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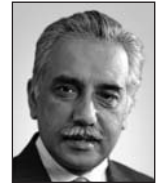
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Oman

Mansoor Jamal Malik



Jehanzeb Afridi



Al Busaidy, Mansoor Jamal & Co.

1 Making Construction Projects

- 1.1 What are the standard types of construction contract in your jurisdiction? Do you have contracts which place both design and construction obligations upon contractors? If so, please describe the types of contract. Please also describe any forms of design-only contract common in your jurisdiction. Do you have any arrangement known as management contracting, with one main managing contractor and with the construction work done by a series of package contractors? (NB For ease of reference throughout the chapter, we refer to “construction contracts” as an abbreviation for construction and engineering contracts.)**

Whilst it is not mandatory as a matter of Omani law, construction contracts for building and civil engineering works in the Sultanate of Oman are based on the third edition (the “**Third Edition**”) of the Omani Standard Documents for Building and Civil Engineering Works (the “**Standard Form Contract**”) issued by the Ministry of Legal Affairs (“**MOLA**”), although the fourth edition issued in 1999 (the “**Fourth Edition**”) is also frequently used. MOLA is in the process of finalising and issuing a fifth edition of the Standard Form Contract which is to be modelled on the *Fédération Internationale des Ingénieurs-Conseils* (“**FIDIC**”). MOLA has also issued the Standard Documents for Electrical and Mechanical Works 1987 (the “**E&M Contract**”). Whilst the above forms of construction and E&M contracts are used by government bodies, private sector entities are at liberty to negotiate their own contract terms and conditions subject to the applicable laws of Oman.

The contractor’s express obligation in the Standard Form Contract is only to build. There is no express obligation imposed on the contractor to design, although this is not expressly excluded. There is no standard form of construction management contract but should parties wish to enter into contractual arrangements which provide for management contracting this would be permitted as a matter of law.

It is not permissible for both engineering and construction activities to be carried on by the same entity as may be the case in other jurisdictions. Notwithstanding, with regard to large infrastructure projects EPC contracts entered into with a single EPC contractor would assume the functions of engagement, design and construction. Generally, for the provision of engineering services in Oman an entity must be registered in accordance with the Engineering Consultancy Law, Royal Decree 120/94 (the “**Engineering Law**”). Therefore many design and build contracts are split between two separate entities. An employer may appoint a single party to design and build a project, who may in turn subcontract the building works to an independent contractor (often a related entity) or appoint a contractor

who will in turn subcontract the design and engineering works to a subcontractor. Responsibility for any liability under the EPC contract would be assumed by the principal contractor.

Whilst the Standard Form Contract and the E&M Contract are widely used by government entities, it is not mandatory under Omani law to use the aforementioned contracts and parties are free to agree to their own terms. It is not uncommon for parties to adopt internationally recognised standard form construction contracts such as the FIDIC suite of documents, or to base their arrangements on such international standard form contracts.

- 1.2 Are there either any legally essential qualities needed to create a legally binding contract (e.g. in common law jurisdictions, offer, acceptance, consideration and intention to create legal relations), or any specific requirements which need to be included in a construction contract (e.g. provision for adjudication or any need for the contract to be evidenced in writing)?**

The law applicable to the formation of contracts is codified in the Oman Commercial Code Royal Decree 55/90 (the “**Code**”) and the recently adopted Civil Transactions Law, Royal Decree 27/2013, (the “**Transaction Law**”). The Code provides that a contract may be inferred by the mere congruence of offer and acceptance. Whilst the contract may be entered into in writing through the exchange of correspondence, its existence may also be inferred from the conduct of the parties. Article 628 of the Transaction Law has provided for construction contracts to include the following:

- (i) location of the site where the work is to be performed;
- (ii) specifications for the development;
- (iii) the type of development;
- (iv) the value of the development;
- (v) the method of performance;
- (vi) the time for performance/completion; and
- (vii) the consideration.

- 1.3 In your jurisdiction please identify whether there is a concept of what is known as a “letter of intent”, in which an employer can give either a legally binding or non-legally binding indication of willingness either to enter into a contract later or to commit itself to meet certain costs to be incurred by the contractor whether or not a full contract is ever concluded.**

Whilst the concept of a Letter of Intent (“**LOI**”) is not provided for specifically by Omani law, the concept is recognised in practice. An LOI may be considered binding if it contains the features

necessary for constituting a contract under Omani law (i.e. offer and acceptance). It is common practice for an LOI to specify that it is intended by the parties to be non-binding and shall remain subject to the parties thereto entering into a formal contract.

