

Construction and projects in Oman: overview

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Country Q&A | [Law stated as at 01-Dec-2018](#) | Oman

A Q&A guide to construction and projects law in Oman.

The Q&A gives a high level overview of the main trends and significant deals; the main parties; procurement arrangements; transaction structures and corporate vehicles; financing projects; security and contractual protections that funders require; standard forms of contracts; risk allocation; excluding liability, including caps and force majeure; contractual provisions covering material delays and variations; appointing and paying contractors; subcontractors; licences and consents; projects insurance; labour laws; health and safety; environmental issues; corrupt business practices and bribery; bankruptcy/insolvency; public private partnerships (PPPs); dispute resolution; tax and mitigating tax liability; the main construction organisations; and proposals for reform.

To compare answers across multiple jurisdictions, visit the construction and projects [Country Q&A tool](#).

This Q&A is part of the multi-jurisdictional guide to construction and projects law. For a full list of jurisdictional Q&As visit www.practicallaw.com/construction-mjg.

Overview of the construction and projects sector

1. What are the main trends in the local construction and projects market? What are the most significant deals?

Main trends

Oman continues to realise the aims of its ninth five-year development plan (2016 to 2020) with approximately USD180 billion worth of projects planned or under development. The upturn in the construction and projects market since 2016 is largely attributable to the government's economic diversification efforts. Priority sectors for development include tourism, mining, logistics, downstream extractives and renewable energy.

Efforts to promote economic diversification are expected to be accompanied by legal reform with new laws and regulations to strengthen corporate governance, restructure capital markets and regulate the Islamic finance sector to diversify funding options for public and private sector entities.

The enactment of a new foreign capital investment law allowing 100% foreign ownership of firms in Oman and removing the current minimum capital requirement is also expected in 2018/2019.

The construction and projects market continues to be dominated by state-owned entities, however, private finance initiatives (PFIs) have been used successfully in the utilities sector and Oman's imminent public private partnership law is intended to help attract further private sector participation.

A new mining law is expected to significantly overhaul existing mining regulations and encourage foreign investment, principally through the streamlining of the licence application process.

Further, a new government initiative called "Tanfeedh" is tasked with developing recommendations on cutting red-tape, encouraging investment and aligning labour requirements in the logistics, tourism and manufacturing sectors. It is likely to be influential in shaping new laws, including the long-awaited revision of Oman's Labour Law.

However, despite the anticipated reforms, the Government's drive for greater economic diversification will remain tempered by its need to balance the budget deficit and absorb modest hydrocarbon prices.

Major projects pipeline

These include:

- Duqm refinery: estimated project cost USD8 billion.
- Khazzan gas field development: project cost USD16 billion.
- 500 MW solar plant at Ibri: planned by the Oman Power and Water Procurement Company.
- Port development-development of Sohar, Duqm and Salalah ports as regional logistics hubs
- Redevelopment of Muttrah waterfront: total spend estimated at USD1.3 billion

Procurement arrangements

2. Which are the most common procurement arrangements if the main parties are local? Are these arrangements different if some or all of the main parties are international contractors or consultants?

Domestic contractors and consultants are typically engaged under the Oman Standard Documents ([see Question 6](#)).

The standard Omani construction contract is "build-only" (Employer design).

International contractors undertaking high value and complex projects are typically engaged under "design and build" or "engineer, procure and construct" (EPC) contracts. The EPC model is prevalent in the water, power and oil and gas sectors. Split onshore/offshore procurement structures are frequently used for international contracts to achieve tax and procurement efficiency.

Public private partnership (PPP) structures are also used to procure long-term infrastructure and power projects and, more recently, the operation and maintenance of public sector assets including hospitals.

Transaction structures

3. What transaction structures and corporate vehicles are most commonly used in both local and international projects?

Entities wishing to undertake construction and engineering projects in Oman must establish a legal presence for the conduct of construction activities and/or for the provision of engineering services. Foreign entities typically register a local branch or incorporate a limited liability company (LLC). Under the Foreign Capital Investment Law RD 102/94, as amended (FCIL), up to 70% of the share capital of an LLC can be foreign-owned. The remaining 30% must be held by an Omani legal person. 100% foreign ownership can be permitted with the approval of the Council of Ministers.

