Qatar and Prospects of Foreign Investment from a Developing Legal Perspective

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Abstract

The current research focuses on the most important features of the Foreign Investment Law of 2019 in the State of Qatar, including guarantees and incentives for foreign investors. These include customs, tax, financial and investment advantages and exemptions, in addition to protection for the foreign investor from non-commercial risks that may be caused by his investment in the country. This research reached a number of conclusions and made recommendations that focus on strengthening as well as enforcing incentives and guarantees based on the Executive Regulation of the Law. These guarantees, along with some proposed recommendations, will be issued shortly, making the enforcement law a real and attractive element for foreign investment.

Keywords

Qatari law – foreign investment – non-Qatari capital – investment guarantees – investment incentives

1 Introduction

The State of Qatar is taking rapid steps to develop its legislation in general and economic legislation in particular. Qatar, as a country with a strong economy,1

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also invests in factors that have made it one of the advanced regional centres. Qatar’s economy tends to be diverse, competitive and knowledge-based to support the business environment and attract foreign investment. These rapid steps have been implemented following the country’s national priorities based on Qatar National Vision 2030.

These developments parallel the significant legislative and economic boom worldwide in which 2.5 billion people are using social media. With one in every three people using social media, a knowledge-based economy has become its essential issue.

In this context, the State of Qatar enacted a number of modern economic legislations in certain fields: namely, in foreign investment, food security, commodity support and consumer protection, media, national production of goods, tourism, foreign real-estate ownership, industrial zones, and other related legislation. Law No. 1, enacted in 2019, is one such critical (investment)
law about regulating non-Qatari capital investment in the realm of economic activity and as such functions as Qatari’s gateway for foreign investment climate in the State.12 This law includes guarantees, incentives and mechanisms to encourage such investments for both the investor and the State.13

The State of Qatar is economically open to the global economy, and aims to have a diversified and competitive knowledge-based economy,14 especially in light of its attempts to develop its performance in the Ease of Doing Business Index (EDBI) issued by the World Bank. The State of Qatar achieved first place in the standard for ease of registering property, one of the EDBI’s criteria. Moreover, it has continuous efforts to develop performance in other standards, such as starting a business, obtaining credit, trading across borders, enforcing contracts, settling insolvency cases, et cetera.15

This research article examines the scope, controls, guarantees, and incentives of the Foreign Investment Law as the basis upon which the legislator established its philosophy in issuing the act.

2 Scope of Investment under Foreign Investment Law

As part of its economic policies based on cooperation with the international economic community, Qatar opened the way for foreigners to invest their cash, in-kind or intellectual rights, inside Qatar.16

At a regional level, many countries follow the same approach because investment is a tool to achieve sustainable development and increase economic performance. For example, the Sultanate of Oman issued a law specifically aimed at foreign investments under Royal Decree No. 50/2019 by issuing the Foreign Capital Investment Law.17 Similarly, the United Arab Emirates (UAE) issued Federal Law No. 91 of 2018 regarding foreign direct investment (FDI).18

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16 Article 1 of Law No. 1 of 2019 about regulating non-Qatari investment in the economic activity.


In addition, Kuwait issued Law No. 116 of 2013 regarding the promotion of direct investment in the State. The investment laws in these countries share their vision to establish incentives and guarantees for FDI. They provide attractive measures for development of the economies of the host countries in certain fields of investment, such as Information Technology (IT) sectors, including Artificial Intelligence (AI).

The Qatari law provides two examples of foreign investment funds: first, the money transferred from abroad to the State of Qatar through licensed banks or financial companies, and, second, the in-kind items imported from abroad for investment purposes such as machinery and special equipment for investment projects. The law has added the status of investable money to the foreign investor's profits and financial returns resulting from the investment of foreign capital, provided that these funds are used to increase the capital of this project or in investments permitted under this law. This is in addition to investment in intellectual property licenses in general and in patents in particular, as well as investment in registered trademarks in the State.

The Foreign Investment Law applies to foreign natural and legal persons, who invest their money directly in a legally authorised investment project. The Qatari law allows foreigners to invest in all economic areas except activities related to the exploitation or management of natural resources, including oil and gas, which are regulated by special concession or agreement contracts. In addition, the investment law applies to limits that do not conflict with concession contracts or with agreements governing exploitation or management of natural resources.