1.4 Are there any statutory or standard types of insurance which it would be commonplace or compulsory to have in place when carrying out construction work? For example, is there employer's liability insurance for contractors in respect of death and personal injury, or is there a requirement for the contractor to have contractors all risk insurance?

Typically there are no standard insurance policies specifically applicable only to the construction industry. The following policies may be considered mandatory for the purposes of a construction contract:

- (i) third party liability insurance;
- (ii) workman's compensation insurance;
- (iii) vehicle insurance; and
- (iv) professional liability insurance.

It is standard practice for construction contracts to contain:

- (i) commercial general and umbrella liability insurance (including third party liability);
- (ii) commercial auto insurance for third party property damage;
- (iii) workers' compensation: company's liability/workers' compensation insurance;
- (iv) insurance to cover loss or damage to the property for its full replacement value; and
- (v) professional liability insurance (for design contracts).

1.5 Are there any statutory requirements in relation to construction contracts in terms of: (a) general requirements; (b) labour (i.e. the legal status of those working on site as employees or as self-employed sub-contractors); (c) tax (payment of income tax of employees); or (d) health and safety?

(a) General requirements

In accordance with the Engineering Law, where the engineer has both undertaken design of a building and provided supervision services, the engineer and the contractor will be jointly liable for any defect(s) that might affect the structure and/or safety of a building for a period of 10 years from the date of handover. Such liability may only be limited if the proposed life span of the building is less than 10 years.

(b) Labour (legal status)

- (i) All employees must be registered with the Ministry of Manpower.
- (ii) All Omani nationals must be registered with the Public Authority for Social Insurance ("PASI").
- (iii) All expatriate/foreign employees must be legally permitted to work in Oman pursuant to obtaining a labour clearance/work permit from the Ministry of Manpower and may only be employed subject to the applicable minimum Omanisation requirement (Omanisation is a legal requirement to ensure the employment of a certain number of Omanis).

(c) Tax (payment of income tax for employees)

There is no income tax payable by employees. The employer is responsible for making a social insurance payments contribution to PASI equal to 10.5% of an Omani employee's salary, in addition to the contribution to be made directly by the employee. With regard to expatriate employees the employer must, in accordance with the Oman Labour Law

Royal Decree 35/03 ("OLL"), pay an end-of-service benefit to the employee upon the completion of his term of employment, as provided for by Article 39 of the OLL.

(d) Health and safety

The OLL imposes health and safety ("HSE") obligations on an employer which require an employer to ensure safe working conditions for employees. Further HSE requirements are set out in Ministerial Decision 686/2008, which sets out in more detail the HSE standards to be adopted by an employer.

Whilst the above statutory obligations are not necessarily required to be adopted in a construction contract, 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 labour employed on construction projects. Any contractual provisions seeking to limit the liability of the contractor and/or the employer when required by law will be null and void.

1.6 Is the employer legally permitted to retain part of the purchase price for the works as a retention to be released either in whole or in part when: (a) the works are substantially complete; and/or (b) any agreed defects liability is complete?

Omani law imposes no restrictions on employers from retaining part of the purchase price until the completion of a designated construction milestone or specified time limit such as the expiry of the defects liability period. It is common practice for payment schedules in a construction contract to provide for specified amounts to be retained from each milestone payment to be made which pays 5% to 10% of the contract price until expiry of the defects liability period.

1.7 Is it permissible/common for there to be performance bonds (provided by banks and others) to guarantee performance, and/or company guarantees provided to guarantee the performance of subsidiary companies? Are there any restrictions on the nature of such bonds and guarantees?

It is permissible and common practice for construction contracts to provide for the obligation to make available performance bonds for the duration of the contract and advance payment guarantees, if any advance payments or mobilisation payments are made by an employer. The Standard Form Contract requires the contractor to provide a performance bond to the employer equal to 5% of the contract value. Article 44 of the Oman Tender Law also requires bodies to whom the Tender Law is applicable to obtain a performance bond equal to 5% of the contract price.

