



Qatar's New Public-Private Partnerships Law:

A Critical Analysis of Law No. 12 of 2020

Dr. Mohamed Salem Abou El Farag ^{*1} , Yousef Shafie²

¹College of Law, Qatar University(QATAR) , Mohamed.salem@qu.edu.qa

²Sidra Medicine(QATAR) , yshafie@sidra.org

Received: 23/11/2022;

Accepted: 05/12/2022

Abstract:

In June 2020, law No. 12 of 2020 pertinent to the regulation of public-private partnerships ('PPP law') was eventually issued in Qatar. This research paper provides a critical analysis of its fundamental provisions. It covers the tendering and contracting processes of PPP projects, the characteristics which distinguish PPP projects from other forms of construction projects, the duration of PPP projects, the significance of PPP law within the existing legal system of Qatar and dispute resolution mechanisms. The paper concludes by making a number of recommendations relating to the interpretation of PPP law and their application when disputes arise.

Keywords: Public-private partnerships- Law no. 12 of 2020- contract law- Qatar.

ملخص البحث:

في يونيو 2020، صدر أخيراً القانون رقم 12 لعام 2020 بتنظيم الشراكة بين القطاعين الحكومي والخاص في قطر. تقدم هذه الدراسة تحليلاً نقدياً لأحكامه الأساسية. وتغطي هذه الدراسة عمليات المناقصات والتعاقد لمشروعات الشراكة بين القطاعين الحكومي والخاص، والخصائص التي تميز هذه المشروعات عن الأشكال الأخرى لمشروعات البناء، ومدة مشروعات الشراكة بين هذين القطاعين، وأهمية هذا القانون في النظام القانوني الحالي في دولة قطر وآليات تسوية المنازعات. وتختتم الدراسة بتقديم عدد من التوصيات المتعلقة بتفسير قانون الشراكة بين القطاعين الحكومي والخاص وتطبيقها عند نشوء المنازعات بين الأطراف.

* Corresponding author

1- INTRODUCTION

In Qatar,¹ official interest in PPP projects² began in 2015. This was when decision No. 2 of 2015 was issued by the Council of Ministers to form a ministerial committee for ‘motivating the private sector to participate in economic development projects.’³ Since then, several executive decisions have been issued by the government, which led to the final formation of the PPP law.⁴ Despite the relatively late interest in PPP projects, there is a genuine intention to use PPP concepts wherever relevant. Such intention is evidenced by several factors:

1. **High Supervision Authority:** The aforementioned ministerial committee was chaired by the highest-ranking officer in the Government, His Excellency, the Prime Minister.⁵ Furthermore, a sub-committee named ‘the technical committee’ assigned with ‘coordination with other ministries and state’s authorities on evaluating the state’s projects in terms of viability for implantation via PPP strategies’ was formed.⁶ This sub-committee is chaired by a representative from the Prime Minister’s office. Such close supervision from officials at the highest echelon of government is a strong indicator of how much these projects are valued.⁷
2. **Devoted Governmental Unit:** One of the most common recommendations in managing PPP projects is to devote a specific governmental unit to provide close supervision of PPP projects. Such a unit should be separated from other governmental units that manage the development and operation of all other types of public facilities projects. This recommendation has been applied in Qatar, where the management of PPP projects was assigned to the aforementioned ‘ministerial committee’ until the issuance of the Amiri Decree No. 12 in 2019.⁸ A new Department within the Ministry of Commerce was recently created to devote full effort to PPP project supervision. Such an assignment was ratified by the PPP Law where specific administrative responsibilities were assigned to the Ministry of Commerce and its ‘designated unit.’⁹
3. **Increase in PPP Projects:** In the last few years, it was clear that there was a significant increase in the number of PPP projects in Qatar. This trend was

discernible in almost all sectors including education, logistics, energy, healthcare and sanitisation.¹⁰

Any discussion relating to PPP projects, including their governing legal system, has therefore become strategically important in Qatar. In view of this, this article aims to shed light on some critical aspects of the new PPP Law. Specifically, it plans to discuss the tendering and contracting processes, the characteristics that distinguish PPP projects from other forms of construction projects, the duration of PPP projects, the significance of PPP law within the existing legal system of Qatar and the applicable law and PPP dispute resolutions.

2- TENDERING AND CONTRACTING PROCESSES

PPP projects have been exempted from the Tenders and Auctions Law application as per Art. 27 of the PPP Law.¹¹ Nonetheless, the steps leading to the formation of a PPP contract are not fundamentally different from the conclusion of any other contracts for developing a public facility in Qatar. The classic processes of identifying a potential project, public request for proposal, pre-qualification of companies, reviewing offers and executing the contract, are identical. The only difference is the new step of forming what is called a 'project company' or 'special vehicle company' (SVC).¹² It must be noted that an SVC is founded only upon award notification and before executing the PPP contract.¹³ This would imply that applicants are not required to fully establish the SVC before applying for the tender. Otherwise, such SVCs will not have any value in situations where the offer was not awarded.

Contrasted to the Tender and Auction Law which was relatively comprehensive, the PPP Law is silent on various key issues. These include, but are not limited to:

- a. The requirements of, and when to choose, each contracting mechanism (e.g. tender vs. sole source);
- b. The rights of, and the consequences of withdrawing a proposal by, a contractor;

- c. The implications of withdrawing an awarded proposal (e.g. re-tender vs. award to the next favourable proposal);
- d. The right to object the committee's decision, and the procedure for appeal; and
- e. Any details about insurance, whether final or temporary.¹⁴

A higher relevance to the tender documents than to the law itself is given by such an approach in the PPP law. This allows for increased flexibility on tendering PPP projects and means that every tender of a PPP project may vary significantly from one case to another depending on the tender documents.