In addition to the above-mentioned areas, companies classified as ‘public sector’, in partnership with non-Qatari investors, are excluded from the scope of application of the Foreign Investment Law. Moreover, companies as well as individuals authorised to conduct oil operations with Qatar Petroleum or companies that target investments in the oil, gas and petrochemical sectors are also excluded from the scope of application of the same law. This law also

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21 Article 25/1 of Law No. 1 of 2019 for regulating non-Qatari capital investment in the economic activity.
22 That is established by the Qatari Government or where it contributes, and other public authorities, and accompanies where the State shares with not less than 51% or less in a condition of the Council of Ministers approval.
23 Article 25/2,3 of the Investment Law.
prohibits foreigners from investing in the banking sector, insurance companies and commercial agencies, as well as any other areas determined by a Decision of the Council of Ministers. However, the legislator has given the Council of Ministers an exceptional authority to allow foreign investment in the banking and insurance sectors.24

3 Incentives for Foreign Investment

As per the Foreign Investment Law of 2019, the State of Qatar has granted foreign investors a package of incentives.

First, the State of Qatar has authorised granting foreign investors land needed for their investment projects through leasing or usufruct right.25 To enhance the granting of incentives to investors, the State has issued a law allowing foreigners to own real-estate in certain areas as well as to have usufruct rights in other zones.26 In addition, foreign investors have been granted the right to reside in the State of Qatar, if approved by competent government authorities, without the need for a sponsor.27

Second, foreign investors have been granted the right to import tools, equipment and technologies from abroad that are required for the establishment, operation or expansion of their projects.28

Third, the law allows foreign investment projects to be exempted from income tax,29 within certain controls provided in the Income Tax Law.30

Fourth, the law exempts foreign investment projects from paying customs duties31 on imported machinery and equipment required for their projects. In the industrial sector, raw materials and semi-manufactured materials needed

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24 Article 4 of the Investment Law.
25 Article 8 of the Investment Law.
26 Law No. 16 of 2018 about regulating non-Qatari ownership of properties and using them.
28 Article 9 of the Investment Law.
29 Article 10 of the Investment Law.
30 Article 4 of Law No. 24 of 2018 about issuing the income tax law.
for the production of foreign investment projects are exempted from customs duties, provided that they are not available in the Qatari market.\footnote{Article 11 of the Investment Law.}

Fifth, per the Executive Regulation of the Investment Law, foreigners are allowed to invest in all legal economic sectors, up to 100\% of the capital,\footnote{Article 2 of the Investment Law.} subject to laws regulating the non-Qatari practice of business and professions. The legislator requires special procedures if foreign shareholders own more than 49\% of the company’s capital. An application must be submitted to the Ministry of Commerce and Industry (MOCI) on an official form attached to the necessary documents needed by the Ministry and payment of required fees.\footnote{Available at: http://www.moci.gov.qa, accessed 25 June 2019.} The law obliges MOCI to execute such a request within 15 days from completion of the required documents and to notify the investor using legally approved channels of communication. If no reply is received within the prescribed period of time, this shall be considered an implied rejection of the request. The law gives a foreign investor, whose application has been rejected, the right to appeal to the Minister the decision of the department that reviewed the application in the Ministry of Commerce and Industry within 15 days from the date of his/her knowledge of the rejection or from the date of considering his/her application rejected. The Minister shall take a decision on the appeal within 30 days from the date of submission. If no reply from the Minister of Commerce and Industry is forthcoming within the set period, the appeal will be considered rejected. The Minister’s decision is considered final. The executive regulations of the law shall determine the investment mechanism to examine the investor’s applications.\footnote{Stephan Jäger, \textit{New Rules for Foreign Investment in Qatar}, 13 May 2019; available at: https://www.jaegerheintel.com/new-rules-for-foreign-investment-in-qatar/, accessed 17 October 2019.}

As for investments in the Qatari shareholding companies listed on the Qatar Stock Exchange,\footnote{Law No. 8 of 2012 about Qatari Stock Market Authority, amended by Law No. 22 of 2018 that amends the rules of Law No. 8 of 2012 about Qatari Stock Market Authority. And the rules of the Qatari Stock Market.} the law allows foreign investors to acquire no more than 49\% of these companies, provided that MOCI approves the proposed percentage in the company’s Memorandum and Articles of Association. If the foreign investor wishes to acquire more than 49\% of the share capital of the Qatari shareholding company listed on the Qatar Stock Exchange, the Council of Ministers’
approval is required based on a proposal of the Minister of Commerce and Industry.37

Sixth, the law allows the Qatari Council of Ministers, and based on a proposal of the Minister of Commerce and Industry, to grant foreign investment projects additional incentives, such as the incentives provided for in the investment law are exclusive.38

4 Foreign Investment Guarantees

The Investment Law includes a range of legal guarantees to protect foreign investment from non-commercial risks.39 First, the Qatari law grants the protection of foreign investment against the expropriation procedures.40 It prevents any expropriation unless the conditions are met taking into consideration the investor's interest in fair and appropriate compensation,41 in an equal manner with Qatari citizens.42 Moreover, the expropriation shall be for the public benefit using the same procedures as for citizens.

