



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Oman: Construction

This country-specific Q&A provides an overview to construction law in Oman.

It will cover termination requirements and obligations, permits and licence, procurement, financing and security, and disputes as well as insight and opinion on challenges and opportunities.

This Q&A is part of the global guide to Construction. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/practice-areas/construction/>

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1. **Is your jurisdiction a common law or civil law jurisdiction?**

Oman has a civil law jurisdiction.

2. **What are the key statutory/legislative obligations relevant to construction and engineering projects?**

Establishment of a legal presence

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.

Under ministerial decision (“MD”) 174/2014, construction activities may be carried out only by a company established for the specific purpose. A contracting company must ensure:

- a) that personnel of the company are used exclusively for contracting activities;
- b) compliance with the Omanisation requirement set out by the Ministry of Manpower (“MOM”);
- c) implementation of appropriate HSE standards approved by the relevant authorities;
- d) registration with the Association of Omani Contractors (“AOC”) within a year of incorporation; and
- e) appointment of an Omani national registered with the Public Authority of Social Insurance (“PASI”) as a manager/director if an Omani shareholder is not occupying that post.

Foreign companies seeking to provide engineering services in Oman need to be licensed as engineering and design consultants in accordance with the Engineering Consultancy Law RD 27/2016 (“ECL”) which regulates the conduct of engineering activities in Oman. A foreign entity seeking to establish an engineering consultancy office in Oman requires a 35% equity participation of an Omani engineer. For a foreign engineering company to qualify for registration of an Omani engineering consultancy office it must demonstrate 10 years or more experience of providing engineering services in other jurisdictions.

Contractor’s and Engineer’s Obligations

The Civil Transactions Law, Royal Decree (RD 29/2013 (“CTL”) stipulates the respective statutory obligations of a contractor and an employer. These may be expressly incorporated into a contract. Where a contract is silent on matters such as pricing,

completion, supply of materials, increase in costs, then the provisions of the CTL will apply. If the CTL is silent, reliance may be placed on custom and market practice.

- 3. Are there any specific requirements that parties should be aware of in relation to: (a) Health and safety; (b) Environmental; (c) Planning; (d) Employment; and (e) Anti-corruption and bribery.**

Partnership for Development obligations

Contractors seeking to undertake construction projects in Oman need to consider the requirements of the law creating the Authority of Partnership for Development ("OAPD") (RD 9/2014 -"OAPD Law"). Article 4 of the OAPD requires state administration offices and companies in which the Government owns more than 50% shares, to incorporate in contracts for infrastructure projects exceeding OMR5 million in value, a clause requiring the contracting parties to interact with the OAPD. This interaction requires contractors to agree upon a program for participation in one or more Partnership for Development projects.

Health and safety;

Under the Oman Labour Law (RD 35/03 as amended -"OLL") an employer must ensure safe site working conditions for employees. Further HSE requirements are set out in MD 686/2008. Construction contracts invariably contain contractor and employer representations, warranties and indemnities with regard to compliance with applicable HSE regulations. A contractual provision seeking to limit the employer and or contractor from liability provided for by law will be null and void.

Contractors generally assume all responsibility for on-site HSE. Construction contracts may require contractors to adhere to the employer's HSE requirements or to formulate plans and procedures by reference to specified international standards.

Environmental

Environmental matters are generally governed by the Law on Conservation of the Environment and Prevention of Pollution RD 114/01 ("Environmental Law"). Developers

undertaking projects are required to obtain environmental permits on the basis of an environmental impact assessment report submitted to the Ministry of Environment and Climate Affairs (“MECA”). In addition to the Environmental Law, other critical environmental matters addressed by the legislation are:

(i) Air

MD 243/05 regulates the control and management of ozone depleting substances.

(ii) Water

The Marine Pollution Law (RD 34/74) prohibits the discharge of pollutants in a pollution-free zone from a ship, shore location or oil transport facility.

(iii) Waste

The Regulations for the Management of Solid Non-hazardous Waste (MD 17/93)

(a) impose obligations on operators of solid non-hazardous waste treatment facilities and sanitary landfills; regulate the disposal of 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. Storage facilities for hazardous waste must be licensed by the MECA.

