Limited Liability Company), or
- a joint-venture formed by contract.

Where a joint-venture agreement is being utilized, the SC requires 'joint and several' liability provisions.

Further, the SC tends to require full disclosure of such joint-venture agreements and will reject joint venture tenders if it is dissatisfied with the terms of the JV agreement.

b. Bonds, Guarantees, Warranties and Retention

Public sector entities such as the SC are required to comply with Law No. (26) of 2005 for public sector Procurement/Tenders and Auctions (amended by Law No. (22) of 2008 and Law No. (14) of 2010).

¹⁰ Oil prices are currently 45% lower than December 2010 (when FIFA announced Qatar's winning bid for the 2020 FIFA World Cup)

¹¹ Qatar's Ministry of Economy and Commerce has stated that they have drafted laws related Public-Private Partnerships (PPPs) with the aim for the cabinet to enact legislation by the end of 2016.

This law requires bidders to provide tender bonds.

In addition, the SC's contracts typically require:

- on-demand performance bonds (at 10% of the contract price),
- on-demand advance payment bonds (where advance payments are requested), and
- collateral warranties in favor of the SC from sub-contractors.

The SC typically retains further performance security through:

- retention of up to 10% of the contract price, and
- a requirement for parent company guarantees (where the contractor entity is a subsidiary of another company).

A subsequent law that overhauls Law No. (26) has been voted on by the Advisory Council of the State of Qatar (Shura) and is in the process of being adopted. The key provisions of the new law include:

- Requiring priority be given to Qatari products and subsequently to those from the Gulf Cooperation Council countries (GCC),
- the removal of monetary ceilings on public tenders,
- only tenders of high value may be awarded to foreign entities provided there is the presence of a Qatari partner,
- upon the cancellation of a tender, tender bonds will be returned to bidders within 7 days,
- upon the award of a tender, tender bonds will be returned to the unsuccessful bidders within 7 days,
- the State of Qatar shall be authorized to impose conditions, specifications and define the mechanisms required to execute contracts,
- the State of Qatar shall be authorized to impose penalties under the contracts without commencing legal proceedings in the courts,
- bidders withdrawing their bids after submission may have penalties imposed,
- bidders awarded contracts who withdraw or refuse to sign the contract or issue the required bonds may have penalties imposed upon them, and
- in the event a contracting company or joint venture dissolves, the State of Qatar has the right to terminate the contract (in some circumstances, the State of Qatar may choose to continue the contractual relationship, after dissolution of a joint venture, subject to certain conditions).

CONTRACTOR RISKS

Without significant major project case history and with vaguely drafted laws (and translations of laws from Arabic), the full nature of the risk a contractor undertakes becomes apparent often only during the performance of the work and contractual close-out.¹²

¹² All of Qatar's laws (with the exception of Qatar Financial Centre Law No. (7) of 2005 establishing and regulating the financial center) are published in Arabic only. All translations are considered to be "unofficial". Further, all documents provided to Qatar's courts must be translated into Arabic.

The usual construction contracting practice in Qatar is to transfer most of a project's risk to contractors and consultants through fixed price contracting. Employers typically assume very little risk by contract.

Further, it is common in the region for some employers to engage consultants to administer contracts in a manner suggestive of a desire to avoid accepting responsibility for events that increase the costs of the work. In recognition of these historic practices, most contractors experienced in Qatar contracting account for a high level of risk in their bids. This results in notably higher construction costs in Qatar even as compared to neighboring countries such as the UAE and Bahrain.

Key risk areas are:

a. Time

Contractual project durations are typically tight in Qatar, owing in part to a clash between fast growth and slow public procurement processes. For major projects, completion dates are typically decreed by government committees and there is limited opportunity (or willingness) for projects administrators to suggest alternate dates.

Often, projects are green-lighted later than planned without concomitant adjustments to desired completion dates thus compelling contract administrators to employ various strategies to pressure contractors to perform in shortened timeframes.

Contractor's report that employers sometimes pass on schedule risks by using D&B contracts even on projects ill-suited to the structure or where the pre-requisites to a successful D&B procurement (a robust design brief and/or detailed performance specifications) are not in place.

Contractor's also report that, regardless of the form of contract, the 'culture' surrounding construction projects in Qatar assumes that granting extensions of time is discretionary and places significant burdens on the contractor to demonstrate entitlement within tight timeframes.

Further, contract provisions pertaining to client obligations (responses to Requests for Information (RFIs), client approvals or instructions) are often loosely drafted and contractors often treat employer delays with a degree of deference.

b. Cost

Contractors find bidding mega-projects in Qatar particularly challenging where:

- contract provisions are overwhelmingly favorable to the employer,
- vague contract provisions create uncertainty,
- contract documents (drawings and specifications) are sometimes incomplete or vague,
- building code revisions can be enacted without grand-fathering provisions,
- adversarial relationships with employers are expected, and

- it is common for payment applications to take longer than stipulated to certify and process.

c. Quality

Contractors are further challenged when drawings and specifications prepared by an international consultant practicing outside Qatar are to be implemented by a contractor who is also relatively new to the country. In such cases, various interpretations of documents, assumptions with regard to the obligations and prerogatives of the parties, and the fluctuating level of involvement by the employer can lead to significant disparities in the expectations of each party.