Second, the foreign investor has the discretion to transfer funds from Qatar abroad and vice versa without any delay or hindrance. The funds protected include the profits of the investment project, amounts resulting from the sale or liquidation of this project, the settlement of investment disputes or any costs arising from compensation for expropriation. This warranty also includes that transfers shall be done at the exchange rate in effect on the date of transfer.43

Third, the legal guarantees include the right of the foreign investor to transfer ownership of his/her investment to any other investor. Also, a foreign partner has the right to waive his/her share to his/her national partner in case of investment participation. The investment project shall continue to benefit

37 Article 7 of the Investment Law.
38 Article 12 of the Investment Law.
40 Article 13 of the Investment Law.
43 Article 14 of the Investment Law.
from the provisions of the Investment Law in terms of the incentives and guarantees that were prevailing. The new investor shall replace the former one in the rights and obligations of the investment project.44

Fourth, the legislator has granted a procedural investment guarantee to the investment project.45 The legislator allows investment disputes to be resolved through alternative means such as arbitrations,46 as well as other means47 in case the foreign investor agrees to use this method in the investment contract.48 The legislator has excluded labour disputes that occur within the scope of the investment project from arbitration or other means.49

As per Decree No. 5 of 2011 that ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID), the State of Qatar is a member of this Convention.50 This is the most important convention internationally in the field of settlement of investment disputes that arise between a foreign investor and the state in which s/he invests. It has been agreed to apply the Convention between the two parties of the investment contract as a law applicable to investment disputes as long as the investor’s state and the host state of the investment are members of the Convention.51 The State of Qatar is also a member of the Convention for Establishing Multilateral Investment Guarantee Agency (MIGA), according to Decree No. 63 of 1995 which approved the State of Qatar as a member of

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44 Article 15 of the Investment Law.
45 See: Thani al-Thani, Varied Ways to Settle Down Investment Disputes, a paper presented at the Seminar of Ministry of Commerce and Industry, on 3 October 2019, with the title ‘Investment Horizons in the State of Qatar, Opportunities and challenges’, in light of Law No. 1 of 2019, for regulating non-Qatari capital investment in the economic activity.
47 For arbitration, it is regulated according to Law No. 2 of 2017, for issuing the arbitration law of civil and commercial items.
48 Article 16 of the Investment Law.
49 Law No. 15 of 2004, for issuing labor law and its amendments, as Article 115—repeated and 1 and 2 repeated stated that according to Law No. 13 of 2017, forming a ‘labor dispute settlement committee’ which is concerned with settle down of all individual disputes resulted from applying this law rules or the employment contract: available at: http://www.almeezan.qa/LawView.aspx?opt&LawID=3961&language=ar, accessed 5 June 2019.
this Convention.\textsuperscript{52} In accordance with this Convention, the agency guarantees investments against losses resulting from non-commercial risks such as restrictions that countries may impose on external exchange of currency. In addition, the agency insures investments against any legislative or administrative actions taken by the host state that resulted in depriving the beneficiary of any legislative stability. This guarantee confirms that the incentives and guarantees given to foreign investments before issuing this law should not be affected according to previous in-force legislation, agreements and contracts.\textsuperscript{54} This is done out of respect for the legitimate expectations of the parties to the investment contract as well as the enforcement of the rights and obligations enshrined as per the agreement.

\section*{5 Foreign Investment Regulations}

The law set a group of controls by which the foreign investor should adhere. It obliges foreign companies involved in carrying out business contracts with the State of Qatar,\textsuperscript{55} within the country, to execute the contract through their company branch in the country. Moreover, such companies are committed to obtaining the commercial register\textsuperscript{56} and license for the company branch through which the contract is executed within the State, in the period after the work is awarded and before the contract is signed.\textsuperscript{57} The law obliges the foreign investor to safeguard the environment from pollution during his/her

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\textsuperscript{53} See: https://www.miga.org/, accessed 28 November 2019. \\
\textsuperscript{54} Article 18 of the Investment Law. \\
\textsuperscript{55} That includes contracts with ministries or governmental authorities or public authorities, or the companies or the establishments where the State shares. \\
\textsuperscript{57} Articles 5 and 6 of the Investment Law, while the law states in Article 5 ‘performing all the requirements of the concerned authorities in the state according to the legislations which are applicable by those authorities through the contract term. 5. Renewing the trade record registration, and renewing licenses issued to the company branch, through
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investment activity and to abide by the rules of public order and morals in the State of Qatar.\footnote{Article 17 of the Investment Law.}