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

(iv) Sustainable development

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

Planning;

The Supreme Council for Planning of Oman (“SCP”) oversees all planning in Oman pursuant to the powers vested in it by RD 15/07. SCP issues planning regulations in the form of MDs. Ministry of Housing (MOH) may impose planning/development conditions with regard to land through grants/usufructs. Sub-division of land and plotting for

construction of residential and commercial purposes must be approved by the MOH. Muscat Municipality prepares and implements urban development plans for the Muscat Governorate in co-ordination with other authorities.

Employment

Omani nationals must be registered with the Public Authority for Social Insurance ("PASI") and expatriate workers must be registered with the Ministry of Manpower (MOM). Expatriate workers require a labour clearance/work permit from the MOM to enter Oman for work purposes, and may only be employed by employers who satisfy minimum Omanisation targets set by government from time to time. Failure to adhere to Omanisation targets may result in an employer being fined, and/or being refused future labour clearances for expatriate employees until the Omanisation target is met.

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 pay an end-of-service benefit to expatriate employees upon completion of their term of employment under Article 39 of the OLL.

No income tax is payable by employees.

Anti-corruption and bribery.

The Penal Code, RD 7/18 and the Protection of Public Property and Avoidance of Conflict of Interest Law promulgated by RD 112/11 (the "Anti-Corruption Law") contain Oman's anti-bribery and anti-corruption legislation. Under the Anti-Corruption Law, government officials convicted of receiving a benefit for themselves or others in relation to the award of any contracts or projects or for acting as intermediary agents or sponsors of a company participating in the award of a government contract may be given heavy custodial sentences, fined and or removed from their government positions.

4. What permits/licences and other documents do parties need

before starting work, during work and after completion? Are there any penalties for non-compliance?

The consents, permits and licences are project specific, but usually the following would be required, where relevant, for both temporary construction site and permanent project facilities:

Before

- Site/plant approval from MECA, Ministry of Regional Municipalities and Water Resources ("MRMWR") or local municipality, Public Authority for Electricity and Water ("PAEW") and MOH.
- Preliminary environmental permits from MECA
- NOC for construction of building/plant from the local municipality and MECA.
- Excavation permits from the local municipality, MECA, MOH, and the Royal Oman Police ("ROP").
- Approval for temporary facilities (temporary construction site) from the local municipality and MECA.
- ROP approval of site drawings.
- Electrical line site clearance from MOH and regional electricity distribution company.
- Water mains site clearance from MOH and PAEW.
- Telephone site clearance from Omantel.
- Gas crossing excavation permits from Oman Gas Company.
- Approval from the Ministry of Heritage if the site is a heritage site or of archaeological significance.

During

- Permits for the transportation of heavy plant and equipment and for the transportation of hazardous waste from 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 MECA.
- Waste disposal consents from the local municipality and MECA.

On completion

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

In case of non-compliance with the permit terms and conditions, the permit holder may be fined, and/or the permitted activity suspended, until the conditions are satisfied.

5. **Is tort law or a law of extra contractual obligations recognised in your jurisdiction?**

Omani law is silent with regard to the duty of care. However, the concept is recognised by the Omani courts. For a claim to succeed in tort the claimant would typically need to establish:

- existence of a duty of care;
- breach of duty;
- foreseeability;
- causation; and
- loss and damage.

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

In view of the general requirement for a claimant to demonstrate losses were direct or actual, and the Omani courts' reluctance to award damages on a speculative basis, foreseeability is likely to be a necessary component of a successful claim in tort.

The ECL expressly provides that an engineer must perform his tasks with all due

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

Whether or not an obligation was performed with “reasonable skill and care” would be a matter for the court’s determination. In such cases, the court may appoint a technical expert to determine whether a contractor has executed the works with the reasonable skill and care expected of a contractor executing similar works.

6. Who are the typical parties to a construction and engineering project?

The main parties to construction and engineering projects in Oman typically will be:

- Employer/Developer/Principal.
- Employer's designer/engineering, architectural and other consultants. In Oman an “Engineer” can have a design function and/or a contract supervision function.
- Construction contractor(s).
- Contractor's subcontractors and suppliers.