LIABILITIES

Qatar generally recognizes principles of freedom of contract. However, as in other civil law countries, there are mandatory provisions of the Qatar Civil Code that will augment or override contractual agreements.

a. Deceit and Gross Negligence

Liabilities resulting from deceit or gross negligence cannot be limited or excluded. Any contract provisions attempting to limit liability for such acts or omissions are not recognized and are unenforceable.

b. Decennial Liability

Consultants and contractors are liable for a period of ten years from the date of substantial completion for any “total or partial collapse or fault” that uncorrected would cause a collapse, even where the fault or collapse was due to “defect[s] in the land”. While decennial liability is a familiar concept to many European consultants and contractors, the regime encountered in Qatar and other Gulf states is different from that found in France for example. The Gulf states mandate the liability, but not always the insurance regime to cover it.

While these provisions cannot be precluded by contractual clauses, Qatar’s Civil Law does provide for the “reasonable” reduction of such liabilities by a court or arbitral tribunal if it is determined that certain circumstances contributing to the failure could not have been expected.

c. General Liability and Liquidated Damages

In other matters of liability, parties are free to agree upon liquidated damages and to limit liability. Nonetheless, courts have discretion to adjust liquidated damages (higher or lower) to approximate actual. While this discretion is rarely exercised, especially to *increase* liability, it does undermine the certainty that parties seek by agreeing to fixed liquidated damages in the first place.

Further, it is commonly accepted that delay damages are capped at no more than 10% of the contract value.

Overall contractual liability is often capped at the full contract value (100%) but typically excludes liabilities arising out of intellectual property rights, serious personal injury or death, and property damage.

d. Force Majeure

Qatar's Civil Law, particularly Article (258), allows the parties to agree provisions regarding liability for the results of force majeure. Many consultants or contractors do not accept such a provision while others may accept the risk by pricing for it.

Once accepted, however, the transfer of this risk is binding and enforceable. Therefore, great caution is advised when considering such provisions.

The law does allow consultants and contractors to have their obligations reduced by appealing for these to be "reasonable", however, reliance on a court or tribunal's determination can be complex, costly and unpredictable.

DISPUTE RESOLUTION

Recognizing the challenges and scale of the works associated with Qatar 2022 and the need to attract the talent, expertise and resources of international consultants and contractors, the SC is aware to the risks associated with substantial disputes erupting during the design and construction process and delaying the project. Nonetheless, we understand that the SC generally has not included early dispute avoidance and resolution measures into its contracts. We are not aware of provisions for dispute boards or compelling mediation having been included.

Sources have suggested, however, that language pertaining to amicable resolution is being included in recent contracts. These typically include a series of steps to escalate unresolved matters (from Engineer level to CEO or Chairman level) before resorting to courts or arbitration. While these means should be encouraged, the process is dependent on the openness of the parties, their individual personalities and the degrees to which they may be empowered by their respective organizations. With most of the stadium projects in design or early construction stage and the confidentiality clauses imposed, the efficacy and success of these means remain unknown.

a. Litigation (Qatar Courts)

Qatar does not have specialized construction or commercial courts. Construction disputes in the courts are almost invariably referred to court-appointed experts who review and investigate the dispute and issue a report to the court stating findings and recommending a resolution. While in theory the court appointed experts—usually engineers practicing in Qatar—should investigate and report only on technical matters, in practice they are often given or assume broad mandates. Expert reports often go to "ultimate issues" and the recommendations of experts often include (or subsume) decisions on legal questions.

The judges who receive these reports are sometimes inexperienced and often overworked. The result is that expert reports are sometimes accepted without the level of review and scrutiny intended.

All proceedings are in Arabic and all documents provided to the court for consideration must also be translated into Arabic.

b. Arbitration

Arbitration is increasingly replacing litigation as the preferred method of formal dispute resolution in Qatar's construction industry, as it provides greater comfort to consultants and contractors working in Qatar.

Recognizing the need to update the legal framework for arbitration, the government of Qatar has drafted a new arbitration law and consulted with domestic and international law firms with regard to its implementation.

Arbitration clauses are routinely included in construction contracts, and most commonly adopt the rules of the International Chamber of Commerce (ICC) and stipulate Qatar as the seat of arbitration.^{13, 14}

Explicit senior level governmental approval for arbitration agreements to be binding on public sector bodies (such as the SC) must be provided to each of them before such provisions can be considered enforceable.

CONCLUSION

It is too early to predict whether the SC will scramble to complete the stadiums and other infrastructure needed to stage the games, or whether it will execute its procurement program smoothly and on schedule. When Qatar hosted the 2006 Asian Games, many of the related projects ran badly behind schedule. Nonetheless, the nation pulled together for a Herculean final push and managed to complete the required projects and stage a successful games. This effort came at a substantial cost, however. Given the much larger scale of the Qatar 2022 undertaking, a similar late push would likely not be enough.

That said Qatar has delivered many major projects since the Asian Games, including massive gas processing facilities and a major international airport, and has many more under construction. The employer and contractor community in Qatar is learning with each

¹³ Other arbitration venues such as London, Paris, Geneva or New York have been agreed to in exceptional cases, however, they are becoming less acceptable as Qatar's resources are improving.

¹⁴ The following arbitration bodies are also increasingly being referred to in contracts: Qatar International Center for Conciliation and Arbitration (QICCA) and the Qatar International Court and Dispute Resolution Centre (QICDRC) – the latter has set up a specialized body specifically addressing construction issues known as Q-Construct, however, it is unclear whether Q-Construct will be put into effect (to date, it has not been convened and there has been no further information on developments concerning the body).

additional experience and is making adjustments and implementing improvements along the way.

It is clear, however, that the systems and processes used successfully on other major sports projects to assure timely delivery of quality venues and their surrounding infrastructure still need to be considered and incorporated as part of the delivery strategy of these facilities in Qatar.

Email: *alkarimi@chrysalis-llp.com*