Introduction

The joint venture between Carillion (Qatar) LLC (a subsidiary of Carillion plc) and Qatar Building Company was selected and appointed to construct "Phase 1B" of the Msheireb Downtown Doha Project ("Project"), following a competitive tendering process involving a shortlist of prequalified international Contractors.

Project description here:

http://www.msheireb.com/msheireb-downtown-doha/about-msheireb-downtown-doha

Phase 1B involves construction of 27 low-mid-rise residential, hotel and office buildings, with a gross floor area of approximately 160,000 m².

The commencement date was 29 December 2011.

The completion date was originally scheduled for 25 June 2014.

The Contract incorporates the "Conditions of Contract for Construction, for Building and Engineering Works designed by the Employer, First Edition (1999)" published by the International Federation of Consulting Engineers (commonly referred to as the "FIDIC Red Book"), particularized to suit the Country, the Project, and the Employer’s risk-profile. This Form of Contract is widely used throughout the State of Qatar and the wider region. Contractors are familiar with its terms, conditions and provisions, and a copy was included in the tender documentation to ensure familiarity prior to award of Contract.

This was the first Project undertaken by Carillion in Qatar, and we were keen to support that initiative, leverage their expertise, and contribute to the continued relationship and economic cooperation between the State of Qatar and the United Kingdom.
Q315 (and Q318)

Allegation "we were not paid for 18 months"

Msheireb Properties rejects Carillion’s allegation that it had not been paid for 18 months. This is factually incorrect.

The Contractor was paid at regular monthly intervals, from January 2012 through January 2017, without exception, in accordance with the conditions of the contract ("Contract"). The Contract for the Project was based on a FIDIC form, a contract form based ultimately on an English standard-form contract and so well known to Carillion and widely used internationally. The Contract was in the English language and was administered by an international consultant. The amounts to which the Contractor was entitled to be paid were assessed and recommended by Contract Administrators (reputable international Cost Consultants and Quantity Surveyors).

During the 18 months in question above where Carillion states they were not paid, Msheireb Properties has paid Carillion (whether to Carillion itself, or directly to Carillion's subcontractors) QAR 1.290B. All payments were processed in accordance with those recommendations and released in accordance with the time-period set-out in the Contract.

The total amounts paid to Carillion were as follows:

(a) 2012-2014: QAR 1,027 million;
(b) 2015: QAR 819 million;
(c) 2016: QAR 1,287 million;
(d) 2017: QAR 13 million

Payments for 2017 reduced due to an arrangement reached between Carillion and Msheireb Properties that we would pay its subcontractors directly as Carillion was unable or unwilling to do so.

Carillion bid for the Contract in a competitive process, and entered into the Contract freely. During the tenure of the Contract, Carillion benefitted from a 25% devaluation of GBP to QAR.

Allegation: "this is a job that had doubled in size. It had 2,500 design variations to it, and... there was a substantial change in scope"

Msheireb Properties confirms there were a considerable number of variations on the project, although there were only 700 - i.e. 28% of the number that Carillion alleges.

To explain:
Variations occur on almost every construction project. This project was no exception. Most construction projects experience variations and the Contract had clear mechanisms to follow when they arose. Large projects often have a considerable number of changes, simply due to their size and complexity. Carillion, as an experienced contractor, made claims under the Contract when those variations arose which were assessed and valued by Msheireb Properties in accordance with the Contract.

Q428 (and Q429 and Q430)

Allegation: Carillion signed a contract in Qatar with penalty clauses that Msheireb Properties could refuse to pay Carillion on time and, if enforced, could cripple the company

Msheireb Properties rejects the assertion that our contract with Carillion allowed Msheireb Properties not to pay on time or to enforce penalties arbitrarily.

The Conditions of Contract do not contain a Clause which permits the Employer not to pay on time. To the contrary, if the Employer does not pay on time (and/or does not pay the amount recommended by the Contract Administrators), the Contractor has the right to provide notice, and then proceed with suspension and/or termination. Msheireb Properties is aware that this was not a right that Carillion passed onto all of its subcontractors.

Provision of an "on-demand" Performance Bond, as security against performance, is a standard requirement on all Contracts in the State of Qatar and the wider region. The amount of the Performance Bond is 10% of the Contract Sum (approximately UK £47 Million at current exchange rate). It is not provided by the Contractor. It is provided by an approved Bank on behalf of the Contractor. It can only be used following the occurrence of a specific set of events or circumstances prescribed in the Conditions of Contract. It cannot be used arbitrarily. And it is not the Contractor’s limitation of liability.