1.8 Is it possible and/or usual for contractors to have retention of title rights in relation to goods and supplies used in the works? Is it permissible for contractors to claim that until they have been paid they retain title and the right to remove goods and materials supplied from the site?

Article 633 of the Transaction Law permits contractors to provide for the retention of their rights of ownership over equipment/materials supplied, in the event that the contractor has completed all or part of the works and has not been paid in accordance with agreed terms. Such retention of right of ownership appears to be permitted on the basis of work completed by the contractor in accordance with the construction contract. Article 633 of the Transaction Law goes on to state 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. *It is unclear from the wording of the Law whether such right of seizure would apply to immovable assets such as plant and buildings in the form over a lien or other such right.* Although there exists case law to suggest that in case of the contractor not being paid for the work undertaken by it, which may have resulted in the enhancement of value of the property, it may have the right to claim against the property notwithstanding that security interests may have been created and registered over the property in favour of lenders.

2 Supervising Construction Contracts

2.1 Is it common for construction contracts to be suspended on behalf of the employer by a third party? Does any such third party (e.g. an engineer or architect) have a duty to act impartially between contractor and employer? Is that duty absolute or is it only one which exists in certain situations? If so, please identify when the architect/engineer must act impartially.

Generally the rights and remedies a third party engineer/architect may have with respect to a construction contract will need to be provided for by the construction contract. The Standard Form Contracts contain provisions that enable the engineer to suspend the works by giving a written order to the contractor. An engineer is prohibited from issuing any order that may increase the contract price or the contract value without first obtaining the permission of the employer. The authority of the engineer or any third party representative of the employer will normally be specified in the construction contract or made pursuant to the written orders of the employer, in accordance with the construction contract, e.g. the authority of the engineer or a third party to suspend all or part of the works.

It is not uncommon for construction contracts to make provisions that authorise the engineer to make decisions in respect of any ambiguities in the construction contract, the role of the contractor and/or any disagreement between a contractor and an employer. In such a case an engineer will be required to act impartially between the employer and the contractor.

2.2 Are employers entitled to provide in the contract that they will pay the contractor when they, the employer, have themselves been paid; i.e. can the employer include in the contract what is known as a “pay when paid” clause?

Omani law imposes no restrictions on the payment terms to be mutually agreed between the parties and adopted in a construction contract. It is not uncommon to include such a provision in construction contracts in Oman. Consequently, should the parties agree to a “pay when paid” clause this should be enforceable between the parties.

2.3 Are the parties permitted to agree in advance a fixed sum (known as liquidated damages) which will be paid by the contractor to the employer in the event of particular breaches, e.g. liquidated damages for late completion? If such arrangements are permitted, are there any restrictions on what can be agreed? E.g. does the sum to be paid have to be a genuine pre-estimate of loss, or can the contractor be bound to pay a sum which is wholly unrelated to the amount of financial loss suffered?

Construction contracts may provide for the payment of liquidated damages, although if the sum fixed is classified by the Omani

Courts as a penalty this is unlikely to be recoverable whilst, if stated to be liquidated damages, if seen to be a reasonable assessment of the likely damages to be suffered by a party in the given circumstances, then such sum should be recoverable.

The maximum liability clause should be enforceable provided that the damages claimed, in the Court’s view, are a reasonable assessment of the actual damage suffered and provided that such damages are direct and have resulted from the fault of the defendant. Whilst this approach had been commonly adopted by the Omani Court historically, it has now been codified in the form of Article 267 of the Transaction Law.

3 Common Issues on Construction Contracts

3.1 Is the employer entitled to vary the works to be done under the contract? Is there any limit on that right?

The Transaction Law permits the employer to make variations to the works to be completed pursuant to a construction contract, provided that the contract price is reviewed and, where necessary, revised accordingly.

Under the Standard Form Contract the engineer is authorised to represent the employer. Consequently any orders of the engineer which may increase the contract price will require the express consent of the employer.

The Standard Form Contract permits the engineer to order variations that:

- (i) increase or decrease the quantity of any work included in the contract;
- (ii) omit any such work;
- (iii) change the character or quality of any such work;
- (iv) change the levels, lines position and dimensions of any part of the works; and
- (v) execute additional work of any kind necessary for the completion of the works.