Under ministerial decision (MD) 13/2017, construction activities can be carried out only by a company established for the specific purpose. A contracting company must ensure:

- That personnel of the company are used exclusively for contracting activities.
- Compliance with the Omanisation requirement set out by the Ministry of Manpower (MOM);
- implementation of appropriate HSE standards approved by the relevant authorities.
- Appointment of an Omani national registered with the Public Authority of Social Insurance (PASI) as a manager/director if no shareholder is able to manage the company on full time basis.

Once a legal presence has been established, parties can elect to form incorporated or unincorporated joint ventures to perform the contract works in Oman.

The use of Special Purpose Vehicles (SPVs) is generally confined to long-term infrastructure and power projects procured under PPP-style structures.

Finance

4. How are projects financed? How do arrangements differ for major international projects?

Traditionally government projects in Oman have been self-funded but with pressure on the Government to reduce the budget deficit and advance its economic diversification agenda, Oman has increasingly sought private participation in public projects to fill the funding gap.

Large-scale water and power projects (generally procured internationally) have successfully adopted limited recourse financing structures by which security is provided only in respect of project assets.

Smaller projects (especially projects procured domestically) such as residential and tourist developments would generally be funded through corporate finance on a full recourse basis.

Security and contractual protections

5. What forms of security and contractual protections do funders typically require to protect their investments?

Security

Funders typically take security over a project's freehold rights, usufruct rights (the right to use, occupy and profit from land or property for a fixed term usually granted for economic or social development) and leasehold rights over real estate, under the Land Registry Law by way of a legal mortgage.

Usufruct rights and leasehold rights will cover both the realty comprised in the usufruct and the leasehold property, and any plant, fixtures, equipment and so on on the land provided it does not infringe on the underlying ownership of the land. This means that the creation of a mortgage over the usufruct or the leasehold rights should not be inconsistent with the terms and conditions set out in the usufruct agreement or the lease agreement under which the owner will have been granted the usufruct rights or the leasehold rights. In particular, it must not purport to create any greater rights for the benefit of the mortgagee than those enjoyed by the mortgagor under the relevant agreement.

Security can also be taken by the funders through a commercial mortgage granted over existing and identifiable tangible assets and certain intangible assets. Tangible assets must be specifically identified and described in the commercial mortgage. For this reason, both a fluctuating pool of assets and after-acquired assets are not capable of being charged by way of commercial mortgage. The Oman Commercial Law promulgated by Royal Decree 55/90 (OCL) expressly provides that certain intangible assets, namely the company's trade name, right of lease, the right to contact clients and goodwill, can also be mortgaged by way of commercial mortgage. It is common practice to mortgage all a company's intangible assets, such as rights under insurance policies, trade name, goodwill, consents, licences, approvals relating to the project, rights under project documents, and rights under shareholder loans.

Funders can also require further performance security by a parent company guarantee. Omani law recognises guarantees.

Contractual

As in other jurisdictions, funders typically seek to minimise their exposure through the allocation of risk away from the project company to construction/EPC contractors and O&M contractors. It is not uncommon for funders and other third parties to enter into direct agreements with the project company and contractors. Under such agreements funders are typically granted step-in rights in the event of project company default for a specific period of time during which funders assume the project company's obligations and have the opportunity to remedy the breach.

Standard forms of contracts

6. What standard forms of contracts are used for both local and international projects? Which organisations publish them?

Contracts awarded locally, including those awarded by public authorities, typically use the Oman Standard Documents which include:

- Sultanate of Oman Standard Documents for Building and Civil Engineering Works (both the third edition 1981 and the fourth edition 1999 are widely used) with risk allocation broadly following that of the FIDIC Red Book (Employer designs; contractor builds).
- Sultanate of Oman Standard Documents for Electrical and Mechanical Works (first edition 1987) with risk allocation similar to that of the FIDIC Yellow Book (contractor responsible for design and construction/installation).

Parties are however free to use other standard forms of contract and negotiate terms and amendments subject to compliance with the applicable laws of Oman. The FIDIC suite of contracts is widely used for projects procured internationally.