7. What are the most popular methods of procurement?

Construction projects in Oman may be procured as build-only contracts (Employer design), 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 structures are frequently used in the market for international contracts for both tax and construction efficiency. Public private partnership (PPP) models are also used to procure long-term infrastructure and power projects.

8. What are the most popular standard forms of contract? Do

parties commonly amend these standard forms?

Contracts awarded by public authorities will typically use the Oman Standard Documents (modelled on early iterations of the FIDIC contracts) 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) – risk allocation follows that of the FIDIC Red Book (Employer designs; Contractor builds); and
- Sultanate of Oman Standard Documents for Electrical and Mechanical Works (first edition 1987) – risk allocation follows that of the FIDIC Yellow Book (Contractor responsible for design and construction/installation).

(together “Oman Standard Form Contracts”)

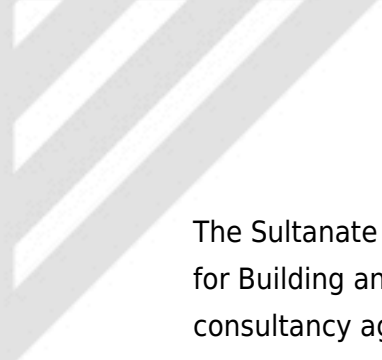
However, parties are at liberty to use other standard forms of contract and negotiate terms and amendments subject to compliance with the applicable laws of Oman. The FIDIC suite of contracts is widely used.

9. Are there any restrictions or legislative regimes affecting procurement?

Although there has been a trend towards greater participation by the private sector (see question 27) the majority of construction procurement in Oman is undertaken by the public sector. With limited exceptions, public procurement takes place under the Tender Law (RD 36/2008 - “Tender Law”). Private entities are not subject to the Tender Law and may procure services at their discretion.

10. Do parties typically engage consultants? What forms are used?

Parties typically engage a range of consultants including engineers (structural, mechanical, electrical), architects, 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 parties are at liberty to agree to use other standard forms (such as the FIDIC White Book).

11. Is subcontracting permitted?

In Oman, a main contractor may subcontract the works (or a portion thereof) subject to the terms and conditions of the main contract.

12. How are projects typically financed?

Traditionally government projects in Oman have been self-funded however private participation in public projects is increasingly sought to fill the funding gap and for knowledge transfer as the government intensifies efforts to diversify the economy.

Limited recourse financing structures whereby security is provided only in respect of project assets have been employed successfully for large-scale water and power projects.

Smaller projects such as residential and tourist developments are usually funded through corporate finance on a full recourse basis.

13. What kind of security is available for employers, e.g. performance bonds, advance payment bonds, parent company guarantees? How long are these typically held for?

It is market practice for construction contracts to require advance payment guarantees and performance bonds until completion of the contract works and/or expiry of any defects notification period. The Oman Standard Documents require the contractor to

provide a performance bond to the employer equal to 5% of the contract value. Article 44 of the Tender Law also requires entities to which the Tender Law applies, to obtain a performance bond equal to 5% of the contract price. Employers usually require that such performances are unconditional, irrecoverable and on-demand.

Employers may also require parent company guarantees where the contractor is not the ultimate parent entity. Omani law recognises the concept of a guarantee and companies may guarantee the obligations of parents or subsidiaries.

14. Is there any specific legislation relating to payment in the industry?

Parties to a construction contract can mutually agree payment terms in default of which the CTL requires payment be made in accordance with market practice.

Advance payments are normal practice and the Oman Standard Documents contemplate 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 work completed and priced against a schedule of rates. 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.

15. Are pay-when-paid clauses (i.e clauses permitting payment to be made by a contractor only when it has been paid by the employer) permitted? Are they commonly used?

Omani law imposes no restriction as to the payment terms that can be agreed between the parties. Pay-when-paid clauses are not uncommon in construction contracts in

Oman and should be enforceable in accordance with Article 655 of the CTL.