All variations are to be taken into account in ascertaining the contract price payable to a contractor. The contract itself will invariably provide for the mechanism to be adopted by the contractor incurring the variation costs.

3.2 Can work be omitted from the contract? If it is omitted, can the employer do it himself or get a third party to do it?

Please see our response to question 3.1 above.

3.3 Are there terms which will/can be implied into a construction contract?

Certain provisions that are mandatory by law will be implied into a construction contract; even if not expressly provided for, these may include the following:

- (i) Decennial liability for the structural integrity of the building (at least 10 years from the date of handover unless the intended life span of the building is less).
- (ii) A standard of professional skill and care for engineers.
- (iii) Compliance with Omani law.
- (iv) The engineer’s obligation to act impartially.
- (v) The employer’s obligation to ensure due compliance with all provisions of Omani law with respect to the contract.
- (vi) The obligation to increase the Omani employees’ salaries.

- (vii) If any general terms e.g. price and time for completion are not provided for in a construction contract, the customs and practices applicable in the Sultanate of Oman will be applied. Should a dispute in this respect be referred to the Omani Courts, the Omani Courts would appoint an expert to determine a reasonable estimate of the price payable or time to be allocated in accordance with Omani customs and practices for the performance of similar works.
- (viii) The soundness of the structure of the building.

3.4 If the contractor is delayed by two events, one the fault of the contractor and one the fault or risk of his employer, is the contractor entitled to: (a) an extension of time; or (b) the costs occasioned by that concurrent delay?

In such a scenario the contractor would, subject to the terms of the construction contract, only be able to claim additional costs and an extension of time for the delay that is caused by or is the burden of the employer (as per the construction contract).

Any delays caused by the contractor may entitle the employer to raise a claim against the contractor (subject to the terms of the construction contract). In making any assessment for extension on time for completion and/or payment of damages or additional costs, the engineer will need to consider all contributing factors attributable to the employer and/or the engineer.

3.5 If the contractor has allowed in his programme a period of time (known as the float) to allow for his own delays but the employer uses up that period by, for example, a variation, is the contractor subsequently entitled to an extension of time if he is then delayed after this float is used up?

Generally a contractor may request from the engineer an extension of time where an event occurs which is outside of the contractor's control, i.e. where an employer's risk event occurs or a variation order has been issued by or on behalf of the employer and the additional work requires an extension of time to be granted. If the additional work or delays caused by the contractor will result in the contractor not being able to complete the works within the time period provided inclusive of the floatation time, no extension may be granted. Should the additional work fall outside the original scope of the project and, as such, reasonably be expected to cause delays to the completion of the project, then the contractor may seek an extension of time.

The parties are not prevented from including specific provisions in a construction contract that expressly provide for the grant of an extension of time beyond the agreed programme notwithstanding the inclusion of the float, provided that such right is clearly defined in the construction contract.

3.6 Is there a limit in time beyond which the parties to a construction contract may no longer bring claims against each other? How long is that period and from what date does time start to run?

Where the engineer has been responsible for design and supervision, he shall be jointly liable with the contractor for the occurrence of any mistake and defects in the property even if the defects occur due to the condition of the land on which the project is constructed or where the employer had earlier allowed for the defective works to be carried out. Both Article 16 of the Engineering Law and Article 637 of the Transaction Law provide that the 10-year guarantee/warranty provided for above, shall be invalidated upon the expiry of three years from the date on which the defect is discovered and no action has been taken.

Subject to the above pursuant to the Transaction Law, the limitation period for raising a claim for the nullity of a contract is 15 years from the date of the contract.

The limitation period for an engineer to raise a claim for payments due to him is five years from the date on which the payment was due.

3.7 Who normally bears the risk of unforeseen ground conditions?

With regard to unforeseen ground conditions, Article 16 of the Engineering Law places strict liability on the contractor and the engineer, where the engineer has been responsible for the design and supervision of the construction works. It is the responsibility of the engineer/contractor to ensure the suitability of the ground condition prior to the commencement of the construction works.

3.8 Who usually bears the risk of a change in law affecting the completion of the works?

Generally the employer will bear the risks associated with a change of law unless the contract provides otherwise.

3.9 Who usually owns the intellectual property in relation to the design and operation of the property?

Unless otherwise expressly agreed to between the parties, all intellectual property rights in relation to the design of the property vest with the engineer.