3- CHARACTERISTICS OF PPP PROJECTS IN QATAR

In this section, a discussion about the scope of the PPP Law in relation to the contracting parties, the subject matter of projects, and the nature of assigned works shall be presented.

3.1 PPP contracting parties

As indicated by its title, the term 'public-private partnership' implies that one of the parties in this partnership is from the private sector and the other is from the public sector.¹⁵ Such a conclusion is further supported by the definition of partnership in the PPP Law.¹⁶ On this note, the following two important remarks need to be made:

- A. Although it is clear that PPP is only between a private and a public party, it is not inconceivable to have the arrangements listed in Art. 3 between two parties from the private sector. Although the PPP law will not apply to that situation, it is not easy to identify any reason for a different treatment between a private-public agreement and a private-private agreement with the exact same scope of work.
- B. While the PPP law delineates what constitute public and private parties, the

definition is not as comprehensive as it should be. For instance, by outlining the public party as the 'Ministry, Governmental Arm or Public Authority or Foundation', it is unclear whether 'public companies'¹⁷ are considered public parties and would therefore be subjected to the PPP Law. Such an issue is fundamental, especially considering the contradictory Court of Cassation rulings in Qatar on this subject.¹⁸

3.2 The subject of PPP projects

Unlike other PPP laws in the region,¹⁹ PPP projects under the Qatari Law were not associated with an infrastructure project or a public service project. The language used therein is broad enough to include any project chosen by the government to be considered a PPP project with no specific requirements over what that project should be. Furthermore, a PPP project could aim to establish a new facility, renovate an existing facility, or operate a non-real estate project (e.g. the postal service).²⁰ All of these could potentially fall within the remit of the PPP Law.

3.3 Nature of tasks

One of the most distinct characteristics of a PPP project is the variety and comprehensiveness of tasks assigned to the private sector.²¹ According to Art. 3, PPP could be structured in any of the following forms:

1. Allocation of lands via lease or usufruct for development;
2. Build, operate, transfer (BOT);
3. Build, transfer, operate (BTO);
4. Build, own, operate, transfer (BOOT);
5. Operations and maintenance (OM);
6. Any other mechanisms proposed by the Minister and ratified by the Council

of Ministers.

Accordingly, in determining what constitutes a PPP project, consideration must be given to two factors:

- A. The diversity of tasks assigned to the party from the private sector.
- B. The assignment of 'operations' to the private sector, among other tasks.²² This analysis would eliminate many mechanisms from the scope of PPP projects, such as turnkey projects and design and build projects.²³

4- DURATION OF PPP CONTRACTS

It is a well-established fact that PPP projects are generally lengthy (lasting between 20–30 years).²⁴ The natural reason for such a long duration is the very nature of the subject matter of PPP projects, namely the building and operation of public facilities. The variety and complexity of tasks in PPP projects and their high costs would justify the need for these durations in PPP contracts.²⁵

The upper limit of PPP contracts has been stipulated in Art. 18. They should not be more than 30 years. No minimum period was specified. A literal application of this Article would therefore render any clause exceeding 30 years as void and null. However, the exact implications of violating this provision remains unclear, as the PPP law did not make specific reference to it. We can nevertheless benefit from Art. 166 of the Qatari Civil Code which stated that: 'Where any provision of the contract is invalid or voidable, only such provision shall be revoked unless it is evident that the contract would not have been concluded without such provision, in which event the contract shall be revoked in full.'²⁶

Therefore, nothing prevents a judge/arbitrator from voiding the said clause only and reducing the contract's duration to its maximum limit while maintaining the rest of the agreement as valid. An exception would be where it was concluded that the parties would not have entered into this agreement without that duration. The entire agreement would be rendered void in such a situation.

5- PPP CONTRACTS WITHIN QATARI CONTRACT LAW

In addition to relying on the parties' offer and acceptance to govern their contractual relationship,²⁷ and the provisions of PPP law, consideration must be given to a number of agreements listed in the Qatari Civil Code and the overall policy governing contracts in Qatar, which shall be governed by specific rules.

Furthermore, 'public interests' agreements (or 'executive/administrative agreements') and non-public interests agreements (or 'civil agreements') have received differential treatment by Qatari law and courts. The former is only between a public authority and a private party. The latter is between private parties, or a private party and a governmental authority acting as a private party in that specific transaction.

It can be surmised from the above that all contracting parties need to be aware that offer and acceptance alone might not be the sole source of governance on their agreement.

5.1 PPP Contracts and Civil Code

Upon a careful examination of the Qatari Civil Code, it can be concluded that even though the term 'PPP contracts' has never been used in Qatari legislation before the issuance of the PPP Law, PPP contracts are not novel to this jurisdiction. In cross-checking the actual characteristics of PPP contracts with the agreements listed in the Qatari Civil Code, a specific agreement was found that matched PPP contracts. This agreement is the 'Moqauala' Agreement or the 'Agreement to perform works', defined in Art. 682 of the Qatari Civil Code. It is therefore implied that the provisions of the Qatari Civil Code shall be applied to PPP contracts where applicable.