16. Do your contracts contain retention provisions and, if so, how do they operate?

It is market practice for specified amounts to be retained from each payment schedule up to an agreed cap, typically 5% to 10% of the contract price. Under the Oman Standard Documents half the retained amount is returned to the contractor upon the issue of the certificate of completion and the balance returned upon expiry of the defects liability period.

17. Do contracts commonly contain delay liquidated damages provisions and are these upheld by the courts?

Yes. See [question 2] on liquidated damages.

18. Are the parties able to exclude or limit liability?

Parties are generally able to exclude or limit liability although a provision that attempt to exempt a defaulting party from all liability for breach of contract will be void. Any terms that seek to limit a right otherwise required by Omani law, including decennial liability (see question 2), shall also be deemed void.

It is normal practice for parties to exclude liability for indirect and consequential loss. Omani courts generally award damages for actual and direct financial losses only, not for consequential loss. However Articles 176(2) and 181 of the CTL provide for the award of damages in respect of harm suffered as a consequence of reckless, aggressive or unwarranted conduct and damages for loss of profit provided there exists a direct connection between the loss of profit and the actions causing the harm.

19. **Are there any restrictions on termination? Can parties terminate for convenience? Force majeure?**

Pursuant to the CTL, a construction contract may be terminated by:

(i) mutual consent;

(ii) court order; or

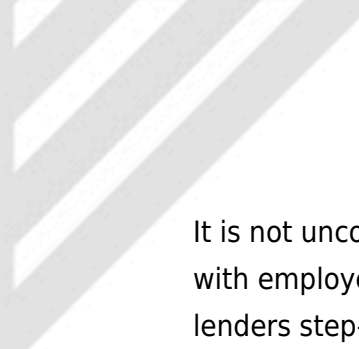
(iii) an employer in circumstances where the agreed designs cannot be completed without additional materials which increase the estimated contract price and the employer cannot afford such an increase.

Parties are at liberty to negotiate further termination grounds including the right to terminate for convenience.

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. However, pursuant to the CTL 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 were not reasonably foreseeable. The courts have considered natural disasters as force majeure events but have not accepted the performance of a contract having become uneconomic due to a force majeure event.

20. **What rights are commonly granted to third parties (e.g. funders, purchasers, renters) and, if so, how is this achieved?**



It is not uncommon for lenders and other third parties to enter into direct agreements with employers and contractors. As in other jurisdictions, such agreements would grant lenders step-in rights in the event of employer default for a specific period of time during which lenders assume the employer's obligations and have the opportunity to remedy the breach.

21. **Do contracts typically contain strict provisions governing notices of claims for additional time and money which act as conditions precedent to bringing claims? Does your jurisdiction recognise such notices as conditions precedent?**

Omani law would not preclude parties agreeing terms under which a contractor's claim for a variation or an extension of time is conditional upon the satisfaction of certain notification requirements.

However, the wording of the Oman Standard Form Contract does not operate as a strict time bar, nor does it state that compliance with notification requirements is a pre-condition to having matters considered as grounds for a variation or extension of time. If a strict time bar is required, or the employer wishes to impose further notification requirements, amendment would be required.

There is nothing to suggest that the notification requirements in FIDIC contracts (1999 edition) would not be enforceable in Oman. However, the Omani courts have broad discretion (see question 18) to adjust parties' obligations in this context.

22. **What insurances are the parties required to hold? And how long for?**

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

- third party liability insurance;

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

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

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

23. How are construction and engineering disputes typically resolved in your jurisdiction (e.g. arbitration, litigation, adjudication)? What alternatives are available?

Provided that contractual formalities are satisfied and that the contract does not require dispute resolution through arbitration, disputes are referred to the commercial bench of the Omani courts.

Oman's Arbitration Law, RD 47/97 as amended ("OAL") is applicable to any arbitration between parties under public or private law provided the arbitration takes place in Oman. Parties may also agree for a dispute to be arbitrated under the OAL in an international arbitration forum.

Parties are also at liberty to for the proceedings to be governed by alternative arbitration rules, for example, the International Chamber of Commerce ("ICC") Rules in an international forum. Omani law also provides for the resolution of disputes through mediation and Omani courts will uphold any other contractual mechanisms provided for the resolution of disputes between the parties.