3.10 Is the contractor ever entitled to suspend works?

Neither Omani law nor the Standard Form Contract provide for the contractor's right to suspend works. However there are no express restrictions contained in Omani law that would prohibit such right from being built into a construction contract.

3.11 On what grounds can a contract be terminated? Are there any grounds which automatically or usually entitle the innocent party to terminate the contract? Do those termination rights need to be set out expressly?

According to the Transaction Law a construction contract may be terminated for the following reasons:

- (i) mutual consent;
- (ii) order of the Omani Court; and
- (iii) an employer may terminate the construction contract if it is discovered, subsequent to having been provided with an estimate, that the agreed designs cannot be completed without the addition of materials which may increase the contract price and the employer cannot afford such an increase to the contract price.

According to the Standard Form Contract the construction contract may be terminated for the following reasons:

- (i) by the employer due to a special risk event (war, hostilities, etc.) at any time;
- (ii) by either party if prevented from fulfilling their obligations as a result of circumstances outside of their control (war, hostilities, etc.);
- (iii) by the employer if the contractor offers, gives or agrees to give any bribe or consideration of any kind in exchange for obtaining or execution of the contract; and

- (iv) the contractor may treat the contract as abandoned if the employer suspends the construction contract for a period exceeding 90 days.

The Omani Courts would have the right to approve the termination of a contract where a party has committed what it considers to be a material breach of contract, even if the contract is silent with regard to such grounds for termination.

3.12 Is the concept of *force majeure* or frustration known in your jurisdiction? What remedy does this give the injured party? Is it usual/possible to argue successfully that a contract which has become uneconomic is grounds for a claim for *force majeure*?

Whilst the concept of *force majeure* is recognised under Omani law, Omani law does not provide a specific definition of what may constitute a *force majeure* event. *Force majeure* has been referred to in the Transaction Law and has been cited in several cases. According to the Transaction Law a contract may 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 his obligations under the contract for reasons outside of his control and which could not have reasonably been foreseen by the party asserting the occurrence of *force majeure*. 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.

The Omani Courts would recognise circumstances which frustrate the performance of a contract.

3.13 Are parties which are not parties to the contract entitled to claim the benefit of any contract right which is made for their benefit? E.g. is the second or subsequent owner of a building able to claim against the original contracts in relation to defects in the building?

According to customs and practices prevalent in the Sultanate of Oman, a contractor will be responsible for any defects to a property for a period of one year from the date of handover. This would, in our view, extend to any subsequent buyers of the property. Construction contracts do expressly provide for the right of the original employer under contract, to be transferable.

3.14 Can one party (P1) to a construction contract which owes money to the other (P2) set off against the sums due to P2 the sums P2 owes to P1? Are there any limits on the rights of set-off?

There are no restrictions contained in Omani law that would prevent parties from mutually agreeing to set off sums due to one another on mutually agreed terms.

3.15 Do parties to construction contracts owe a duty of care to each other either in contract or under any other legal doctrine?

Whilst no specific provisions relating to duty of care are provided for by Omani law in relation to construction contracts, the concept of duty of care is recognised in practice and woven into the various provisions of the Code, the Transaction Law and the Engineering Law that would apply.

The Omani Courts will consider whether the offending party has performed an obligation with the duty of care that would be expected from a reasonable person in similar circumstances or a professional acting within the scope of his duties.

The Engineering Law expressly provides that an engineer must perform his tasks with all due professional skill and care.

The Standard Form Contract requires the contractor to perform his duties with all reasonable skill and care.

The term “reasonable skill and care” remains subjective and, if a dispute is referred to the Omani Court, will be subject to the Court’s discretion. The Omani Court in such instances appoints technical experts to determine whether a contractor has executed the works with the reasonable skill and care that would be expected from a contractor executing similar works.

3.16 Where the terms of a construction contract are ambiguous are there rules which will settle how that ambiguity is interpreted?