Equally, the absence of the term 'PPP contracts' from Qatari legislation shall not be used as an excuse nor justification for treating PPP contracts as novel, since the concept is sufficiently described within Qatari laws.²⁸ Such a conclusion is mainly driven by the fact

that the primary purpose and intention of PPP contracts are (to use the language of the Civil Code) to 'perform certain works and services', which, in the context of PPP projects are the designing, building, operation, or maintenance of public facilities.

The above analysis signifies that the common usage of 'lease agreements' in titling PPP contracts is not accurate and does not represent the true intention of the parties. Severe consequences regarding the expectations of the parties could result from such misuse.

It should be noted that the only exceptions to applying Art. 682 on PPP contracts would be where the PPP contract was deemed a hybrid agreement. This could happen in the following cases:

- a. The governmental party is not just a contracting party in a PPP contract, but also a partner in the SVC. The assumption here is that the PPP contract itself included provisions for the SPV partnership. In this case, the PPP contract would be a hybrid between a classic 'Moqauala' agreement and a 'company agreement', governed by Law No. 11 of 2015 on Commercial Companies.
- b. The private sector is also paying a fee for using the estate of the private party to perform the services. In this case, the PPP contract would be a hybrid between a classic 'Moqauala' agreement and a lease agreement, which is governed by Art. 582–669 of the Civil Code.

In those cases, and assuming that (a) the governing provisions are contradictory and (b) it is not possible to allocate the terms of the agreement depending on the purpose of each clause, the only way forward would be to identify one agreement as the 'main' agreement and apply its provisions over the contract in question.

It is worth noting that the following test could be applied to ascertain the main agreement. Hypothetically, in the occurrence of what could invalidate the provisions of the 'lease agreement' or the partnership only and not the provisions governing the performance of works/services, would the parties still be interested in continuing with the transaction? In our view, the answer is yes. However, in the occurrence of what could invalidate the provisions of performing works/services and keep the requirements of the 'lease agreement'

or the partnership valid, it is highly doubtful that the parties will still be interested in continuing with the same PPP contract.

5.2 PPP contracts and public-interest contracts

Consideration must be given to the following factors to determine whether a typical PPP contract constitutes a public-interest contract (and therefore would receive a different treatment from a civil contract):

1. The explicit language within Qatari laws specifying what are ‘public interest’ contracts, or
2. The existence of three characteristics:
 - One of the parties is a governmental body;
 - The subject of the agreement is a public facility; and
 - The agreement contained terms that were unusually favourable to the public party.

It is assumed that Qatari law has been silent on which agreements are to be considered public interests agreements. The same approach seems to have been followed in the PPP law. It is clear, in our view, that any language that can be used to determine whether PPP contracts are regarded as public-interest contracts was not included in the PPP law.

Accordingly, it is mandatory to use the second mechanism: cross-checking the PPP contract in question against the aforementioned characteristics. This approach places a burden on the dispute resolution body to determine, on a case-by-case basis, whether the agreement in question is to be considered a public interest agreement.

Also, upon examining the language of typical PPP contracts, it is found that they are generally neutral. There are ordinarily no indications that suggest the intention of the parties to consider them as public interest agreements.

It must be noted here that the burden of proof is on the party claiming that the agreement in question is a ‘public interest’ agreement as per Qatari court rulings.²⁹

The assumption, therefore, is that all agreements are civil agreements until proven otherwise.

6- DISPUTE RESOLUTION

Article 28 of the Qatari Partnership Law states that:

“1- The partnership contract is subject to the provisions of Qatari law, and any agreement to the contrary shall be null and void.

2- Qatari courts are competent to adjudicate disputes that arise as a result of the contract between its parties, and the contract may include another mechanism for settling such disputes with the approval of the Prime Minister, based on a proposal by the Minister.”

According to this Article, Qatari law is the law that must be applied to the partnership contract. Non-compliance with this will result in the nullification of the contract. A question may nevertheless arise about the impact of the agreement between the parties on a law other than Qatari law. We are here faced with two hypotheses concerning the validity of the contract:

- We can say that the other law is the applicable law. This is based on the presumption that the contract in dispute is not a partnership contract. Rather, it is any other contract that the law allows for a foreign law to be the applicable law, or
- We can say that the partnership contract is void and has no effect.

It is likely that the answer is the second option, since the applicable law is not at the core of the contract. It is therefore taken into account when attempting to determine the nature of the contract. It is understood that when determining the nature of a contract, consideration to be given to what is specific to the contract in question. Specifically, the obligations of the parties towards each other, and the applicable law is one of the matters that fall outside the core of the contract in general.

The mere fact that the parties have agreed on another law is not on its own sufficient to give rise to the presumption that it is their intention to have another type of contract. Moreover, it is not permissible for whoever looking at the dispute, whether he is a judge or an arbitrator, to determine or even to say that the intention of the parties is not what they wanted. This is what the first hypothesis entails.

Accordingly, Article 167 of the Qatari Civil Code states: "If the contract is void or voidable, and the elements of another contract are fulfilled, then the contract is valid as the contract whose elements are fulfilled, if it appears that the intention of the contracting parties was to conclude this contract." It stipulates that the contracting parties intended to conclude the other contract. Therefore, if the court or the arbitral tribunal concludes that the contract before it is a partnership contract that includes another law, such as an applicable law, it must rule it invalid, as it appears that this provision relates to the public order that it is not permissible to agree to the contrary.

The Article gives rise to two further questions relating to the type of nullity:

- Is it absolute or relative invalidity?
- Is it an invalidity of the entire contract, or is it limited to the term of the applicable law?

