

**Jurisdiction: Oman**

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## 1. What is the structure of the court system in respect of civil proceedings?

The Judicial Authority Law (enacted by Royal Decree 90/99) ('JAL') provides for different levels of courts: Supreme Court, appellate courts, courts of first instance and courts of summary jurisdiction.

Courts are competent to hear all civil and commercial matters, labour, tax and rent cases, in addition to arbitration applications filed before them other than in respect to immovable property situated outside Oman. The Administrative Law (enacted by Royal Decree 91/99) established an administrative court as an independent judicial body set up with exclusive powers to review decisions issued by government bodies. Court proceedings are conducted in accordance with the Civil and Commercial Procedural Law (enacted by Royal Decree 29/2002).

## 2. What is the role of the judge in civil proceedings?

Judges are competent to decide on all issues of facts and law relevant to the matter brought before them in accordance with Omani law.

They are required to ensure that all procedural formalities have been complied with regarding the proceedings filed before them and that the parties, if represented, have executed valid powers of attorney in favour of their attorneys authorising them to act on their behalf. At the first hearing of the case, the judge is required to ask the parties whether there is any possibility of a settlement. During the proceedings, the judge will allow the parties to make oral

submissions and to provide oral evidence in accordance with the Law of Evidence in Civil and Commercial Transactions (enacted by Royal Decree 68/2008) ('Evidence Law'). Only the judge may cross-examine witnesses.

Depending on the nature of a dispute and the complexity of the technical issues raised by the parties, the judge may appoint a court-registered expert (see question 11). While judges are at liberty to take an inquisitorial approach to cases, they seldom do so and leave it to the parties to present and establish their cases on the basis of documentary evidence.

Following a review of the parties' pleadings and consideration of any oral evidence, judges are required to pronounce judgment and then issue the same in a written form.

All judges are required to take an oath provided for by JAL upon their appointment. They may not engage in commercial activity or any work inconsistent with the independence and dignity of the court. They must at all times comply with the requirements of JAL, including preservation of confidentiality of their deliberations, prohibitions on expressing political opinions, engaging in any political activity, considering cases in which they may have a conflict of interest and disclosure of confidential information.

## 3. Are court hearings open to the public? Are court documents accessible to the public?

Under Oman's Civil and Commercial Procedure Law (enacted by Royal Decree 29/2002) ('Procedure Law'), all civil court proceedings

at primary and appellate levels are open to the public unless otherwise ordered by the presiding judge. The Supreme Court, however, conducts its deliberations in camera. Judgments of all courts are pronounced in open court.

Court documents are not accessible to the public

#### 4. Do all lawyers have the right to appear in court and conduct proceedings on behalf of their client? If not, how is the legal profession structured?

Lawyers licensed by the Ministry of Justice's advocacy committee in accordance with article 66 of the Advocacy Law of Oman (enacted by Royal Decree 78/2008) have the right to appear before the courts. Only Omani national lawyers may appear before the primary courts while licensed non-Omani lawyers may appear only before the appellate courts and the Supreme Court of Oman.

#### 5. What are the limitation periods for commencing civil claims?

Article 92 of Oman's Commercial Code (enacted by Royal Decree 55/90) provides for a limitation period of 10 years, commencing from the date an obligation arose or was breached giving rise to a cause of action, within which a party may file its dispute before the Omani courts unless a shorter period is specified by another law. For example, the limitation period for a carriage of goods claim is one year, a bill of lading claim two years, agency disputes three years from the expiry of the agency agreement, claims against the government five years, and claims by the government seven years.

The liability of contractors is 10 years from the date of completion and hand-over to the client under articles 21 and 22 of the Engineering Consultancy Offices Law (enacted by Royal Decree 27/2016) ('ECL').

Under article 634 of the Civil Transaction Law (enacted by Royal Decree 29/2013) ('CTL'), a contractor and an engineer may be jointly liable

for any: (a) total or partial damage to a building or other fixed facilities constructed by them; (b) defects which threaten the stability or safety of the building; and (c) defects which endanger the safety and endurance of the building for a period of ten years. It remains to be seen how the CTL limitation period will be applied in light of the ECL.

Article 185 of the CTL introduces an overarching limitation period of 15 years within which an action for compensation recoverable for a harmful act may be initiated. This 15-year limitation period is subject to any shorter limitation periods stipulated by law.