Whilst there are no specific rules of interpretation applicable to construction contracts, the Code and the Transaction Law provide that:

- (i) if the wording of a contract is clear, it is not permissible to divert from its clear meaning in order to ascertain the intentions of the parties to the contract;
- (ii) in the event of ambiguity, clauses will be interpreted in accordance with the common intention of the parties without regard to the literal meaning of the wording incorporated;
- (iii) any ambiguity is to be interpreted in favour of the obligor;
- (iv) any ambiguity in a submission contract is to be interpreted in favour of the submissive party; and
- (v) the Primary Commercial Court will generally consider the following matters when interpreting commercial contracts:
 - (a) the terms of the contract;
 - (b) legislative provisions;
 - (c) rules of custom and practice; and
 - (d) the provisions of Islamic *Shariah*.

Subject to possible application of the basic law of Oman, only in the absence of provisions (a), (b) and (c) above would the provisions of Islamic *Shariah* be considered in any dispute before the Omani Court.

3.17 Are there any terms in a construction contract which are unenforceable?

Any terms that are contrary to public morals, Omani law or *Shariah* Law shall be considered void.

Any terms that seek to limit a right otherwise required by Omani law to be made available to a party, shall be deemed void, e.g. any clause that seeks to limit decennial liability and/or statutory limitation periods.

3.18 Where the construction contract involves an element of design and/or the contract is one for design only, are the designer’s obligations absolute or are there limits on the extent of his liability? In particular, does the designer have to give an absolute guarantee in respect of his work?

According to Article 16 of the Engineering Law, where the engineer has prepared the design and assumed responsibility for supervision

of the construction, he will be absolutely liable, jointly with the contractor, for any mistake and any defects in the building. Where the engineer's role has been confined to the preparation of design drawings only, without supervision of the construction, he shall only be responsible for such defects as shall be proven to have been caused by his defective design.

4 Dispute Resolution

4.1 How are disputes generally resolved?

Construction contracts may provide for the resolution of disputes by a third party expert, the engineer and, if their rulings will not be acceptable to any the parties, then for the matter to be referred to the Omani Courts unless the contract stipulates otherwise.

Where a construction contract is silent in respect of the dispute resolution process, any disputes arising between the parties may be referred to the jurisdiction of the Omani Courts. Indeed, the Omani Courts may also assume jurisdiction over a contractual dispute, despite a contract providing for a foreign jurisdiction, if the contract is required to be performed in the Sultanate of Oman.

The Omani Court shall not assume jurisdiction over a dispute where the parties to a construction contract have otherwise agreed to refer any disputes to arbitration.

4.2 Do you have adjudication processes in your jurisdiction? If so, please describe the general procedures.

Any disputes being referred to the Omani Court will be so referred according to the terms pertaining to dispute resolution contained in the construction contract. Subject to any preceding formalities required by the construction contract having been complied with, e.g. good faith negotiations, notice periods, etc., and subject to the contract not providing for the resolution of disputes through arbitration, a dispute may be filed for adjudication with the Omani Court.

Disputes up to a monetary value of 70,000 Omani Rials will be heard by a single judge any disputes involving a monetary value above 70,000 Omani Rials shall 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 will generally be made in writing; there is a very limited verbal element to the proceedings. Once the plaintiff has filed the suit with the Omani Court, the Court will summon the parties to the Court for the first hearing within four to six weeks.

The next stage will permit the respondent to prepare a statement of defence. Once both parties have made all the necessary submissions to the Omani Court (including witness statements, etc.) and the Court has heard the parties and referred any expert reports directed by it for the determination of any technical issues, it will pass its 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.

4.3 Do your construction contracts commonly have arbitration clauses? If so, please explain how arbitration works in your jurisdiction.

It is common for construction contracts to provide for any disputes to be resolved by arbitration.

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.

Generally the seat of arbitration is Oman and the procedure governing the proceedings will be as set out in the OAL, however the parties are free to agree to any alternative venue for the arbitration proceedings and for the proceedings to be governed by alternative arbitration rules, e.g. the International Chamber of Commerce ("ICC") Rules, and a foreign governing law.

4.4 Where the contract provides for international arbitration do your jurisdiction's courts recognise and enforce international arbitration awards? Please advise of any obstacles to enforcement.