As for the first question, the Article came as an order since it expressly stipulates the sanction of nullity in the event of an agreement on another law, and this does not depend on the will of one of the parties, as is customary in complementary texts. This indicates that the nullity here is absolute, and the court must rule on it by itself. This is in accordance with Article 163 of the Qatari Civil Code which states that: "A void contract does not produce any effect, and anyone with an interest may hold to its invalidity, and the court may rule it on its own." Based on this, even if the public sector accepts that another law is the applicable law, the ruling on this term is invalid according to the provisions of Qatari law.

On the second question, what appears as invalidity here is limited to the applicable law term unless one of the parties proves that he would not have entered into the contract without this term. In such a situation, the whole contract is invalidated. This is in line with

Article 166 of the Qatari Civil Code that stipulates: “If the contract is in part void or voidable, this part alone is nullified, unless it becomes clear that the contract would not have been completed without this part, then the whole contract is invalidated”.

On the other hand, disputes arising from the partnership contract shall be examined by the Qatari courts.³⁰ The law permits the contract to include another mechanism for settling these disputes. However, the approval of the Prime Minister must be obtained, based on the recommendations of the competent Minister. On the question of which party is responsible for obtaining the approval, it would be the public sector party.

As for the question of what is meant by “another mechanism” under Article 28, this refers to “Alternative Dispute Resolution Mechanisms”. These are the different means by which parties can resolve their disputes outside of the formal court system. The following methods are considered the most important alternative mechanisms used to settle commercial disputes: negotiation, mediation, impartial evaluation, conciliation, and arbitration. The parties resort to these means because of their relative advantages. These are, among others, the shorter length of time involved, the confidential nature of the discussions, and the lower costs and expenses. In addition, these means are characterized by flexibility in terms of their procedures, rules and outcomes.

7- CONCLUSION

After dealing with the provisions of the PPP law, it is essential to draw attention to the following points:

- The concept of PPP projects is broad. PPP projects can take various forms. In each case, the rights and obligations of the parties are fundamentally different. However, the common theme among all forms is that the party from the private sector is endowed with higher responsibilities than is typically the case for projects developing public facilities.
- Nevertheless, this concept of entrusting the private sector with more responsibilities is economical and developmental in the first place, without any

noticeable legal implications.

- The fact that a new legislation was passed shall not be a sufficient reason to claim that PPP contracts are new to the Qatari legal system. Issuing a new law can have political, economic, and/or administrative values (or all combined), more than legal ones. For instance, a new law can (1) be an implicit announcement to investors to bring their attention to a specific sector, (2) clarify the nature of the support of the state within a particular sort of project, (3) put a minimum and maximum limit on the duration of the project, (4) be seen as placing a mechanism for the transparent and flexible tendering process, etc. This can be further evidenced by the fact that Qatari law already has other legislations that serve the same purpose as the PPP law (e.g. Law No. 10 of 1987 for public and private state assets, and Law No. 8 of 2018 on the industrial areas). This suggests that the PPP Law was procedural, political, created for publicity purposes or all combined. The same observation can also be made when examining other PPP laws in the region.

Footnotes:

¹ This analysis represents the core elements of a book written by the two authors entitled: “The Legal Framework of Public Private Partnership in Qatar.” It was published by Qatar University Press in 2022 (in Arabic, approximately 220 pages).

² For a general overview of PPP laws and projects, see World Bank, *World Bank Guide to PPP Projects*, The World Bank, 3rd Edition, available at: <https://library.pppknowledge.org/documents/469>; Alessandra Fontana, ‘Public-Private Partnership: The Point of View of an External Player, Accenture Development Partnerships,’ 2014, available at: www.gbnews.ch/2014/01/; Argentino Pessoa, ‘Public-Private Sector Partnerships in Developing Countries: Prospects and Drawbacks’ 2006, working paper no. 228, available at: www.researchgate.net/publication/24111613; Jomo KS, Anis Chowdhury, Krishnan Sharma and Daniel Plats, ‘Public-Private Partnerships and the 2030 Agenda for Sustainable Development: Fit for Purpose?’ 2016, working paper No. 148, available at: www.un.org/en/development/desa/papers/; Zivile Tuncikiene, Adriana Grencikova and Ilona Skackauskiene, ‘Development of Public- Private Partnership: Managerial Aspects’ 2014, (15) 1 *Business: Theory and Practice*; United Nations, *UNICITRAL Legislative Guide on Public Private Partnership*, Vienna, 2020; Ahmed Harir, ‘The Legal System of the Public-Private Partnership Contract and Its Role in Financing Infrastructure Investment,’ (2018) Volume 7 (1) *Journal of Law*

- *University Center Ahmed Zabana in Ghelzan* - Institute of Legal and Administrative Sciences; Bilal Hammoury, *Public-Private Partnership as a Development Requirement*, Arab Planning Institute, 2014; Jaber Gad Nassar, *BOT Contracts and the Modern Development of the Commitment Contract*, Dar Al-Nahda Al-Arabiya, Cairo, 2002; and Ragab Mahmoud Tajen, *Partnership Contracts*, 1st edition, Dar Al-Nahda Al-Arabiya, Cairo, 2007.

³ Official Gazette-Qatar, Issue 2 of 2015, February 4, 2015, p. 39.

⁴ See for example: Cabinet decision N0.14 in 2016, Cabinet decision No. 23 in 2016, Cabinet Decision No. 9 in 2017, Cabinet Decision No. 16 in 2017 and Cabinet Decision No. 33 in 2019.