#### 6. Are there any pre-action procedures with which the parties must comply before commencing proceedings?

In general, no. However, pre-action procedures must be complied with in certain circumstances such as where a promissory note has been dishonoured.

#### 7. What is the typical civil procedure and timetable for the steps necessary to bring the matter to trial?

Claims are filed with the relevant primary court which then serves on the defendant a summons accompanied by the statement of claim and the supporting documents. The defendant is required to submit a response within a specified time period upon which the court secretariat may schedule a hearing date. Upon expiry of the period provided for submission of the defence, the court will schedule a hearing date for the parties to appear in person or represented by lawyers in possession of a power of attorney executed before a notary public in Oman or, where one of the parties is resident overseas, executed, notarised and consularised in the jurisdiction where the party is domiciled. If a party has not instructed lawyers to present the case or otherwise requires time to instruct lawyers, the court may grant an adjournment of up to two weeks.

Upon receipt of the statement of defence and any rejoinder from the plaintiff, the court will determine whether it can proceed to adjudicate the case or whether an expert should be appointed. After consideration of the pleadings, any expert's report and comments of the counter-party, the court pronounces judgment. Judgments for sums in excess of OMR 1000, other than those handed down by summary courts, may be appealed before the appellate courts and the Supreme Court of Oman. An appeal must be filed within 30 days of the issue of the judgment or, in the case of the Supreme Court, within 40 days of the date of

the appeal court judgment. A primary court judgment may not be enforced until the time for lodging an appeal before the appeal court has expired, or, if an appeal is lodged, until a determination is reached. However, in the case of appeals to the Supreme Court, enforcement proceedings may proceed notwithstanding the appeal unless otherwise stayed by the court. The judgment of the Supreme Court is binding on the parties subject to articles 142 and 143 of the Procedure Law.

The conduct of proceedings up to the Supreme Court may take between 18 months and six years, depending on the complexity of the case



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Mansoor is founder and managing partner of Al Busaidy, Mansoor Jamal & Co, a globally-ranked, top-tier, full-service law firm in Oman. A UK-qualified barrister, he has extensive experience of dispute resolution and expert advisory on the laws of Oman and other GCC and Islamic jurisdictions. Mansoor is experienced leading and directing teams of advocates

in high-value domestic and international arbitration of public and private law disputes and complex commercial litigation claims across a wide span of industry sectors including banking, power and water, construction, insurance, employment and oil and gas. He has successfully prosecuted and defended claims under ICSID and UNCITRAL rules before the ICC International Court of Arbitration and the London Court of International Arbitration (LCIA).

Mansoor is a listed Court of Appeal arbitrator in Oman, enjoys rights of audience before the Supreme Court of Oman and acts as an expert witness on Omani laws in disputes before courts in international jurisdictions. He is a door tenant of leading Chambers of Stephen Tromans QC and Neil Block QC at Thirty Nine Essex Street, London, a member of Lincolns' Inn and the International Bar Association.

Mansoor's expertise has won him Chambers Global's accolade of 'star performer' in Oman for the past five years and top ranking across the main global legal directories.

and procedures for service of proceedings on a party domiciled or resident outside Oman.

**8. Are parties required to disclose relevant documents to other parties and the court?**

Parties are required to provide copies of all documents on which they seek to place reliance in the proceedings to the counter-party(ies). Under the Evidence Law, parties to proceedings may seek a court order compelling the opposing party to submit documents and records relevant to the case in their possession. This process is not dissimilar to the process of discovery found in other common law jurisdictions and takes place in the circumstances set out in articles 20–21 of the Evidence law, namely:

- (a) where the law expressly entitles a litigant to request the submission of the relevant documents; or
- (b) if the document is common between the parties (a document will be considered to be common if it affects the interest of both parties or if it confirms their mutual liabilities and rights); or
- (c) if the opponent has relied on the document at any stage of the proceedings.

The application for the disclosure must provide, to the satisfaction of the court, a detailed description of the document, the purpose for which the document is required, supporting evidence that it is in the possession of the opposing party and the reasons why the document is required.

**9. Are there rules regarding privileged documents or any other rules which allow parties to not disclose certain documents?**

The concept of privilege is not recognised in Omani law. There are no rules in the Evidence Law which allow a party to withhold or not disclose certain documents.