Contractual issues

Contractors' risks

7. What risks are typically allocated to the contractor? How are these risks offset or managed?

The Oman Standard Documents (see [Question 6](#)) are based on FIDIC precedents and therefore follow a similar risk allocation. Contractors engaged under EPC contracts can expect to assume greater risk with regard to timeframes and budget.

Generally, risk allocation would be as follows:

- Employer:
 - unforeseeable site conditions;
 - changes in law;
 - force majeure.
- Contractor:
 - cost inflation of materials, equipment and labour;
 - verification of employer design or specification;
 - project conforming to employer's specification and fitness for intended purpose;
 - Responsibility for sub-contracted works.

Excluding liability

8. How can liability be excluded or restricted under local law?

Parties are generally free to agree limitations or exclusions of liability. While it is normal practice for parties to exclude liability for indirect and consequential loss, the Civil Transactions Law RD 27/13 (CTL) does allow for the recovery of consequential losses in certain circumstances. Such provisions of the law are yet to be tested before the Omani Court. However, any provision that attempts to exempt a defaulting party from all liability for breach of contract will be void.

Similarly, any terms that are contrary to public morals, Omani law or shariah law or terms that seek to limit a right otherwise required by Omani law to be made available to a party, including decennial liability, will also be deemed void.

Articles 21 and 22 of the Engineering Consultancy Law promulgated by Royal Decree 27/16 (ECL) impose decennial liability on contractors, engineers and design consultants.

A consultant engaged in the preparation of design drawings and supervision of construction works, will be liable for any defective design for ten years jointly with the contractor, commencing from the date of handing over of the building/structure. Where a consultant is only responsible for the preparation of design/architectural drawings without supervision of construction, the consultant is responsible only for defects which have emanated from the drawings

Decennial liability is also codified in the CTL. Article 634 of the CTL imposes joint liability on both the contractor and the engineer for ten years for

- Total or partial damage to a building or other fixed facilities constructed by them.
- Defects which threaten the stability or safety of the building.

However, the interplay between ECL and the CTL remains to be tested. Liability under the ECL could, in theory, include defects of lesser severity than those contemplated under the CTL, which refers to major structural failings.

Caps on liability

9. Do the parties usually agree a cap on liability? If yes, how is this usually fixed? What liabilities, if any, are typically not capped?

It is not unusual for parties to agree caps on overall liability subject to certain carve-outs for liabilities that cannot be limited (including strict liabilities such as decennial liability and liabilities to third parties). Caps on delay and performance liquidated damages are also frequently negotiated. Carve-outs to general liability caps such as amounts owing under indemnity provisions and amounts recoverable under insurance policies can also be negotiated.

Force majeure

10. Are force majeure exclusions available and enforceable?

While the concept of force majeure is recognised under Omani law, Omani law does not provide a specific definition of what constitutes a force majeure event. Force majeure has been cited in several cases and under the CTL a contract can be terminated due to a force majeure event.

The Omani courts have held that a force majeure event would be any event that prevents a party from performing its obligations under the contract for reasons outside its control and which could not have been reasonably foreseen by the party asserting the claim. The Omani courts have considered events such as natural disasters as force majeure events, but have not accepted the performance of a contract having become uneconomic due to a force majeure event. Generally, the Omani courts recognise circumstances which frustrate the performance of a contract and such provisions agreed between the parties should generally be enforceable.

Further, Article 159 of the CTL gives the Omani courts discretion to vary the terms of a contract in favour of an obligor if continued performance of the contract has become "oppressive" provided the circumstances in question are "exceptional" and "public" and could not have reasonably been foreseen by the contracting parties at the time of their agreement.

11. What contractual provisions are typically negotiated to cover material delays to the project?

The extension of time provisions that appear in the Oman Standard Documents and the FIDIC suite of contracts are generally adopted by parties to construction contracts in Oman. Parties are also able to negotiate their own provisions. Grounds for a contractor's claim for an extension of time typically include:

- Employer instructed variations (change in scope).
- Employer delay (for example, provision of drawings, granting access to the site).
- Force majeure or employer risk events (as can be expressly set out in the contract).

As in other jurisdictions, employers typically seek to narrow the grounds under which contractors can claim additional time. Employers can also negotiate time bars and pre-conditions to contractor claims (for example, notice of a claim to be given within a certain time after the event relied upon as grounds for the claim). Contractors typically seek to broaden their ability to claim additional time. It is also likely that parties will negotiate the process for determining the amount of any such extensions.

