



Dispute Resolution Guide **2015**

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A primer in local litigation

Mansoor Malik and **Majda Al Riyami** from **Al Busaidy Mansoor Jamal & Co** answer key questions on Omani dispute resolution procedures

Provide a brief overview of the Oman's commercial court hierarchy, and each level's jurisdiction.

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

There are three types of jurisdiction before the Omani court. First, international jurisdiction. In general, the commercial courts of Oman have jurisdiction in any case in which the defendant has expressly or impliedly accepted the jurisdiction of the Omani courts.

Second, value jurisdiction. If the value of a claim is less than OR70,000 (\$182,000), a single judge bench of the Primary Commercial Court of First Instance will decide on the case. The judgment passed will be final. If the claim is for more than OR70,000, then a bench of three judges of the Court of First Instance will be competent to decide on such case and cases relating to insolvency, liquidation of companies, insurance claims, disputes between brokers in securities and intellectual property and patents.

While judges are at liberty to take an inquisitorial approach to cases, they seldom do so

Third, local jurisdiction. Generally, and unless otherwise provided for by law, the court within the precinct in which the defendant is domiciled has jurisdiction.

The Omani courts are competent to hear all civil and commercial matters, labour, tax and rent cases in addition to arbitration applications filed before them, save in respect to immovable property situated outside Oman. Specialist courts have been established for consideration of specific matters. These courts are: the Commercial Court; the Magistrates Court; the Sharia Court; and, the Administrative Court.

The Commercial Court has jurisdiction to hear all labour disputes in addition to commercial matters. Any case in which the Primary Commercial Court of First Instance has passed its judgment will be appealable within a period of 30 days from the date of service of judgment, provided the amount decreed is in excess of OR20,000 and the judgment has been passed by a panel of three judges.

The Magistrates Court deals solely with criminal offences. Proceedings are invariably initiated by the Royal Oman Police and followed through by the Public Prosecution Department, which independently decides on whether or not to refer the case to the Magistrates Court for prosecution.

The Sharia Court has jurisdiction over all civil and family matters. There are approximately 26 Sharia Courts in Oman, one in each *wilayat*. All judgments of the Sharia Court are appealable and no registration fee is payable for commencement of proceedings before these courts.

The Administrative Law, issued at the same time as the Judicial Authority Law, provided for the establishment of an Administrative Court. The Administrative Court is an independent judicial body with exclusive powers to review decisions issued by Government bodies.

Explain the role of the judge in commercial court proceedings (ie do they formally decide on issues of law and fact, do they take an inquisitorial approach to cases?).

The judges are competent to decide on all issues of facts and law relevant to the matter brought before them in accordance with the applicable laws of the Sultanate of Oman including but not limited to laws of procedure. When adjudicating on cases brought before them, the judges must, in accordance with the Commercial Code of Oman RD 55/90 and the Civil Transactions Law RD 29/2013 (CTL) set out the rules governing the rights and obligations of contracting parties. The Primary Commercial Court, when considering any contractual disputes brought before it, will consider the contract between the disputing parties (provided that it does not conflict with any law or public policy) and also consider general principles which establish justice between litigants and lead to certainty in commercial transactions. The Primary Commercial Court considers the following matters when interpreting commercial contracts: (i) contract terms; (ii) legislative provisions; (iii) rules of custom and practice; and (iv) provisions of Sharia (Islamic) law.

Subject to possible application of the Basic Law of Oman, the provisions of Sharia law would be considered by the court only in the absence of (i), (ii) and (iii).

Under article 1 of the CTL, in the absence of applicable law, the Omani court is required to decide disputed matters brought before it in accordance with the general principles of Sharia law or else the prevailing customs. Given that the Commercial Code itself addresses the interpretation of contracts, and expressly provides for the relevant practice to be considered when interpreting contracts between merchants, in our view, the judges of the Primary Commercial Court will allow the provisions of the Commercial Code to prevail over the conflicting provisions, if any, of the CTL.

Depending on the nature of a dispute and complexity of the technical issues raised by the parties, the courts may appoint a court-registered expert. Experts are chosen from a range of professions such as accounting and engineering. The court will provide the expert with a mandate based on which he is to prepare a report. The litigants will be given an opportunity to comment on and challenge the expert's findings and recommendations.

Whilst 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 their documentary evidence.

Explain the time line and procedures for court cases regarding commercial disputes.

Article 92 of the Commercial Code 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 another applicable law provides for a shorter period.

The plaintiff will need to file a statement of claim in Arabic. Any supporting documents in a foreign language are required to be translated into Arabic by a licensed translator in accordance with article 27 of the Civil and Commercial Procedures Law RD 29/2002 (Civil Procedure Law). The plaintiff will need to provide the court with the requisite number of copies of the statement of claim and supporting documents, for service of summons on each defendant. The statement of claim must include the defendant's location and residence if an individual, or corporate head office if a company, so that for service of the summons physically on the defendant. The court does not serve summons to postal addresses.