**10. Do parties exchange written evidence prior to trial or is evidence given orally? Do opponents have the right to cross-examine a witness?**

Written evidence is exchanged prior to any hearing of the case. All statements of claim, defence and counter-claim and reply must be accompanied by supporting documentation on which the litigant parties seek to rely.

Parties and the court may call witnesses to provide oral evidence subject to the rules and limitations laid down by the Evidence Law.

Article 43 of the Evidence Law provides that witness testimony may be heard: (a) where there is a material or moral obstacle to obtaining written evidence; (b) if the creditor loses written documents for reasons beyond its control; and (c) when the court is satisfied that evidence may be established through the testimony of witnesses. Article 43 of the Evidence Law can be relied on by a party to prove the existence of a contract by calling as a witness a person who was present at the conclusion of a contract. Litigant parties are not permitted to cross-examine witnesses. This is a prerogative of the judge alone. While judges are at liberty to take an inquisitorial approach to cases, they seldom do so and leave it to the parties to present and establish their cases on the basis of documentary evidence.

**11. What are the rules that govern the appointment of experts? Is there a code of conduct for experts?**

Depending on the nature of a dispute and the complexity of the technical issues raised by the parties, the court may appoint an expert, of its own accord or at the request of a litigant. Oman’s Ministry of Justice maintains a register of experts chosen from a range of professions such as accounting and engineering (the ‘Register’). The court will accept an agreement between the litigants on the appointment of an identified expert or otherwise will select

one from the Register. The expert will be issued with a mandate letter setting out the brief and the terms on which it is to be carried out. Litigants will be given an opportunity to comment on and challenge the expert's findings and recommendations.

An expert is not obliged to commence work until his/her fee is deposited with the court secretariat. An expert may be relieved from appointment at his/her request within five days from receipt of the mandate letter or at the request of a litigant party for any of the reasons set forth in the Evidence Law.

There is currently no code of conduct governing experts. However, at the time of entry on the Register, experts are required to take an oath before the court of appeal undertaking to act professionally, diligently and honestly in the discharge of their duties.

## 12. What interim remedies are available before trial?

An application may be made to the court for a provisional attachment order under the Procedure Law in circumstances where:

- (a) a creditor is a bearer of a bill of exchange or promissory note and the debtor is a merchant who has undertaken to perform the obligation set out in the instrument; and
- (b) a creditor may lose a right to which the creditor is entitled to if the order is not granted.

The application for a provisional attachment order must provide details of the outstanding debt and particulars of the properties to be attached.

The presiding judge may grant the interim relief with or without an order for security. The order must specify the amount of the debt or an estimate thereof. The court will notify any third party in possession of movable property subject to the order or the relevant authority in the case of immovable property of the attachment order. The court may order the sale of the goods

subject to the attachment if they are perishable or liable to lose value.

The debtor must be notified within 10 days of the attachment order and the applicant is required to file the substantive claim within the same period. If the debtor has not been notified or the substantive proceedings have not been filed, then the order shall lapse.

## 13. What does an applicant need to establish in order to succeed in such interim applications?

The creditor will need to demonstrate, to the satisfaction of the court, that if a provisional attachment order is not granted, the defendant is likely to dispose of or remove its assets from the court's jurisdiction or otherwise dispose of it so as to deprive the creditor of the opportunity to enforce and/or recover its rights from the debtor once a final judgment is obtained.

## 14. What remedies are available at trial?

Most remedies are discretionary. The most commonly available remedy is an award of monetary damages for loss or injury. The remedy of specific performance introduced by the CTL provides contracting parties with a remedy other than a claim for monetary damages in circumstances where damages do not adequately compensate for the loss or damage arising from the non-performance of the party in breach. As the CTL provisions are relatively new and untested, it remains to be seen how they will be interpreted and applied by the Omani courts.

As a general rule, the courts uphold contractual terms which are not contrary to the law. However, in the event of a fundamental breach of contract, after considering the merits of the case, the court may order termination of the agreement notwithstanding the presence of provisions in the contract stipulating or excluding an alternative remedy. Articles 167–173 of the CTL now set forth the circumstances

(e.g. force majeure or the occurrence of an exceptional event rendering the performance of an obligation unduly onerous for a party) in which a contract may be terminated and the mechanism for such termination.