The Ministry of Commerce and Industry, through the concerned department,\footnote{Article 22 of the Investment Law states that ‘the ministry officials, who are authorized as judicial controllers by a decree from the Deputy General, in an agreement with the minister, shall investigate and confirm the crimes that violate the rules of this law’.}
monitors the foreign investor’s implementation of the conditions and regulations prescribed in the Investment Law. When a foreign investor commits any violation, the relevant department shall notify him/her to rectify the violation in no more than 3 months from the date of notification. In cases where violations are not rectified, the concerned department in the Ministry of Commerce and Industry will cancel the investment project license and remove the company or branch’s registration, as per the conditions in the commercial register. In addition, the department will notify the relevant government authorities about the investment project to take the necessary measures against the project. The law grants the concerned persons the right to appeal to the Minister of Commerce and Industry about the decision to cancel the license and remove the company or branch.\footnote{The rules and the procedures stated in Article 3 of Law No. 1 of 2019 about regulating non-Qatari capital in the economic activity shall be applicable on complaining.}

As for criminal rules, the law punishes any person engaged in economic activity that violates the provisions of the Foreign Investment Law with a fine not exceeding 500,000 Qatari riyals, without prejudice to any more severe penalty stipulated by another law. As for the liability of the legal person, the same penalty is provided by the Law if the crime is committed by an employee of the legal person without prejudice to the criminal responsibility of the natural person affiliated to it.\footnote{Articles 20 and 21 of the Investment Law.}
6 Other Legal Frameworks that Enhance Foreign Investment

There are additional legal frameworks that enhance the investment climate in the State of Qatar, the most prominent of which is the Qatar Financial Center (QFC), which is a ‘Center for Finance and Business’ established by Law No. 7 of 2005 by issuing the QFC Law that was amended by Laws No. 2 and No. 14 of 2009, in order to make the city of Doha a global financial centre. Article 5 of QFC Law refers to the role of QFC, affirms and strengthens its position as a leading global location for finance and business. QFC is designed to attract the business of international banks, financial services, insurance activities, main centres of companies and other business. QFC provides full support to the companies licensed by providing investment opportunities inside and outside Qatar. To achieve the goals of QFC, the companies registered under its umbrella are allowed, in accordance with the QFC law, to transfer all revenues from their activities outside the State of Qatar without any restrictions. Legally, the QFC is considered financially, administratively and organisationally independent as provided in Article 11 of the QFC Law. It is noteworthy in this context that the entities established under the umbrella of QFC are not subject to the laws of the State, but rather to special laws derived from the English common law system; a system that is based on case law that occurs in order to be used as a measurement in similar cases. However, the State of Qatar adopts different laws in scope and in philosophy. In terms of scope, the State laws are not applied to entities established under the umbrella of QFC. The laws of the State also depend in its philosophy on the Civil Law System; a system that is based on the application of legal rules established by the competent authority of the State. According to Article 9 of the QFC Law:

Each of the Center’s Authority, the Regulatory Authority, the Regulatory Tribunal, Civil Court and Commercial Court shall set their own regulations, amend them, and cancel the existing ones in accordance with what they deem appropriate to achieve their goals and assist them in carrying out their powers and tasks.

This includes provisions related to identifying and paying compensation and fines in the event of a breach of the provisions contained in these regulations.

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These regulations shall be presented to the Minister for issuance in accordance with the powers prescribed to him/her.

The State of Qatar has Free Zones Authority, governed by Law No. 34 of 2005 regarding Investment Free Zones amended by Decree Law No. 21 of 2017, and the Authority aims, according to Article 19 of the above-mentioned law, to manage and develop free zones in accordance with the best international standards as well as to encourage and attract investment in the fields of scientific research, technology, production, export and others. The Authority also issues licenses, approvals and permissions for companies wishing to engage in economic activity in the free zone.

7 Conclusion

The following six conclusions have been drawn as follows:

1. The Foreign Investment Law is an important step within the framework of economic legislation development, especially as it includes guarantees and incentives for foreign investment.

2. Tax, customs, and financial incentives are attractive to foreign investment. Investment guarantees are also a reassuring factor for foreign investors against non-commercial risks such as expropriation, transfer restrictions, transfer of ownership of the investment project, investment dispute settlement mechanisms, legislative consistency and respect of agreement obligations, before the current investment law comes into force.

3. The regulations set by the Law for investment projects require further clarification and elaboration. It is suggested that this regulation includes texts that facilitate foreign investor procedures to start the establishment and execution of his/her investment project.

4. To determine the effectiveness of this Law, the actual implementation of its provisions must be considered in light of the executive regulations soon to be issued.

5. It is proposed that the Executive Regulation should specify the extent to which this Law applies to a Qatari investor who holds


a foreign nationality. It is also expected that the concept of non-Qatari capital is defined to include natural and legal persons.

6. It is suggested to determine the applicability of the Foreign Investment Law to which the case in Article 15 of the Law is referred in case the foreign partner of a Qatari partner waives his/her share in the investment project to enable the Qatari citizen to own the investment project entirely.