It is permissible for parties to a construction contract to agree to hold arbitration proceedings in a foreign jurisdiction. It may be noted that Oman is a signatory to the 1958 New York Convention on the recognition and enforcement of foreign arbitral awards (the "Convention"). To our knowledge, no foreign arbitral award (other than an arbitral award awarded by a Gulf Cooperation Council ("GCC") country) has as yet been enforced by the Omani Courts on the basis of Oman being a Contracting State (as defined in the Convention). Enforcement of judgments obtained before the Omani Courts, of arbitration awards where the arbitration was conducted before the Omani Courts, or of a private arbitration award obtained in Oman and theoretically from a contracting state, is undertaken by the commercial division of the Courts of First Instance, to whom application for enforcement must be submitted.

4.5 Where the contract provides for court proceedings in a foreign country, will the judgment of that foreign court be upheld and enforced in your jurisdiction?

Under Articles 352 to 355 of the Civil and Commercial Procedure Law, applications may be submitted to the Courts of First Instance in Oman for enforcement of judgments and orders passed by foreign courts. An order for execution of a foreign judgment or order shall not be passed by the Primary Commercial Court unless the Court is satisfied that:

- (i) the judicial authority which passed the foreign judgment or order had jurisdiction, in accordance with the rules governing international judicial jurisdictions, as provided for in the law of the country where the judgment or order was passed, and 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;
- (ii) 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;
- (iii) the judgment or order does not contain any request which is essentially in violation of any of the laws prevailing in the Sultanate of Oman;
- (iv) the judgment or order is neither in conflict with a judgment or order passed earlier by a court in the Sultanate of Oman, nor does it contain anything which is against public order or morals; and
- (v) the country where the judgment was passed accepts for execution the judgments passed by the courts of the Sultanate of Oman, in its territory.

Despite the introduction of the Decree referred to above, it is not possible to state with certainty whether a judgment obtained in a foreign court including the courts of England and Wales in respect of any of the Loan Agreement would be recognised and enforced by the Primary Commercial Court. To our knowledge, no judgment of a non-Omani court has ever been enforced in the Sultanate of Oman by the Primary Commercial Court. Notwithstanding the contents of Royal Decree No. 29/2002, we are of the opinion that, in the absence of specific Omani legislation in the future permitting registration and recognition of foreign judgments, a foreign judgment would be of evidentiary value only in full hearing before the Primary Commercial Court and the matter may have to be litigated *de novo* before the Primary Commercial Court.

4.6 Where a contract provides for court proceedings in your jurisdiction, please outline the process adopted, any rights of appeal and a general assessment of how long proceedings are likely to take to reduce: (a) a decision by the court of first jurisdiction; and (b) a decision by the final court of appeal.

Please see our response to question 4.2 above.

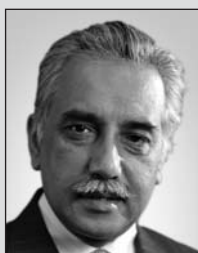
A judgment from the Primary Commercial Court may be obtained within four to 12 months depending on the number of hearings required by the parties and the time required by an independent expert (if appointed).

A Primary Court judgment may be appealed before the Appeals Court within 30 days of being passed.

The fees for filing a case with the Appeals Court is 2% of the value claimed. The first hearing may take place within six weeks of filing the statement of appeal. The number of hearings will depend on the number of submissions being made to the Court, the complexity of the case and the engagement of expert witnesses; the Appeals Court has the right to consider all claims in the case.

The proceedings before the Appeals Court may be concluded within four to 12 months depending on the complexity of the case.

A judgment of the Appeals Court may be appealed within 40 days of the judgment being passed by the Supreme Court, as a matter of law only and not as an issue of fact.



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Al Busaidy, Mansoor Jamal & Co. ("AMJ") is a top-tier, full-service business law firm in Oman serving a large portfolio of international and regional corporates, financial institutions, government bodies and high net worth individuals. The firm is globally ranked for its corporate/commercial, banking and finance and dispute resolution practices. Seven teams of in-house, multi-lingual, international lawyers and Omani advocates provide quality, cost-effective legal advice and practical insights across a diverse range of commercial transactions, agreements, laws and regulatory frameworks in the water and power, oil and gas and infrastructure sectors, and in privatisation, banking, mergers and acquisitions and capital markets. AMJ's professionals combine cross-border expertise with an in-depth understanding of Oman's business and legal environment, derived from the firm's long-standing presence in the market and involvement in landmark projects and legal developments such as public-private partnerships, privatisations and the restructuring of key economic sectors.

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