12. What contractual provisions are typically negotiated to cover variations to the works?

As above, employers will typically seek to narrow the grounds under which contractors can claim additional costs; contractors can seek to broaden such grounds. Again, time bars, pre-conditions for claims and the method for valuing variations will likely be negotiated.

Other negotiated provisions

13. What other contractual provisions are usually heavily negotiated by the parties?

Generally, the following terms of construction contracts are often heavily negotiated:

- Delay damages (level and application).
- Payment periods.
- Termination and suspension rights.
- Performance security package (performance bonds, cash retentions and parent company guarantees).
- Dispute resolution provisions.
- Appointment of subcontractors and responsibility for employer-nominated subcontractors.
- Grounds for claims for additional time and cost.

Architects, engineers and construction professionals

14. How are construction professionals usually selected? Following selection, how are they formally appointed?

Parties typically engage a range of consultants including engineers (structural, mechanical, electrical), architects and other design consultants and project managers.

The Sultanate of Oman Standard Conditions of Engagement for Consultancy Services for Building and Civil Engineering Works (first edition 1987) is the standard form of consultancy agreement generally used by public authorities but, as with construction contracts, parties are free to agree to use other standard forms (such as the FIDIC White Book) and negotiate amendments and additional terms subject to compliance with the applicable laws of Oman.

Individuals operating engineering offices (performing one engineering discipline) and engineering consultancy offices (performing a range of engineering services) must be licensed to perform such work and must have the levels of experience and qualifications stipulated in the ECL. The ECL also imposes a penalty regime on individuals providing consultancy services without a licence.

In practice, design can also be provided by foreign consultancies but with drawings formally submitted to the relevant authorities for approval through a local licensed entity (Architect of Record). Typically, the local entity will be fully indemnified and insured by the foreign entity for all liability arising from the submitted design.

15. What provisions of construction professionals' appointments are most heavily negotiated? Are liabilities commonly limited or capped in construction professionals' appointments?

Negotiated provisions

The following terms of consultant agreements are often heavily negotiated:

- Standard of care (for example, "good industry practice" or "the standard expected of a consultant with experience of projects of a similar nature and value").
- Limitation of liability.
- Insurance coverage.
- Co-ordination with other consultants.
- Grounds for suspension or termination.
- Intellectual property use and ownership.

Liability

Liability under consultancy services agreements is typically capped. The extent of such cap is not restricted under Omani law and will be subject to agreement between the parties. The liability cap will usually be aligned with the level of the consultant's professional indemnity cover.

Payment for construction work

16. What are the usual methods of payment for construction work? Are there ways for the contractor and consultants to secure payment or mitigate risks of non-payment under local law?

Methods of payment

Omani law imposes no restrictions on payment terms which can be mutually agreed between the parties to a construction contract.

Advance payments are normal practice and the default position in the Oman Standard Documents is an advance payment of 10% of contract value.

As in other jurisdictions, the most common pricing structures are "measure and value" and "fixed price lump sum". Under a measure and value contract, payments are made periodically by reference to quantities of work completed

and priced by against a schedule of rates/bill of quantities. Under a fixed-price, lump sum contract payments are made upon attainment of specific milestones. The Oman Standard Documents can be amended to accommodate either structure.

Securing payment

Article 633 of the CTL permits contractors to retain rights of ownership over equipment/materials supplied, when the contractor has completed all or part of the works but has not been paid in accordance with agreed terms.

The CTL also states that the retention of an employer's equipment by the contractor is not permitted where the contractor has not performed all or part of the works. There is also case law to suggest that where a contractor has not been paid for the work undertaken by it, and such work results in the enhancement in the value of the property, the contractor may have the right to claim against the property even if security interests have been created and registered over the property in favour of lenders.

Subcontractors

17. How do the parties typically manage their relationships with subcontractors?

In Oman, a main contractor can subcontract the works or a portion of them to a subcontractor and parties are free to negotiate contractual protections in respect of such arrangements. Protections might include indemnities from the subcontractor in favour of the main contractor and direct agreements and/or continuity guarantees between the subcontractor and the employer in the event the main contract is terminated. The employer can also require collateral warranties to ensure the subcontracted work is completed to the required standard. Under the Oman Standard Documents, the contractor is responsible for all subcontracted work which follows the FIDIC risk allocation.