⁵ For more details, see Yousef Shafie and Mohamed Salem Abou El Farag, *op.cit.*, p. 71.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Official Gazette, No. 6, March 21, 2019, p. 70. It stipulates the functions of this Department as follows: To

“1. Propose policies and standards necessary to achieve partnership between the public and private sectors in the fields of business and investment, in coordination with the competent authorities.
2. Follow up on the implementation of partnership projects between the public and private sectors, in light of the requirements of sustainable development, in coordination with all concerned parties.
3. Study and analyze partnership experiences and distinct partnership patterns at the regional and international levels, and suggest ways to benefit from them.
4. Prepare contract models and agreements related to partnership systems between the public and private sectors, in accordance with local and international standards, in coordination with the concerned administrative units.
5. Prepare periodic partnership follow-up reports that include studying the problems and obstacles related to them, and propose appropriate solutions.
6. Propose means to support and stimulate partnership at the level of sectors and projects, and follow up on their implementation after approval.
7. Provide administrative and technical support to the private sector to participate in establishing, operating, managing and financing partnership projects.
8. Build and update a database and information for partnership projects, in cooperation with the competent authorities, including projects of activities available for private sector participation in their establishment, operation, management or financing.
9. Coordination and cooperation with the Qatar Chamber of Commerce and Industry regarding partnership between the public and private sectors.
10. Implementation of legislation related to partnership issues between the public and private sectors.”

⁹ For example, see Article 8 of the PPP Law.

¹⁰ Below are a number of examples:

- The Education Sector: a large program to design, build, finance and maintain 45 new public schools over 25 years.
- The Logistics Sector: Manateq to design, build and operate large storing units in several locations over a period of 25 years and in more than 2 million cubic meters.
- The Energy Sector: the first solar energy plant in Qatar has been tendered by Kahrama in a BOOT format. Additionally, one of the largest water purification and electrical power stations in the region called Um Al houl station is developed as a BOT project.

- The Healthcare Sector: the Ministry of Public Health has announced a tender to build and operate three hospitals with an operational period of 25 years.
- The Sanitization Sector: a large sewage purification plant with 150 thousand cubic meters capacity for water treatment with an operational period of 25 years.

For more details, see Shafie and Abou El Farag, *op. cit.*, p. 70.

¹¹ Art 27: 'the provisions of the aforementioned Tenders and Auctions Law and the State's Financial System Law shall not apply to any of the tender, award, contracts or any other procedures that occur in accordance with this Law.'

¹² In the following table, we will demonstrate the most important provisions of concluding the contract in the Partnership Law with what may be equivalent to them in the Law of Regulating Tenders and Auctions:

PPP Law	Law of Regulating Tenders and Auctions
<p>- Article 8</p> <p>The contracting authority, in coordination with the competent department, shall announce the project to be proposed, and the announcement shall be through publication in local or international newspapers and bulletins or the website of any of them and the unified website for state procurement.</p> <p>The project will be submitted for contract in one of the following ways:</p> <ol style="list-style-type: none"> 1. Tendering in two stages. 2. The limited tender in accordance with the lists or specified acceptance specifications. 3. Practice. 4. The contest. 5. Bidding. 6. Direct agreement. 7. Any other contracting method approved by the Council of Ministers based on the Minister's proposal. 	<p>- Article 2</p> <p>The contract for the purchase of items, business contracts or services shall be through public tender.</p> <p>As an exception to this, a decision by the Chairman, based on a reasoned recommendation from the Committee, may conclude a contract in one of the following ways:</p> <ol style="list-style-type: none"> 1- Tendering in two stages. 2- Limited Tender. 3- Practice. 4- The contest. 5- Direct agreement. <p>After announcing the tender and submitting bids, it may not be converted into a direct practice or agreement.</p> <p>All provisions regulating public tenders shall apply to the tender in two stages, the limited tender, the practice, the contest and the direct agreement, in the absence of a specific text for each of them.</p> <p>In all cases, the contract shall be made in accordance with the controls and procedures stipulated in this law and regulation.</p> <p>It is permissible, with the approval of the Prime Minister, based on a proposal by the Minister, to exclude a business or service or supply of an item from being subject to the provisions of this law.</p>

<p>- Article 6</p> <p>A committee is formed for each project separately by a decision of the Minister in coordination with the relevant government agencies, provided that its formation includes representatives from the contracting authority, the competent department, and the Audit Bureau.</p> <p>The project committee is responsible for the following:</p> <ol style="list-style-type: none"> 1. Preparing the project policy document and submitting it to the Minister for approval 2. Bid evaluation 3. Contract negotiation 4. Submitting a recommendation to the contracting authority regarding the winning bidder 	<p>- Article 9</p> <p>A government entity shall establish a committee specialized in conducting tenders, auctions, practices, contests and direct agreement, consisting of a number of members from the employees of the government entity, not less than five and not more than seven, including the chairman of the committee and his deputy, and a member from outside the government entity may be included in the committee.</p> <p>It is permissible, with the approval of the Prime Minister, upon the proposal of the President, and a reasoned recommendation from the Minister, to establish more than one committee in the government entity.</p> <p>For the validity of the committee's meetings, the presence of a representative of the Audit Bureau and the Administration, in the capacity of an observer member, is required.</p> <p>The regulation determines the other competencies of the committee, its work system, the procedures to be followed, the mechanism for approving its recommendations, and the rules for membership.</p> <p>The members of the committee are named by a decision of the President.</p> <p>A decision by the Prime Minister, based on a proposal by the Minister, may establish one or more committees, each of which is competent to conduct tenders, auctions, practices, contests, and direct agreement for more than one government agency. In this case, the committee is formed from a number of employees of these bodies, with the same controls stipulated in this Article.</p>
<p>- Article 4</p> <p>Each of the government agency or the competent department may, on its own or upon the proposal of the private sector, specify a project for implementation through partnership and submit it to the Minister for approval in principle.</p>	<p>-Article 10</p> <p>The offering shall be within the limits of the actual needs estimated by the government entity, and within the limits of the financial appropriations allocated to it, and on the basis of accurate and detailed technical specifications for the items, business contracts or services required.</p> <p>It is permissible to conclude contracts for periodic supplies and services for a period exceeding the financial year, provided they do not result in more obligations in one of the following financial years than what was decided in the financial year in which the contract was made.</p> <p>The regulation defines the controls and procedures related to tendering, preparing its documents, and submitting bids, whether by ordinary or electronic methods, as well as those related to determining the estimated value of the tender.</p>