Q479 and Q480 and Q481 and Q482 and Q483

Allegation: Carillion was owed £180 -200 million when Mr. Howson left the business (March 2017)

Msheireb Properties entirely disputes Mr. Howson’s statement that Msheireb Properties owed Carillion somewhere between £180 -200 million in March 2017.

Carillion’s statement of ‘owed’ may, perhaps misleadingly, refer to the value of construction work remaining to be completed (which cannot be considered “owed” until those works have been satisfactorily performed) plus the value of Claims relating to further delays. These cannot reasonably be considered to be “owed” until the Contractor’s entitlement (if any) to further extensions of time is established, and the extent of the Contractor’s own delays and defaults have been identified, and the
Contractor's loss and expense submission is substantiated, assessed, and agreed or determined.

In fact, Msheireb Properties considers that Carillion owed Msheireb Properties a similar amount of money, for the following reasons:

1. **In Good Faith Overpayments to Carillion (QAR 149M)**
   - QAR 50M: On-account payment made by Msheireb Properties against Carillion's 2016 claim
     In December 2016, a prolongation (delay) claim by Carillion which had been independently assessed and valued at zero (by third party consultants appointed by Msheireb Properties) led to Msheireb Properties making a payment of QAR 50 million (despite these monies not being owed) in order to assist Carillion.
   - QAR 99M: Contract Retention
     Despite the Contract providing for cash retentions during the build period, to assist with Carillion's financial situation, Msheireb Properties voluntarily released QAR 99 million to Carillion in December 2016. These monies may only have been released to Carillion (subject to a final account reconciliation) at the end of the project.

2. **Non-payment of supply chain**
   During the project, Carillion did not meet its payment obligations to subcontractors. A number of those subcontractors approached Msheireb Properties who, out of a desire for the Project to be completed, made direct payments to them to ensure that they continued with the work. These were often works which we had already paid to Carillion. Msheireb Properties had intended to ultimately recover these sums from Carillion, although given Carillion's entry into liquidation, these sums may never be recovered.

3. **Delay damages**
   Carillion's performance on the project was generally poor. In particular, the works were not completed in a timely manner and, as a result of delays caused by Carillion's resourcing, financial issues and problems with their supply chain, Carillion became liable to pay substantial liquidated damages for delay under the Contract. The liquidated damages Carillion is due to pay are QAR 237 million (or approximately £47 million) as a result of delays to the progress of the work.

**Allegation: The contract was meant to finish in May 2017**

Msheireb Properties disputes Richard Howson's statement as to when the project should have completed.

Mr Howson in his evidence told the Committee that Carillion's works were due to finish in May 2017. This is incorrect. After taking into account the extensions of time...
granted under the Contract, the date for completion was September 2016. By May 2017 alone, the project was 8 months in delay. The project is still not complete. Msheireb Properties as a result has suffered an enormous loss from a revenue perspective, where the development was modelled on producing rental income from 2016.

Q526

Allegation: The Carillion contract should have taken 2.5 years. There were numerous variations / changes on the contract; i.e. architects x 3, 40,000 drawings...

Msheireb Properties acknowledges that there were changes to the Contract scope of work. The Contract provided a mechanism to accommodate and value these changes. Carillion operated this mechanism in relation to design changes and was paid appropriately for them.

Paid claims covering this time period on variations / changes were the following:

1. **Claim 1** – Carillion was paid QAR 17 million in two instalments in 2014/15; and
2. **Claim 2** – Carillion was paid QAR 187 million in two instalments in June 2015 and May 2016

When construction progress at Site reached a sufficiently-advanced state of completion, their construction supervision services (only) were removed, and a new Supervision Consultant was engaged. The new Supervision Consultant adopted a more flexible and proactive approach to the contractual review, inspection and approval processes, to the benefit of the Contractor.

Q593 and Q594

Allegation: Mr. Howson personally settled claims 1 and 2 with the CEO of Msheireb Properties, which were lodged 18 months previously.

On many large construction projects, including the Msheireb Properties project, claims made by contractors need to be demonstrated as compensable through a review of those claims carried out by Independent Cost Consultants. The speed of settling any claim is dependent on the quality of documentation and substantiation of the merit of the claim. Claims 1 and 2 were properly reviewed and ultimately settled with Carillion, so that any issues surrounding those claims would not affect the progress of the works.