Back-to-back agreements under which a subcontractor is engaged by the main contractor on broadly the same terms provided in the main contract are common in Oman, particularly where a substantial portion of the contract works is to be subcontracted and the main contractor wishes to pass through its risk.

Licensing

18. What licences and other consents must contractors and construction professionals have to carry out local construction work? Are there any specific licensing requirements for international contractors and construction professionals?

A foreign construction entity wishing to conduct business in Oman requires a registered legal presence and a licence granted by the Ministry of Commerce and Industry (MOCI).

Typically, foreign entities incorporate an LLC ([see Question 3](#)).

Engineering/design consultants are required to be licensed in accordance with the ECL ([see Question 14](#)).

19. What licences and other consents must a project obtain?

The consents, permits and licences to be obtained by application to the relevant authorities will be project-specific but the following are normally required:

Before

Approvals and permits needed before the start of the project include:

- Site/plant approval for the:
 - Ministry for Environment and Climate Affairs (MECA);
 - Ministry of Regional Municipalities and Water Resources (MRMWR) or local municipality Public Authority for Electricity and Water (PAEW);
 - Ministry of Housing (MOH).
- Preliminary environmental permits from MECA;
- “No Objection Certificate” (NOC) for construction of building/plant from the local municipality and the MECA.
- Excavation permits from the local municipality, MECA, MOH and the Royal Oman Police (ROP).
- Approval for temporary facilities (temporary construction site) for the local municipality and the MECA.
- Approval of site drawings by the ROP.
- Electrical line site clearance (temporary construction site and permanent project facilities) from the MOH and regional electricity distribution company.
- Water mains site clearance (temporary construction site and permanent project facilities) from the MOH and the PAEW.
- Telephone site clearance (temporary construction site and permanent project facilities) from Omantel.
- Gas crossing excavation permits from the Oman Gas Company.

During

These include:

- Permits for the transportation of plant and equipment (heavy items) and of hazardous waste (if necessary) from the ROP and Roads Department.
- Consent to open up highways or other roads for crossing.
- Permission for the installation of sign boards from the local municipality and the MECA.
- Waste disposal consents from the local municipality and the MECA.

On completion

- Municipality permits, such as certificate of completion.
- Electricity connection request to be made to the relevant electricity distribution company.
- A fire safety certificate from the Director-General of Civil Defence.
- Water supply requests to be made to the PAEW.

Projects insurance

20. What types of insurance must be maintained by law? Are other non-compulsory types of insurance maintained under contract?

Compulsory insurance

Omani law does not specify the insurance policies required for the performance of a construction contract. However, the following policies would in practice be considered mandatory:

- Third-party liability insurance.
- Workman's compensation insurance.
- Vehicle insurance (third-party).
- Professional liability insurance.

Non-compulsory insurance

It is market practice for construction contracts to also require both:

- Commercial general and umbrella liability insurance (including third-party liability).
- Loss or damage to the property for its full replacement value.

Employment laws

21. What are the main requirements for hiring local and foreign workers?

The following apply:

- All employees must be registered with MOM.
- All Omani nationals must be registered with PASI.
- All expatriate/foreign employees must be authorised to work in Oman under a labour clearance/work permit from the MOM and can only be employed subject to the applicable minimum Omanisation requirement. All employers in Oman are required to comply with Omanisation targets set by the Government from time to time. Such targets can be made applicable with immediate effect or to be complied within a stipulated time. Failure to adhere to the Omanisation targets could result in an employer being exposed to fines, penalties and/or being refused future labour clearances for expatriate employees.

There is no income tax payable by employees. The employer is responsible for making a social insurance payment contribution to PASI equal to 11.5% of an Omani employee's gross salary, in addition to the contribution to be made directly by the employee. Employers must also, in accordance with the Oman Labour Law promulgated by Royal Decree 35/03 (as amended (OLL)), pay an end-of-service benefit to expatriate employee's on the completion of the term of employment, as provided for by Article 39 of the OLL.