<p>- Article 2 (2)</p> <p>With the approval of the Council of Ministers, upon a recommendation by the Minister, one of the projects implemented through partnership may be exempted from being subject to the provisions of this law.</p>	<p>- Article 2 of the Issuance Provisions of the Law</p> <p>The provisions of the attached law apply to ministries, other government agencies, public bodies and institutions, and the following bodies are excluded from the scope of its provisions, and within the limits of what is stipulated in the relevant legislative instrument:</p> <p>1- The armed forces, the police, and other military entities, with regard to contracts of a confidential nature, which are determined and regulated by an Emiri decree.</p> <p>2- Qatar Petroleum.</p> <p>3- Qatar Investment Authority.</p> <p>4- Entities exempted, and the list of tenders and auctions related thereto, issued by a decision of the Council of Ministers, based on the recommendation of the Minister of Finance.</p> <p>By a decision of the Council of Ministers, based on a recommendation by the Minister of Finance, the provisions of the attached law may be applied to the entities whose budget is wholly or partly financed by the state.</p>
<p>- Article 29</p> <p>The Minister shall issue the necessary decisions to implement the provisions of this law, and to the extent that they are issued and enforced, the decisions in force shall continue to be applied in a manner that does not conflict with the provisions of this law.</p>	<p>- Article 3 of the Issuance Provisions of the Law</p> <p>The Council of Ministers, upon the recommendation of the Minister of Finance, shall issue the executive regulations of the attached law, and until such regulations are issued, the decisions and regulations currently in force shall continue to be in force, in a manner that does not conflict with the provisions of this law and the attached law.</p>

<p>- Article 7</p> <p>The contracting authority, in coordination with the project committee, prepares the project study, and includes in particular the following:</p> <ol style="list-style-type: none">1. The strategic and operational advantages of implementing the project2. Description of the project, the contracting model, the duration of the partnership contract, and the determination of the tasks of the contracting party and the project company.3. A detailed plan for the implementation of the project, including defining the timetable for implementation.4. The government agency whose participation may be required to implement the project and the lands that need to be allocated for implementation.5. Estimating the capital costs of the project, any necessary payments from any government agency, and any government support in the form of guarantees or others.6. Description of the incentives that may be granted to the winning bidder, the project company, its shareholders, main contractors, or subcontractors.7. The financial and technical standards, controls, and requirements that bidders must meet, and their ability and competence in the field of specialization.8. A statement of the financial and technical advantages resulting from the implementation of the project through the partnership and a statement of the risks borne by the project company.9. The ability of the administrative, financial and technical contracting authorities to implement their obligations arising from the partnership contract, and to monitor their implementation.10. Determining the entity that will supervise the implementation of the partnership contract. An evaluation of the project is presented to the Minister for submission to the Prime Minister, together with his recommendations.	<p>- Article 15</p> <p>Opening the envelopes, evaluating the submitted bids from the technical and financial aspects, and deciding on them shall be in accordance with the restrictions and procedures specified by the regulations.</p>
---	--

<p>- Article 14</p> <p>The Prime Minister may, notwithstanding the recommendations of the Minister and the request of the contracting authority, cancel the offering procedures in the following cases:</p> <ol style="list-style-type: none"> 1. If only a single bid is submitted, or if only one bid remains after excluding other bids. 2. If all bids are accompanied by reservations, or conditions that do not conform to the terms and conditions of the offering documents, or that cannot be evaluated. 3. Other cases specified in the offering documents. <p>The offering procedures shall also be canceled by a decision of the Prime Minister if the public interest so requires.</p> <p>In all cases, the contracting authority shall notify the bidders of the cancellation decision by any means that informs them.</p>	<p>- Article 17</p> <p>The tender shall be canceled before a decision is made on it, by a decision of the Chairman, if it is permanently dispensed with, or the public interest so requires.</p> <p>A reasoned decision by the Chairman, based on the committee's recommendation, may cancel the tender and re-issue it in the following cases:</p> <ol style="list-style-type: none"> 1- If only one bid has been submitted, or there is only one bid left after the excluded bids. 2- If the value of the best bid exceeds the estimated value. 3- If all or most of the bids are accompanied by reservations.
<p>- Article 17</p> <p>The partnership contract must include in particular the following:...</p> <ol style="list-style-type: none"> 5. Determining the selling price of the product or for performing the service on which the project is based, the principles and rules of determination, the principles and rules for adjusting the price by increase or decrease, how to deal with inflation rates, and what is related to changing interest rates, if necessary. 7. Regulating the contracting party's right to amend the conditions of construction, equipment, maintenance, operation and exploitation, and other obligations of the project company, and the principles and mechanisms of compensation for this modification. 	<p>- Article 18</p> <p>The Chairman, based on the committee's recommendations, and in accordance with the requirements of the public interest, may amend the quantities or volume of contracts concluded in accordance with the provisions of this law and the regulations by increasing or decreasing the same conditions and prices, without the contractor with the government entity having the right to claim any compensation for that, in accordance with the restrictions and within the limits indicated by the Regulations.</p> <p>The scope of works or services may also be modified in accordance with the limitations specified by the Regulation.</p>