For the sake of clarity, Richard Howson did not “personally settle” claims with the CEO of Msheireb Properties. Carillion resolved its claims with Msheireb Properties in accordance with the provisions of the contract and payments were made against Interim Payment Certificates. Although personal relationships are important in Qatar, as elsewhere in the GCC (see Mr Howson’s answer to question 528), they do not
trump or replace the parties’ legally binding contractual relationship, nor can they replace compliance with and fulfilment of the agreed terms of the contract.

**Allegation:** The project would have finished in May 2017 if Carillion had been paid (£200M). Carillion had to settle claims 3 & 4.

Msheireb Properties disputes this statement in its entirety.

Carillion’s performance on the project was very disappointing. Msheireb Properties’ commercial goal was however to complete the project, and not to engage in litigation. Msheireb Properties had taken legal advice as early as March 2017 on pursuing Carillion for its poor performance, delays and to recover the costs paid twice (to Carillion and subcontractors).

In 2016 Carillion made a claim for QAR 771 million for an extension of time and prolongation costs (Claim #3(a)-(d)). Msheireb Properties had that claim assessed by an independent third party consultant to determine whether any monies were owed. Their evaluation of this claim was that it was without merit. By this time, Carillion’s performance on the Contract was deteriorating even faster.

In order to provide cash to Carillion to complete the works, and purely on a good faith basis, Msheireb Properties made a payment of QAR 149 million to Carillion in 2016 (see In Good Faith Overpayments to Carillion above). These monies were not scheduled to be paid when they were paid, and now may never fall due to be paid, to Carillion. Instead, they amount in our view to a substantial advance payment to assist Carillion with its cash flow issues in order to complete the project. As a result of Carillion’s liquidation, these monies may never be recovered.

**Allegation:** Msheireb Properties, in June 2017, elected to appoint a third-party contractor to complete the works, which we disagreed with, at our cost.

When it appeared objectively clear that Carillion was unable to complete the works, and was not paying its subcontractors, Msheireb Properties had little option but to hire a new contractor to complete the works. Msheireb Properties also made very significant payments to subcontractors for monies not paid to them by Carillion. These additional costs run into the millions. The cost to complete Carillion’s works through a replacement contractor may be difficult to recover.

**Additional Comments**

Msheireb Properties disagrees with recurring statements that the Contractor was "owed" UK £200 Million, for the reasons set-out above.

Carillion freely entered into a contract with Msheireb Properties for a major works Project. It was a form of contract they were familiar with, and presumably took advice on. They won a competitive tender for these works. After being appointed, they mismanaged the works, under-resourced them and starved the project of cash.
It is Msheireb Properties' opinion, throughout the Project life-cycle, that the Contractor's cash-flow issues (including its internal access to funds and finance) was a continual source of discussion, which contributed to the slow-progress on Site, and continuing delay to the Project.

To alleviate issues, and stimulate progress, Msheireb Properties did the following:

- provided a generous initial Advance Payment and supplemental Advance Payments
- included “on-account” payment for design variations which had not been substantiated by the Contractor
- introduced quicker payment processing and release cycles
- employed a Specialist Claims Consultant to expedite settlement of the Contractor's Claims
- accepted a reduction in Retention, the early release of retention, and introduced payment for materials stored both on and off-Site
- various other “without prejudice” contractual concessions were made and financial incentives offered, all without tangible and sustained improvement on Site

Construction of the Project is ongoing, and a completion date remains uncertain.

In light of Carillion's very disappointing performance, Msheireb Properties considers that it acted in a collaborative and co-operative manner, including by opting not to terminate Carillion plc when its endemic failures to pay its supply chain first emerged, and by not bringing formal claims against Carillion as soon as its internal problems became apparent. Instead, Msheireb Properties made generous and premature payments to Carillion to assist them with their cash position on the understanding that the works would be progressed. Carillion’s performance consistently disappointed, and the good faith payments and relaxation of security and retention monies, which Msheireb Properties made to Carillion, may never be recovered. Msheireb Properties is still incurring additional costs by having to bring in a new contractor to complete the project and Msheireb Properties has incurred substantial further costs and losses associated with the delay in completion.

Msheireb Properties are sad to witness the demise of Carillion plc, but their demise was not attributable to monies “owed” on this Project. Msheireb Properties strongly rejects and objects to Mr Howson’s response to Mr Field’s question (Q484), in which he inferred that the Msheireb project and his failure to settle the final account on that project “helped to sink Carillion”. Carillion and its management, and they alone, sank Carillion. The Msheireb project was tendered and administered fairly and openly, and there was nothing intrinsic in the Project or Msheireb Properties' administration of it which “helped sink the company”.

Msheireb Properties' thoughts and sympathies are with the employees, pensioners and stakeholders of Carillion plc.