As in the case of the remedy of specific performance, these CTL provisions remain to be considered by the Omani courts, and no precedent is as yet available.

#### 15. What are the principal methods of enforcement of judgment?

Enforcement of judgments or arbitration awards conducted before the Omani courts, or of a private arbitration award obtained in Oman and from a contracting state under international conventions, is undertaken by the commercial division of the primary court. An application for enforcement is submitted identifying the judgment debtor's assets.

Pending the enforcement of a judgment or an arbitration award, an application may be made for the attachment of the judgment debtor's assets. Upon seven days' notice to the judgment debtor, the judgment debtor's assets may be seized and sold at auction by the court within three months of the confiscation application unless otherwise agreed or ordered.

A judgment may be enforced against funds held by a third party or against land, the sale of which shall take place at the courts after appropriate notices have been published in the daily newspapers.

Notwithstanding provisions in the CTL for declaring a debtor bankrupt, historically, the courts have been reluctant to make bankruptcy orders unless and until satisfied that all efforts have been expended to obtain and enforce a judgment.

#### 16. Are successful parties generally awarded their costs? How are costs calculated?

Historically, the Omani courts awarded legal costs only in circumstances where the contract

between the parties provided for recovery of the same. The courts currently award legal costs irrespective of whether this is provided for by contract. Quantum of costs awarded, rather than the actual costs claimed by the litigants, is assessed by the court. In general, the courts award nominal legal costs in relation to lawyers' fees. Expert fees are determined by the court and payable by the party requesting the appointment of an expert or the party against whom the final judgment has been passed.

#### 17. What are the avenues of appeal for a final judgment? On what grounds can a party appeal?

Appeals may be raised in the appellate courts against judgments of the primary courts, and appellate court decisions may be appealed before the Supreme Court of Oman. A Supreme Court judgment may not be appealed unless it is determined that a member of the Supreme Court bench had sat as a judge in a lower court when the same case was adjudicated.

#### 18. Are contingency or conditional fee arrangements permitted between lawyers and clients?

Contingency or conditional fee arrangements are not permitted in accordance with article 48 of the Advocacy Law.

#### 19. Is third-party funding permitted? Are funders allowed to share in the proceeds awarded?

There are no restrictions on a party entering into third-party funding arrangements. Consequently, a funder would be permitted to share in the proceeds awarded.

#### 20. May parties obtain insurance to cover their legal costs?

There are no legal restrictions preventing a party from obtaining insurance to cover its legal costs.

**21. May litigants bring class actions? If so, what rules apply to class actions?**

Class actions are permitted, but there are no specific rules governing the commencement of such actions.

**22. What are the procedures for the recognition and enforcement of foreign judgments?**

Applications for enforcement of judgments and orders passed by foreign courts are dealt with by Oman's primary courts in accordance with articles 352–355 of the Procedure Law. An order for enforcement of a foreign judgment or order may be passed by the primary court provided the court is satisfied that:

- (a) the judicial authority which passed the foreign judgment or order had jurisdiction, in accordance with the rules governing international judicial jurisdictions, as provided for by the law of the country where the judgment or order was passed, and that the judgment or order was to be treated as final in accordance with such law and was not passed on the basis of deceit and fraud;
- (b) the parties to the suit in respect of which the foreign judgment was passed were summoned to appear and were represented in a proper and rightful manner;
- (c) the judgment or order does not contain any request which is in violation of any of Oman's laws;
- (d) the judgment or order was neither in conflict with an earlier judgment or order passed by an Omani court, nor does it contain anything contrary to public order or morals; and
- (e) the country where the judgment was passed enforces on a reciprocal basis judgments passed by the courts of Oman.

**23. What are the main forms of alternative dispute resolution?**

Mediation may be applied for in accordance with Royal Decree 98/2005.

**24. Which are the main alternative dispute resolution organisations in your jurisdiction?**

There is no specific organisation set up for alternative dispute resolution. However, the Ministry of Justice has established a special committee empowered to conduct reconciliation proceedings upon application by the parties in dispute under Royal Decree 98/2005. There is no obligation under Omani law requiring disputing parties to negotiate or seek mediation in a disputed matter before commencing litigation.