<p>- Article 28</p> <p>Qatari courts are competent to adjudicate disputes that arise due to the contract, and the contract may include another mechanism for settling these disputes with the approval of the Prime Minister, upon a recommendation by the Minister.</p>	<p>- Article 34</p> <p>The parties to the contract may, in the event of a dispute between them arising from the contract, agree to settle it through arbitration, with the approval of the Minister, based on the presentation to the President, with each party to continue honoring their obligations under the contract.</p> <p>- Article 38</p> <p>The Dispute Settlement Committee is competent to decide, by a reasoned decision, as a matter of urgency, in all administrative disputes prior to the conclusion of the contract, arising from the application of the provisions of this Law and the Regulations.</p> <p>The decisions issued by the Dispute Resolution Committee shall be enforceable.</p> <p>Those concerned may appeal the decision issued by the aforementioned committee before the competent Administrative Circuit of the Court of Appeal, and the appeal shall not result in a suspension of the decision's implementation unless the competent Circuit decides otherwise.</p>
--	--

¹³ Art. 19 of the PPP Law.

¹⁴ Except for Art.9 which only refers to preliminary insurance and the method of calculating the final insurance as a 'requirement in the tender document.'

¹⁵ For more details, see Mohamed Abdul-Khaleq Al-Zoubi, 'Partnership Contracts between Public and Private Sectors between Theory and Practice and Arbitration in their Disputes,' Symposium on Partnership Contracts between the Public and Private Sectors and Arbitration in their Disputes - Jordan, 2010; and Omar Salman, 'The Legal Framework for Partnership Contracts between the Public Sector and the Private Sector,' Seminar on the Legal Framework for Partnership Contracts between the Public and Private Sectors and Arbitration in Their Disputes - Egypt, 2011.

¹⁶ Art.1: 'an agreement between a Governmental Entity and a Private Sector to perform and finance the works or to provide the services in accordance with any of the arrangements listed in Article 3 of the Law.'

¹⁷ E.g.: Ooredoo, Qatar Airways, Al Rail, Qatar Foundation, *etc.*

¹⁸ See for example: Ruling No. 126 in 2016 vs ruling No.32 in 2011. Where the earlier ruling categorized "public companies" that were founded by the Qatari government to be identical to any other governmental unit as they were mostly natural continuation of governmental functions, the later ruling has clearly stated that such companies should be viewed as private sector units, based on the well-established doctrine that the personhood of companies are generally separated from the personhood of their founders.

¹⁹ For example, see Article 2 of the Egyptian Law (Law no. 67 of 2010) on the participation of the private sector in infrastructure projects, services and public utilities, which states in the definition of partnership projects, that the subject matters of partnership contracts are: "Financing, establishing and equipping infrastructure projects and public utilities and providing their services or financing and developing these facilities, with a commitment to maintaining what is being established or developed, and providing the services and facilities necessary for the project to become usable in the production or the provision of service regularly and continuously throughout the contract period." This requires that the subject matter of the contract be an infrastructure or a public facility in order for it to be called a "partnership" and the provisions of the partnership law are applied to it.

²⁰ For more details, see Abdullah Tawfiq, 'Public-Private Partnership and Disguised Privatization,' (2012) *The Scientific Journal of Research and Commercial Studies*, Helwan University, p. 146; and Siham Aliout, 'Public-Private Partnership as a Mechanism for Managing the Public Water Service,' (2017) (1) *Journal of Economic Studies*, Abdel Hamid Mehri University, p. 20.

²¹ For more details, see World Bank Guide, *op. cit.*, pp. 6-8.

²² Operations have been highlighted explicitly and implicitly in all PPP mechanisms listed in Art. 3. They imply that the PPP projects are based mainly on assigning the operation of the public facility to the private sector. However, the PPP Law did not define what constitutes 'operations'. A group of activities starting with the actual use and service provided to the beneficiaries, leading to maintenance works, can all be considered within the term 'operations' and therefore within the remit of the PPP Law.

²³ World Bank Guide, *op. cit.*, pp. 6-8.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Re this Article, see Jaber Mahjoub, *The General Theory of Obligation, Part One Sources of Obligation in Qatari Law*, College of Law, Qatar University, 2016, p. 307 *et seq.*

²⁷ See Muhannad Noah, *Offer and Acceptance in the Administrative Contract*, Al-Halabi Publications, 2013.

²⁸ In fact, the World Bank Guide states that 'While PPP contracts can be categorized using the parameters above, there is no consistent, international standard for naming and describing these different types of contract'. World Bank, Public Private Partnership Reference Guide, Version 3, p.8.

²⁹ For example, Qatar Cassation Court, Civil Circuit, Ruling no. 100, 2016.