22. Which employment laws are relevant to projects?

The OLL also imposes minimum wage requirements for Omani employees, working time restrictions and general health and safety requirements (see [Question 24](#)).

23. Must an employer pay statutory redundancy or other payments at the end of a project? Are all employees eligible?

Oman law does not provide for statutory redundancy. On expiration or termination of employment, employees will be entitled to accrued entitlements (including leave) and expatriates will also be entitled to an end of service benefit and repatriation expenses.

Oman courts have traditionally taken a protective stance in relation to employees terminated for reasons other than gross misconduct. Wrongful termination will potentially entitle the employee to minimum compensation of three months' gross salary.

Health and safety

24. Which health and safety laws apply to projects?

The OLL's health and safety (HSE) obligations require an employer to ensure safe working conditions for employees. Further HSE requirements are set out in Ministerial Decision 686/2008. These statutory obligations do not have to be expressly adopted in a construction contract, but it is common practice for an employer to include representations, warranties and indemnities from a contractor for any breach of the statutory requirements applicable to the workforce employed on construction projects.

Any contractual provisions seeking to limit the liability of the contractor and/or the employer in respect of statutory obligations will be null and void.

As in other jurisdictions, contractors generally assume all responsibility for HSE at the site and for all persons attending the site. Construction contracts may also require contractors to adhere to the employer's own HSE requirements or formulate plans and procedures by reference to certain international standards.

Environmental issues

25. Which local laws regulate projects' effects on the environment?

In Oman, environmental matters are generally governed by the Law on Conservation of the Environment and Prevention of Pollution promulgated by Royal Decree 114/01. Specific laws and regulations are as follows:

Air

Ministerial Decision 243/05, which regulates the control and management of ozone-depleting substances, will also apply to emissions from construction sites.

Water

Sources of potable water are protected under Royal Decree 115/01 (promulgating the law on protection of sources of potable water from pollution).

The Marine Pollution Law promulgated by Royal Decree 34/74 prohibits the discharge of any pollutant in a pollution-free zone from a ship, shore location or oil transport facility.

Ministerial Decision 145/93 regulates the discharge and re-use of wastewater.

Waste

The Regulations for the Management of Solid Non-hazardous Waste impose obligations on operators of solid, non-hazardous waste treatment facilities and sanitary landfills. In general, the law does not permit any person to dispose of non-hazardous waste in places other than designated places.

The Regulations for the Management of Hazardous Waste (issued under Ministerial Decision 18/93) deal with hazardous waste, including any waste arising from commercial, industrial or any other activities, which due to its nature, composition, quantity or for any other reason is hazardous or potentially hazardous to the environment. Any storage facility for hazardous waste must be duly licensed by the MECA.

The discharge of any wastewater or sludge into the environment is governed the Regulations for Wastewater Re-Use and Discharge (issued under Ministerial Decision 145/93) and a permit for such activities is required from MECA.

Environmental impact assessments (EIAs)

Applicants for environmental permits from MECA will generally be required to submit environmental impact assessments in support of their applications.

Sustainable development

Sustainable development in the Oman construction sector is limited to ad hoc developer-led initiatives such as rooftop solar.

26. Do new buildings need to meet carbon emissions or climate change targets?

In Oman, the construction industry is not subject to any carbon emissions or climate change targets. As mentioned in *Question 25*, developers are increasingly adopting green building practices.

Prohibiting corrupt practices

27. Are there any rules prohibiting corrupt business practices and bribery (particularly any rules targeting the projects sector)? What are the applicable civil or criminal penalties?

Rules

The main anti-bribery and anti-corruption laws are the:

- Penal Code promulgated by SD 7/18.
- Protection of Public Property and Avoidance of Conflict of Interest Law promulgated by SD 112/11 (Anti-Corruption Law).

Penalties

The concept of corruption in Oman is wider than bribery. Under Article 7 of the Anti-Corruption Law, a government official is prohibited from using his/her position to achieve an advantage for him/herself or for others or to use his influence to obtain an advantage or a special treatment for others. This offence is punishable under Article 16 with imprisonment from one to three years.