**25. Are litigants required to attempt alternative dispute resolution in the course of litigation?**

No. The primary court may, at the first hearing of a disputed matter, enquire of the parties as to whether reconciliation is feasible. If not, the judge will proceed with the adjudication of the case. Parties in dispute may refer their dispute for resolution through a reconciliation committee under the purview of the Ministry of Justice in accordance with Royal Decree 98/2005.

**26. Are there any proposals for reform to the laws and regulations governing dispute resolution currently being considered?**

No.

**27. Are there any features regarding dispute resolution in your jurisdiction or in Asia that you wish to highlight?**

No.

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## 1. 在民事诉讼方面，法院系统的结构是怎样的？

《司法机构法》（第 90/99 号皇家法令颁布）（‘JAL’）规定了各级法院：最高法院、上诉法院、一审法院和即时裁决法院。

除仲裁申请外（不包括有关阿曼境外不动产的仲裁申请），法院还有权审理所有民商事、劳务、税务和租务案件。《行政法》（第 91/99 号皇家法令颁布）设立了行政法院，该行政法院作为独立的司法机构，具有复核政府机构决议的专属权。法院审理程序依据《民商事程序法》（第 29/2002 号皇家法令颁布）执行。

## 2. 法官在民事诉讼中的角色是什么？

法官有权根据阿曼法律对提请法院裁决的事项所涉及的所有事实和法律问题作出裁决。

法官必须确保在处理提请其解决的诉讼时，遵守所有相关程序手续，如当事人由他人代理，应确保当事人已签署有效委托书，授权其代理人代其行事。案件第一审期间，法官必须询问当事人是否有可能和解。诉讼期间，法院会允许当事人根据《民商事证据法》（第 68/2008 号皇家法令颁布）（‘《证据法》’）提供口供和口头证据。只有法官可盘问证人。

法官可根据当事人提出的争议的性质以及技术问题的复杂性，指定一名在法院登记的专家（见问题 11）。虽然法官可对案件采用审问模式，但他们很少这样做，而是由当事人自己依据证明文件说明和证明其案情。

在复核当事人的诉答和审议任何口头证据之后，法官必须宣判并下达判决书。

所有法官在接受任命时均须按照 JAL 的规定宣誓。法官不得从事任何有违法院独立性和尊严的商业活动或任何工作。法官必须始终遵守 JAL 的要求，包括保护其审议内容的机密性，禁止发表政治言论、从事政治活动、审理与其有利益冲突的案件以及泄露保密信息。

## 3. 庭审是否向公众开放？公众是否能够查阅法庭文件？

根据阿曼《民商事程序法》（第 29/2002 号皇家法令颁布）（‘《程序法》’），所有初级和上诉阶段的民事法院诉讼均向公众公开，除非审判长另有其他命令。但是，最高法院执行不公开审讯。所有法院的判决均在公开法庭宣布。

法院文件不对公众公开。

## 4. 所有律师均有权代表其委托人出庭并参加诉讼吗？如果不是，律师职业的结构是怎样的？

司法部辩护委员会依据《阿曼辩护法》（第 78/2008 号皇家法令颁布）第 66 条许可的律师有权出庭。只有阿曼本国律师可在初级法院出庭，而非阿曼本国的执业律师只能在阿曼上诉法院和最高法院出庭。

## 5. 提起民事请求的时效期为多久？

阿曼《商法典》（第 55/90 号皇家法令颁布）第 92 条规定为 10 年期限，自产生或违反义务而引起诉讼之日起计。在该期限内，当事人可将争议提交阿曼法院，除非其他法律规定了较短期限。例如，货物运输请求的时效期为一年，提单请求的时效期为两年，代理争议的时效期为自代理协议到期

之日起三年，针对政府的请求的时效期为五年，政府提起的请求的时效期为七年。

根据《工程咨询机构法》（第 27/2016 号皇家法令颁布）（‘ECL’）第 21 条和第 22 条的规定，承包商的责任期为 10 年，自完工并移交交给委托人之日起计。

根据《民事交易法》（第 29/2013 号皇家法令颁布）（‘CTL’）第 634 条的规定，承包商和工程师可共同承担以下责任：(a) 其建造的建筑物或其他固定设施的全部或部分损坏；(b) 威胁建筑物稳定性或安全性的缺陷；以及 (c) 危及建筑物安全性和耐久性的缺陷，责任期为十年。涉及到 ECL 时，CTL 时效期的适用性则视情况而定。