The Primary Commercial Court filing fee is two percent of the claim amount, with a minimum of OR30 up to a maximum of OR3000. A similar fee will be payable when appealing a judgment of the lower court before the Appeal Court. The fee for an appeal to the Supreme Court is OR50. Upon payment of the fees, the court clerk will set a date for the first hearing within three weeks of the date of filing the claim.

Court fees for registration of a case before the Primary Commercial Court and the Appeal Court as well as other fees, such as those paid to a court-appointed expert or auctioneer, and enforcement fees, will be recoverable from the unsuccessful party. Courts in Oman do not allow for recovery of lawyers' fees in proceedings as a matter of right. The courts will uphold a contractual agreement between the parties to recover a specific sum in respect of lawyers' and attorneys' fees.

The introduction of Islamic finance in Oman has had no impact on the dispute resolution process

In cases involving only principles of law and where the commercial issues are reasonably clear, typically it may take up to a year for the case to reach a conclusion, inclusive of the period of appeal. However, the timeline for conclusion of a case is likely to take longer if service of the summons or judgment proves difficult or the disputed matter is of a technical nature requiring the appointment of an expert by the court, or is subject to one or more appeal. A commercial case, if appealed all the way to Supreme Court, can typically take two to four years to obtain final judgment.

How efficient are local court proceedings and local enforcement?

With the introduction of the Civil Procedure Law, Evidence Law and the establishment of the Supreme Court, court proceedings and enforcement processes in Oman have become much more efficient. Prior to this, enforcement of judgments could be a prolonged process.

Are there any procedural idiosyncrasies that foreign investors must be aware of?

To file a case with the Omani courts, the company or the individual will need to provide their Omani lawyer with a notarised and attested power of attorney (POA) on the basis of which the lawyer is authorised to represent them. In the case of a foreign claimant, the POA must be attested by the Ministry of Foreign Affairs and consularised by the Omani Embassy in the foreign claimant's place of domicile.

Although the Omani courts have confirmed their willingness to pass judgments for a foreign currency amount, claims filed before the courts must state any monetary amounts claimed in Omani *rials*. Where the amount to be claimed is in excess of OR5000, the claimant will need to be represented by a lawyer. As noted above, all documents and statements of claim are required to be submitted in Arabic. Unlike in other jurisdictions, court hearings are typically of short duration as cases are invariably decided on the basis of documentary evidence submitted by the parties and reports prepared by court-appointed experts. Witnesses are rarely called for examination-in-chief or cross-examination.

How extensive are the parties' discovery and disclosure obligations both pre-trial and during proceedings?

The Law of Evidence in Civil and Commercial Transactions RD 68/2008 (Evidence Law) provides for a party's right to seek a discovery or disclosure of documents and records relevant in the disputed matter in accordance with the procedures set out in articles 20 – 21 of the Evidence Law. These articles primarily allow a litigant to seek an order from the court directing his opponent to disclose relevant documents in the case in the following circumstances: (i) where the law expressly entitles a litigant to request the submission of the relevant documents; or (ii) 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 (iii) if the opponent has relied upon the document at any stage of the proceedings.

The application for the disclosure must provide 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 for which the document is required to be disclosed. If the court is satisfied with the application it will order release of the documents.

Have there been any other recent reforms regarding the court system or enforcement?

Whilst there have not been any recent reforms with regard to the court system in Oman, the Ministry of Justice has recently developed and established courts in additional regions of the Sultanate to facilitate the rendering of judgments more efficiently and expeditiously and to reduce pressure on the courts in larger cities.

Has the introduction of Islamic finance in 2012 had any effect on dispute resolution in Oman?

The introduction of Islamic finance in Oman has had no impact on the dispute resolution process.

How common is alternative dispute resolution, including arbitration and mediation, and must parties try resolving their dispute in one of these forums before commencing litigation?

There is no obligation under Omani law requiring disputing parties to negotiate or seek mediation in a disputed matter before commencing litigation. Parties who wish to reach an amicable settlement of a dispute may refer it to the Primary Court's dispute settlement department but this is not a compulsory procedure.

The parties may contractually agree to have their disputes resolved through arbitration or by other means without the involvement of the Omani courts or prior to proceeding with the filing of a claim before the Omani courts. If a contract between two parties provides for dispute resolution by arbitration only, then the parties will be obliged to refer the disputed matter to arbitration and the Omani courts will not accept jurisdiction unless the parties mutually agree to waive the arbitration provision.

Do Omani courts respect foreign judgments, and are arbitration awards enforceable in the country?

Several laws govern the enforcement in Oman of foreign judgments and arbitration awards. Oman entered into a convention with the countries of

the Gulf Cooperation Council countries in 1997 whereby all judgments and arbitration awards obtained in Oman are enforceable in any other Gulf Cooperation Council (GCC) country. In 1998, Oman also ratified the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). Accordingly, any award rendered by a foreign arbitral tribunal should be directly enforceable in Oman, provided that it does not fall under any of the exceptions set out in the New York Convention.