Under Article 8 of the Anti-Corruption Law, a government official is prohibited from acting as an intermediary, an agent or a sponsor of any company or establishment whose activities are connected with the entity in which he/she works. This offence is punishable under Article 15 with imprisonment from six months to two years.

Under Article 11 of the Anti-Corruption Law, the government official or his/her minor children must not have a share in any company, establishment or business for profit which is directly connected with the entity in which he/she works.

In all the above cases, the government official must be removed from his/her position and all the funds illegally received by him/her will be confiscated.

Bribery in respect of public officials is dealt with under Articles 207, 208, 209, 210, 211 and 212 of the Penal Code. Penalties include fines of up to OMR1000 and imprisonment for up to five years, depending on the nature of the offence.

Bankruptcy or insolvency

28. What rights do the client and funder have on the contractor's bankruptcy or insolvency?

In general, a company's declaration of bankruptcy will be grounds for its dissolution under the CCL, but parties are free to agree their respective rights and obligations in the event of the contractor's bankruptcy or insolvency.

Public private partnerships

29. Are public private partnerships (PPPs) common in local construction projects? If so, which sectors commonly use PPPs?

PPP structures have been used in Oman's power sector with considerable success since 1996. The Privatisation Law promulgated by Royal Decree 77/04 and the Law for the Privatisation of the Electricity and Related Water Sector promulgated by Royal Decree 78/04 (Sector Law) formalised the private sector's ability to participate in the water and power sector and Oman has subsequently witnessed the development of an array of independent power and water projects utilising private finance initiatives.

The renewable power sector is set to follow suit with the Oman Power and Water Procurement Company (OPWP) developing a 500MW solar plant to private sector developers. Other sectors such as healthcare are also utilising PPP variants. Uptake has been cautious but signs are positive that PFIs can be used to help fill the funding gap for large-scale public projects.

30. What local laws apply to public private partnerships (PPPs)?

The new public private partnerships law is expected imminently. The Privatisation Law and the Sector Law ([see Question 29](#)) govern the participation of the private sector in infrastructure projects. The Tender Law (promulgated by Royal Decree No. 36/2008) also applies to government entities and public authorities procuring projects.

31. What is the typical procurement or tender process in a public private partnership (PPP) transaction? Does the government or another body publish standard forms of PPP project agreements and related contracts?

There is no prescriptive tendering process for projects procured under a PPP structure but where procurement is undertaken by a government entity, the Tender Law will apply. The tendering process typically comprises a pre-qualification stage and a formal bid stage.

This is no standard PPP template although precedent tenders have been established in the market.

Dispute resolution

32. Which are the most common formal dispute resolution methods used? Which courts and arbitration organisations deal with construction disputes?

Formal dispute resolution methods

Any disputes being referred to an Omani court will be referred according to the dispute resolution terms of the particular construction contract.

Court litigation

A dispute can be filed for adjudication with the Omani court subject to parties complying with the dispute resolution regime agreed in the construction contract, for example, that parties are required to attempt negotiations in good faith and to comply with specified notice periods.

The Oman courts will typically not assume jurisdiction if the construction contract provides for the resolution of disputes through arbitration (*see below*).

The competent courts and fees are as follows:

- Disputes up to a monetary value of OMR70,000 will be heard by a single judge.
- Disputes involving a monetary value above OMR70,000 will be heard by a panel of three judges of the Primary Commercial Court.
- The fees for filing a suit with the Primary Commercial Court are approximately 2% of the value of the dispute.

Submissions to the Primary Commercial Court are generally made in writing; the scope for oral representations/pleadings is very limited. Once the plaintiff has filed the suit with the Omani Court, the court summons the parties for a first hearing within four to six weeks, after which the respondent will be invited to submit a statement of defence. Once both parties have made all the necessary submissions (including witness statements) and the court has heard the parties and reviewed any expert reports commissioned by it for the determination of any technical issues, it will

pass judgment. The judgment of the Primary Commercial Court will be appealable before the Appeals Court and the Appeals Court's judgment may be appealable before the Supreme Court.

Arbitration

However, it is usual practice in Oman for construction contracts to provide for disputes to be resolved by arbitration. Where a contract provides for arbitration, the Omani courts have consistently held that they will not assume jurisdiction unless otherwise consented to by both the disputing parties.