CTL 第 185 条引入了 15 年的普遍时效期，在该期间，可针对危害行为提起赔偿诉讼。该 15 年的时效期应服从法律规定的任何较短时效期。

#### 6. 有哪些诉前程序是当事人在提起诉讼之前必须遵守的？

一般情况下没有。但是，在某些情况下，例如期票被拒付，必须遵守诉前程序。

#### 7. 案件进入审理之前要经过哪些典型的民事程序？有什么样的时间表？

向相关初级法院提出请求后，该初级法院向被告送达传票以及请求书和证明文件。被告必须在规定期限内递交回复书，之后，法院秘书处可安排听审日期。提交答辩文件的规定期限到期后，法院会安排听审日期，当事人可亲身出庭或由持有委托书的律师代为出庭，该委托书必须是在阿曼公证人面前签署的，或者，如果一方当事人居住在国外，则该委托书必须由该当事人所在管辖区进行签署、公证、领事认证。如果一方当事人未聘请律师提交案件或需要时间聘请律师，法院可允许休庭最多两星期。

收到答辩陈述书和原告的任何反驳书后，法院会决定是否可继续审判案件，或者是

否需要指定专家。法院在审议诉求、专家报告和对方当事人的论述后即作出宣判。

对于金额超过 1000 阿曼里亚尔的判决（不包括即决法院作出的判决），可向阿曼上诉法院和最高法院提起上诉。该上诉必须在作出判决后 30 日内提出，或者如果是向最高法院上诉，在上诉法院作出判决之日起 40 日内提出。初级法院的判决必须在向上诉法院提起上诉的期限到期后才可执行，或者，如果已提起上诉，则在裁决作出之后才可执行。但是，如果是向最高法院提起上诉，则判决即使被上诉都可进行执行程序，除非被法院阻止。最高法院的判决对当事人具有约束力，但受《程序法》第 142 条和第 143 条的规限。

诉讼至最高法院的程序，可需要 18 个月至六年时间，取决于案件的复杂性以及向住所所在阿曼境外的当事人送达诉讼文书所需的程序。

#### 8. 当事人是否必须向其他当事人和法院披露相关文件？

当事人必须将其诉讼所依赖的全部文件副本提供给对方当事人。根据《证据法》，诉讼当事人可寻求法院命令，强制对方当事人提交其持有的与案件相关的文件和记录。该程序与其他普通法管辖区的证据开示程序没什么不同，并且在发生《证据法》第 20 至 21 条所述的情况时会出现该程序，即：

- (a) 法律明确规定诉讼当事人有权要求提交相关文件；或
- (b) 文件是当事人之间的共同文件（如果文件影响到双方当事人的利益或确认了双方当事人共同的责任和权利，则被视为共同文件）；或
- (c) 对方当事人诉讼的任何阶段曾依赖过该文件。

申请披露时，必须按照法院的要求提供该文件的详细说明、需要该文件的目的、对方当事人持有该文件的佐证以及需要该文件的原因。

9. 是否有涉及特权文件的规则或允许当事人不披露特定文件的任何其他规则？

阿曼法律不认可特权这一概念。《证据法》中没有任何其他允许当事人隐瞒或不披露相关文件的规则。

10. 当事人在审理之前是否交换书面证据？或是否提供口述证据？对方是否有权盘问证人？

书面证据在案件的任何庭审之前交换。所有的请求书、答辩书、反请求书和回复书必须附有诉讼当事人依赖的证明文件。

当事人和法院可根据《证据法》规定的规则和限制传唤证人提供口头证据。

《证据法》第 43 条规定，在以下情况下，可听取证人证言：(a) 获取书面证据存在物质

或道德障碍；(b) 债权人因其控制之外的原因丢失书面文件；以及 (c) 法院认为证人证言能够作为证据。根据《证据法》第 43 条，一方当事人可传唤签订合同时在场的一名人员作为证人，以此证明存在合同。诉讼当事人不得盘问证人。这是法官独有的特权。虽然法官可对案件采用审问模式，但他们很少这样做，而是由当事人自己依据证明文件说明和证明其案情。

11. 有关专家任命的规定是怎样的？是否有专家行为准则？

法院可根据当事人提出的争议的性质和技术问题的复杂性，主动地或应诉讼当事人的请求，指定一名专家。阿曼司法部备有一份专家登记簿，其中记录了从会计和工程设计等各行业选出的专家（“登记簿”）。法院认可诉讼当事人之间关于指定某一专



AL BUSAIDY, MANSOOR JAMAL & CO.  
—BARRISTERS & LEGAL CONSULTANTS—

## Mansoor J Malik

高级合伙人, Al Busaidy, Mansoor Jamal & Co.