Oman's Civil Procedure Law lays down the rules and procedure for the enforcement of a foreign judgment with regard to an Omani interest. Under the Civil Procedure Law, reciprocal treatment of judgments and orders issued by Oman's courts and tribunals is a pre-condition to the enforcement of a foreign judgment. Article 352 of the Civil Procedure Law stipulates that judgments and orders issued in a foreign country may be executed in Oman on the same terms applicable in the law of that country with regard to execution of judgments and orders issued in Oman. Article 352 additionally states that:

The order for enforcing execution shall not be effected unless the following are all satisfied:

- the concerned judgment or order is passed by a competent judicial authority in accordance with the international jurisdiction rules applicable in the country in which the said judgment or order is passed, is final according to that law and was not grounded on deception;
- the parties to the said law suit in relation to which a foreign judgment was issued were summoned to appear and were properly represented;
- the judgment or order does not include any requests, the basis of which breaches the laws enforced in Oman;
- the judgment or order does not contradict any judgment or order previously issued by the Omani courts, and it does not include anything contravening public order or morals; and
- the country in which the judgment in question was issued, accepts execution of judgments of Omani Courts within its own territories.

In addition to these provisions of the Civil Procedure Law, the CTL also provides that parties to a contract may choose the jurisdiction of foreign courts and law, subject to certain conditions being met. These provisions of the CTL have not yet been tested so it is not possible to state with any certainty how the Omani courts will interpret the overlap between the Civil Procedure Law and the CTL.

Are judgments and arbitration awards from Oman generally enforceable overseas?

Whether or not a judgment or arbitration award rendered by an Omani court or tribunal is enforceable in an overseas jurisdiction would depend upon the rules of civil procedure applicable in that jurisdiction. An arbitration award rendered by a tribunal in Oman is prima facie enforceable in another GCC country or any country which is a party to the New York Convention. The enforcement of Oman Court judgements in foreign jurisdictions would depend on the existence of reciprocal treaties, as is the case between GCC member countries, and the existence of law in foreign countries allowing for the enforcement of Omani judgements. At the time of writing, other than the treaty between GCC member countries, there is no other bilateral treaty entered into by Oman which provides for the mutual enforcement of judgements or arbitration awards obtained in Oman

What are the main considerations when agreeing a choice of court or forum selection clause when drafting a contract?

Omani law does not impose any limitation or restriction in relation to choice of jurisdiction or choice of governing law clauses in contracts, but there are practical considerations which affect the position. The Omani courts have in the past expressed a willingness to apply a law other than the law of Oman, provided that the parties to a case before the Omani courts are able to produce evidence that they have agreed to the application of the foreign law. The choice of a foreign law is more likely to be successful in the context of arbitration. The choice of a foreign jurisdiction would not

necessarily exclude the jurisdiction of the Omani courts provided that a litigant is able to establish that the Court of First Instance has the jurisdiction to hear the disputed matter under the Civil Procedure Law,

Save where a document provides for resolution of disputes by arbitration, provided that one of the parties to the dispute is resident or domiciled in Oman, then in all likelihood, the Primary Commercial Court would accept jurisdiction if a matter were to be presented to it for adjudication by a party to a document governed by a foreign governing law.

Omani courts place significant reliance on court experts for assistance on technical and financial matters

If a document is expressed to be governed by non-Omani law and provides for resolution of any dispute through arbitration, the Primary Commercial Court is unlikely to accept jurisdiction unless the parties to such documents consent to the same. In such a case, arbitrators would be at liberty to apply the contractually-agreed upon law. Prior to the enactment of the CTL, if a contract provided for the jurisdiction of a foreign court with no reference to arbitration and the governing law was stated to be English law, then the Primary Commercial Court would assume jurisdiction in a dispute and, in all likelihood, apply Omani law unless the parties to the contract were able to demonstrate the existence of the foreign governing law as a matter of evidence.

Article 21 of the CTL provides that a contract will be subject to the laws of the state where the contract is concluded. However the contracting parties may expressly or impliedly agree otherwise. Therefore contracting parties will continue to be able to select the governing law of their contract.

Article 28 of the CTL provides that the provisions of a foreign law specified by its preceding articles may not be applied if such provisions are contrary to Sharia law, public order or morals in Oman. In our opinion, article 28 is intended only to apply to contracts which do not have an express choice of law and a foreign law is the applicable law solely as a result of applying the conflict of law principles set out in articles 10 to 27 of the CTL.

Articles 21 to 28 of the CTL referred to above are yet to be tried and tested before the Omani courts.

What single advice would you offer a foreign party embarking on litigation in Oman?

A foreign party seeking to litigate in Oman should bear in mind that a successful party may recover the full cost only of court fees and fees for the appointment of an expert by the court. Awards for recovery of lawyers' fees are typically nominal and the courts do not take into consideration the actual fees paid to legal counsel, even though they are usually the main expense incurred by a party. Additionally, the Omani courts place significant reliance on court experts for assistance on technical and financial matters.


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