³⁰ On this issue, see Mohamed Abdul Majeed Ismail, *Studies in the International Administrative Contract and Arbitration in State Contracts*, Al-Halabi Publications, 2014; Walid Muhammad Abbas *Arbitration in Administrative Disputes of a Contractual Nature*, Dar AlJamaa Al Jadida, Egypt, 2010; Saad Al Dhiyebi, 'Arbitration in International Construction Contracts (BOT), a paper presented at the 19th Annual Conference of the Commercial Arbitration Center in the Gulf Cooperation Council Countries on "Arbitration in International Oil and Construction Contracts", Amman, 2014; and Sabrina Jabaili, *The Impact of Arbitration on the Privacy of the Administrative Contract*, PhD thesis, Larbi Ben M'hidi University, Algeria, 2016.

References:

I- Books and Research Papers

1. Abdullah Tawfiq, 'Public-Private Partnership and Disguised Privatization,' (2012) *The Scientific Journal of Research and Commercial Studies*, Helwan University.
2. Ahmed Harir, 'The Legal System of the Public-Private Partnership Contract and Its Role in Financing Infrastructure Investment,' (2018) Volume 7 (1) *Journal of Law - University Center Ahmed Zabana in Ghelzan* - Institute of Legal and Administrative Sciences.
3. Alessndra Fontana, 'Public-Private Partnership: The Point of View of an External Player,' Accenture Development Partnerships, 2014. Available at: www.gbnews.ch/2014/01/.
4. Argentino Pessoa, 'Public-Private Sector Partnerships in Developing Countries: Prospects and Drawbacks' 2006, working paper no. 228. Available at: www.researchgate.net/publication/24111613.
5. Benjamin F. Tennille, Lee Applebaum, and Anne Tucker Nees, 'Getting to Yes in Specialized Courts: The Unique Role of ADR in Business Cases' (2010) 11 *Pepperdine Dispute Resolution Law Journal* 35.
6. Bilal Hammoury, *Public-Private Partnership as a Development Requirement*, Arab Planning Institute, 2014.
7. Jaber Gad Nassar, *BOT Contracts and the Modern Development of the Obligation Contract*, Dar Al-Nahda Al-Arabiya, Cairo, 2002.
8. Jaber Mahjoub, *The General Theory of Obligation, Part One Sources of Obligation in Qatari Law*, College of Law, Qatar University, 2016.
9. Jomo KS, Anis Chowdhury, Krishnan Sharma and Daniel Plats, 'Public-Private Partnerships and the 2030 Agenda for Sustainable Development: Fit for Purpose?' 2016, working paper No. 148. Available at: www.un.org/en/development/desa/papers/.
10. Katherine V.W. Stone, 'Alternative Dispute Resolution: Encyclopedia of Legal History'. A research paper which is available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=631346.
11. Mohamed Abdul Majeed Ismail, *Studies in the International Administrative Contract and Arbitration in State Contracts*, Al-Halabi Publications, 2014.
12. Mohamed Abdul-Khaleq Al-Zoubi, 'Partnership Contracts between Public and Private Sectors between Theory and Practice and Arbitration in their Disputes,' Symposium on partnership contracts between the public and private sectors and arbitration in their disputes - Jordan, 2010.
13. Muhannad Noah, *Offer and Acceptance in the Administrative Contract*, Al-Halabi Publications, 2013.
14. Omar Salman, 'The Legal Framework for Partnership Contracts between the Public Sector and the Private Sector,' Seminar on the Legal Framework for Partnership Contracts between the Public and Private Sectors and Arbitration in Their Disputes - Egypt, 2011.
15. Ragab Mahmoud Tajen, *Partnership Contracts*, 1st. edition, Dar Al-Nahda Al-Arabiya, Cairo, 2007.
16. Saad Al Dhiyebi, 'Arbitration in International Construction Contracts (BOT),' a paper presented to the 19th Annual Conference of the Commercial Arbitration Center in the Gulf Cooperation Council Countries on "Arbitration in International Oil and Construction Contracts", Amman, 2014.
17. Sabrina Jabaili, *The Impact of Arbitration on the Privacy of the Administrative Contract*, a PhD thesis, Larbi Ben M'hidi University, Algeria, 2016.

-
18. Siham Aliout, 'Public-Private Partnership as a Mechanism for Managing the Public Water Service,' (2017) (1) *Journal of Economic Studies*, Abdel Hamid Mehri University.
 19. United Nations, *UNICITRAL Legislative Guide on Public Private Partnership*, Vienna, 2020.
 20. Walid Muhammad Abbas, *Arbitration in Administrative Disputes of a Contractual Nature*, Dar Al Jamaa Al Jadida, 2010, Egypt.
 21. World Bank, *World Bank Guide to PPP Projects*, The World Bank, 3rd Edition, the Guide is available online at: <https://library.pppknowledge.org/documents/469>;
 22. Yousef Shafie and Mohamed Salem Abou El Farag, *The Legal Framework of Public Private Partnership in Qatar*, Qatar University Press, 2022 (Arabic Edition).
 23. Zivile Tuncikiene, Adriana Grencikova and Ilona Skackauskiene, 'Development of Public-Private Partnership: Managerial Aspects' 2014, (15) 1 *Business: Theory and Practice*.

II- Legislations and Judicial Rulings:

- Law No. (12) of 2020 Regulating Partnership between Public and Private Sectors.
- Law No. (11) of 2015 Promulgating the Commercial Companies Law.
- Law No. (22) of 2004 Promulgating the Civil Code.
- Court of Cassation, Civil Circuit, Ruling No.32, 2011.
- Court of Cassation, Civil Circuit, Ruling No. 126, 2016.
- Cassation Court, Civil Circuit, Ruling no. 100, 2016.