Mansoor 是全球顶级全方位服务律师事务所 Al Busaidy, Mansoor Jamal & Co 的创始人和管理合伙人。作为一名有英国执业资格的律师，他在争议解决、阿曼

法律和其他 GCC 以及伊斯兰管辖区法律的专家咨询方面具有丰富经验。Mansoor 是一个有经验的律师团队领导人，参与过国内外重大的公法私法争议仲裁和复杂的商业诉讼，涉足行业领域极其广泛，包括银行、水电、工程建设、保险、就业和油气。他曾在国际商会国际仲裁院和伦敦国际仲裁院 (LCIA) 成功地依照 ICSID 和 UNCITRAL 规则为仲裁申请人提起请求和为被申请人进行辩护。

Mansoor 是阿曼记录在册的上诉法院仲裁员，享有在阿曼法院出庭辩护的权利，并且可在国际司法区法院的争议中担任阿曼法律界的专家证人。他是位于伦敦 Essex 街 39 号的 Stephen Tromans QC 大律师事务所和 Neil Block QC 大律师事务所的常驻律师以及林肯律师学院和国际律师公会的成员。

凭借其专业知识，Mansoor 在过去五年中曾获得钱伯斯全球授予的阿曼“最佳表现奖”，并且在主要的全球律师名录中名列前茅。

家的协议，若无协议则从登记簿中另选一名。专家会收到一份委托书，其中说明其职责范围和执行职责的条款。诉讼当事人有机会对专家的调查结果和建议提出意见和质疑。

专家在专家收费存入法院秘书处之后才有义务开始工作。如有《证据法》所述的任何原因，专家可在收到委托书后或收到诉讼当事人请求后五日内申请免除对其任命。

目前没有专家行为准则。但是，在被录入登记簿时，专家必须在上诉法院宣誓，保证专业、勤勉、诚实地履行其职责。

#### 12. 案件审理前可获得哪些临时救济？

在以下情况下，可根据《程序法》向法院申请临时扣押令：

- (a) 债权人是任何汇票或期票的持有人，债务人是保证履行票据所述义务的商人；以及
- (b) 如不给予扣押令，债权人可能会丧失其享有的权利。

申请临时扣押令时，必须提供未偿还债务以及拟扣押财产的详细信息。

审判长可批准给予临时救济，同时可附带或不附带提交担保令。扣押令必须具体说明债务金额或预估金额。法院会将扣押令通知持有该命令所涉及的动产的任何第三方，如果该扣押令涉及的是不动产，则通知相关主管机构。如果所扣押的货物易腐坏或丧失价值，法院可命令出售该货物。

关于扣押令的通知必须在 10 日内发给债务人，并且申请人也须在相同期限内提交实体请求。如未通知债务人或未提起实体程序，则命令失效。

#### 13. 申请人需要确立些什么才能成功申请此类临时救济？

债权人须按照法院要求证明，如不给予临时扣押令，被告可能会处置其资产或将其资产转移到法院管辖区之外或以其他方式进行处置，从而使债权人丧失在终审判决

作出后行使其权利或从债务人处追回其权利的机会。

#### 14. 案件审理时可获得哪些救济？

大部分救济是酌情给予的。最常见的救济为判定损失或伤害的损害赔偿金。CTL 引入的强制履行救济为合同当事方提供了一种损害赔偿请求之外的救济，适用于损害赔偿金无法充分补偿违约方违约所造成的损失或损害的情形。由于 CTL 的规定相对较新并且从未经过检验，阿曼法院如何解释和运用这些规定仍不得而知。

在一般情况下，法院会维护那些不违背法律规定的合同条款。但是，如发生根本性违约行为，法院可在考虑案件真实情况后，命令解除协议，即使合同中有规定或排除某种替代救济的条款。现行 CTL 第 167 条至第 173 条规定了可解除合同的情形（例如，不可抗力或发生特殊事件，导致一方义务过分繁重而难以履行）以及解除机制。