If, however, one of the parties refers the dispute to the Primary Commercial Court despite the existence of an arbitration clause, if the court must dismiss the action brought before it upon an objection being raised by the other party to the dispute. If no objection is raised by the other party at the first hearing, the court can assume jurisdiction.

The Omani Arbitration Law is set out in Royal Decree 47/97 as amended (OAL). The OAL is applicable to any arbitration between parties under public or private law, irrespective of the nature of the legal relationship on which disputes are based, provided the arbitration takes place in Oman or, in the case of international commercial arbitration taking place abroad, provided the parties have agreed to the applicability of the OAL.

The parties are free to agree to any venue for the arbitration proceedings and for the proceedings to be governed by alternative arbitration rules, for example, the International Chamber of Commerce (ICC) Rules. It is also permissible under the OAL for parties to agree to hold arbitration proceedings in a foreign jurisdiction. Oman is a signatory to the 1958 New York Convention on the recognition and enforcement of foreign arbitral awards (New York Convention). However, we are aware of only one foreign arbitral award that has been enforced by the Omani Courts on the basis of Oman being a contracting state.

Article 352 of the Civil and Commercial Procedure Law promulgated by Royal Decree 29/2002 (CCPL) sets out the mandatory conditions for a foreign judgment to be enforced in Oman. Article 353 confirms that these conditions are also applicable to foreign arbitral awards. They are that the:

- Award was rendered by a competent judicial body or tribunal vested in accordance with international law, is final and binding upon the parties and was not obtained through deception or fraud.
- Parties to the award were summoned to appear in the proceedings and/or were duly represented in such proceedings.
- Award does not include any order, remedy or relief which is contrary to the laws of the Sultanate of Oman.
- Award is not in contravention of any judgment or order previously passed by the Omani courts, nor is contrary to public policy or conduct in the Sultanate.
- Country or territory in which the award was passed recognises arbitral awards rendered in the Sultanate of Oman on a reciprocal basis.
- Subject-matter of the foreign arbitration proceedings is one in respect of which arbitration is permissible under Omani law.

33. What are the most commonly used alternative dispute resolution (ADR) methods?

Alternative dispute resolution methods, whilst not as widespread as in other jurisdictions, can be agreed by the parties on a case-by-case basis. Methods may include expert determination, mediation or referral to a disputes panel. The Oman Standard Documents include an expert determination step but it is yet to be seen whether a FIDIC-style "Disputes Adjudication Board" (in line with the FIDIC 1999 suite of documents) or a "Disputes Avoidance/Adjudication Board" (as per the new FIDIC 2017 suite of documents) will be introduced when the next iteration of the documents is published.

Tax

34. What are the main tax issues arising on projects?

Contractors will be liable to pay customs duties on imported equipment and materials as well as income tax on profit from operations in Oman. Customs duties on imported goods from non-GCC countries are typically charged at 5%; Corporation tax (at the time of writing) is 15% on chargeable profits.

35. Are any methods commonly used to mitigate tax liability on projects? Are there any tax incentives to carry out regeneration projects?

Mitigating tax

Split onshore/offshore contract structures are frequently used in the market for international contracts for both tax and construction efficiency. Offshore activities may include design, certain elements of assembly; onshore activities may be limited to groundworks, installation and incidental construction activities.

Tax incentives

Tax exemptions may be applicable to projects undertaken within a Special Economic Zone (SEZ). The extent of any exemptions available will be subject to the specific laws pertaining to each SEZ.

Other requirements for international contractors

36. Are there any specific requirements that international contractors or construction professionals must comply with?

Key requirements for international construction entities and professionals operating in Oman include:

- Establishing an appropriate Legal presence (see [Question 3](#)).
- Obtaining appropriate licences to operate (see [Question 18](#)).
- Compliance with applicable employment laws and Omanisation requirements (see [Question 21](#)).

Reform

37. Are there any proposals to reform construction and projects law?

Current proposed reforms include:

- A new PPP law is expected imminently (see [Question 30](#)).
- A new mining law is anticipated and intended to streamline the licence application process and provide incentives to attract foreign investment.
- The Oman Standard Documents are also due to be updated and brought in line with FIDIC 1999. The uptake of the new FIDIC 2017 suite remains to be seen.

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