至于强制履行救济，这些 CTL 条款还有待阿曼法院考虑，目前尚无先例。

#### 15. 执行判决的主要方式有哪些？

阿曼法院作出的判决或仲裁裁决，或在阿曼境内和国际公约缔约国获得的民间仲裁裁决，由初级法院商事法庭负责执行。提交执行申请时，需指明判定债务人的资产。

执行判决或仲裁裁决之前，可申请扣押判定债务人的资产。除非另有其他约定或命令，法院在提前七日向判定债务人发出通知后，即可扣押判定债务人的资产，并在收到没收申请后三个月内拍卖其资产。

可针对第三方持有的资金或针对土地执行判决，土地的出售应在日报上发布恰当通知之后在法院进行。

尽管 CTL 中有关于宣布债务人破产的条款，但法院以往一直不愿意发布破产命令，除非法院认为有关当事人已尽全力获得和执行判决。

16. 胜诉方是不是一般会被判获得诉讼费用赔偿？诉讼费用如何计算？

在过去，阿曼法院只有在双方当事人之间的合同有赔偿诉讼费用规定的情况下才会判定诉讼费用。现在法院在判定诉讼费用时不会考虑合同是否有此规定。法院会评估所判定费用的总额，而非诉讼当事人请求的实际费用。一般情况下，法院会就律师费判定名义诉讼费。专家费用由法院决定，然后由要求聘任专家的一方当事人或终审判决被执行方支付。

17. 对最终判决有哪些上诉途径？当事人能够以什么理由提起上诉？

对于初级法院的判决，可向上诉法院提起上诉，对于上诉法院的裁决，可向阿曼最高法院提起上诉。最高法院的判决是不可上诉的，除非下级法院对同一案件宣判时有最高法院法官团的一位成员担任下级法院法官。

18. 是否允许律师和委托人之间存在胜诉酬金或按条件收费的安排？

根据《辩护法》第 48 条规定，禁止胜诉酬金或按条件收费的安排。

19. 是否允许第三方资助？资助人是否可分享胜诉收益？

目前无任何规定限制当事人订立第三方资助协议。因此，资助人可分享胜诉收益。

20. 诉讼当事人是否可为其诉讼费用投保？

目前无任何法律规定限制当事人为其诉讼费用投保。

21. 诉讼人是否可提起集体诉讼？如果可以，哪些规则适用于集体诉讼？

允许提起集体诉讼，但是目前没有关于提起此类诉讼的具体管辖规则。

22. 外国判决通过哪些程序予以承认和执行？

目前由阿曼初级法院根据《程序法》第 352 条至第 355 条的规定受理关于执行外国法院判决和命令的申请。初级法院如认为符合以下情况，则可发出执行外国判决或命令的命令：

(a) 根据国际司法管辖权规则，作出该外国判决或命令的司法机构具有其本国法律所规定的管辖权，并且按照该法律的规定，该判决或命令为终局性的，且不存在欺骗和欺诈；

(b) 该外国判决的诉讼当事人有被传唤出庭，并且获得了恰当和合法的法律代理服务；

(c) 该判决或命令不含任何违背阿曼法律的要求；

(d) 该判决或命令既不违反阿曼法院之前通过的判决或命令，也不含任何有违公共秩序或道德的内容；以及

(e) 作出该判决的国家根据互惠原则执行阿曼法院作出的判决。

23. 替代争议解决的主要形式是什么？

可根据第 98/2005 号皇家法令申请调解。

24. 在您所在司法管辖区有哪些主要的替代争议解决机构？

目前未设立专门的替代争议解决机构。但是，司法部成立了一个专门委员会，该委员会有权在争议当事人提出申请时根据第 98/2005 号皇家法令执行和解程序。阿曼法律不强制要求争议当事人在提起诉讼之前协商或调解争议事项。

25. 在诉讼过程中诉讼人是否必须尝试替代争议解决办法？

不需要。初级法院可在首次听审争议事项时询问当事人和解是否可行。如果不可行，法官会继续审理案件。争议当事人可将其争议提交给司法部下辖的和解委员会，由



该委员会根据第 98/2005 号皇家法令予以解决。

26. 当前是否有改革争议解决法律法规的建议在审议中？  
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没有。

27. 关于您所在司法管辖区或者亚洲地区的争议解决，是否有任何特殊情况需加以强调？  
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没有。

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