24. How supportive are the local courts of arbitration (domestic and international)? How long does it typically take to enforce an

award?

Omani courts will not assume jurisdiction over a contractual dispute where the contract provides for arbitration as a mechanism for dispute resolution unless otherwise agreed by the parties.

Oman is a signatory to the 1958 New York Convention on the recognition and enforcement of foreign arbitral awards (the "Convention"). However, we are aware of only one foreign arbitral award that has been enforced by the Omani courts under the Convention.

The enforcement of foreign arbitral awards (and judgments) is a two-stage process: 1) the successful party obtains 'recognition' of the arbitral award from the Omani courts (formal permission for enforcement proceedings to be commenced in Oman on the basis of the award); 2) the award is executed through enforcement proceedings before the local court.

Articles 352-353 of the Civil and Commercial Procedure Law (RD 29/2002 -the "CCPL") sets out conditions for the enforcement of a foreign judgment or arbitral award respectively.

Given the scarcity of precedent enforcement decisions, time-frames are difficult to predict.

25. **Are there any limitation periods for commencing disputes in your jurisdiction?**

Under the ECL, engineering consultants must retain the technical files for all phases of construction projects for which the engineer has prepared the design drawings, or rendered supervisory services inclusive of blue prints, in addition to the contract with the employer for period of not less than 10 years from the completion of the project.

Subject to any lesser limitation periods provided for by law, Article 185 of the CTL

introduces an overarching limitation period of fifteen years within which action for compensation for a harmful act may be initiated.

Under Article 637 of the CTL no claim for compensation may be heard after the expiration of three years from the date of collapse of the structure or discovery of the defect.

Articles 21 and 22 of the ECL and Article 634 of the CTL impose decennial liability on both contractors and engineers/design consultants with regards to damage or defects in the building for a period of 10 years commencing from the date of hand-over. Where a consultant is responsible for the preparation of design/ architectural drawings only and not for supervision of construction, the consultant shall be responsible only for defects arising from the drawings. Liability under the ECL could, in theory, include defects of lesser severity than those contemplated under the CTL which refers to major structural failings. The interplay between ECL and the CTL remains to be tested.

26. **How common are multi-party disputes? How is liability apportioned between multiple defendants? Does your jurisdiction recognise net contribution clauses (which limit the liability of a defaulting party to a “fair and reasonable” proportion of the innocent party’s losses), and are these commonly used?**

It is permissible pursuant to CCPL for a plaintiff or defendant to join third parties to ongoing proceedings before the Omani courts where it is apparent or alleged that the third party is partly responsible for damage or breach resulting under a contract. In such circumstances, the court would have a discretion to hold such parties responsible for the damage caused either in its entirety or in part. In light of this, we are of the view that the Omani courts should recognise and uphold net contribution clauses as may be provided for by contract.

27. **What are the biggest challenges and opportunities facing the construction sector in your jurisdiction?**

Priority sectors for development in Oman include tourism, mining, logistics, downstream industrial projects and renewable energy. However, the construction and projects market is still dominated by state-owned entities and, as a consequence, the government's drive for greater economic diversification remains tempered by its need to balance the budget deficit and modest hydrocarbon prices. The construction sector has also been subject to labour shortages and pricing pressures in what has traditionally been an employer-friendly market. Omanisation requirements can compound the pressure on construction companies if not managed carefully.

It is hoped that private finance initiatives ("PFIs") will fill funding gaps for infrastructure development following the private sector's successful participation in the power and water industries over the last 20 years. Other sectors look set to follow suit and PPP variants are already being utilised in the healthcare and tourism sectors. The development of Special Economic Zones will provide significant opportunities for private companies in the industrial and logistics sectors as the government seeks to leverage its favourable geographical position and market itself as a gateway to the wider GCC region.

Oman would also benefit from the establishment of a dedicated arbitration centre for the conduct of cost and time-efficient arbitration of construction disputes.

28. **What types of project are currently attracting the most investment in your jurisdiction (e.g. infrastructure, power, commercial property, offshore)?**

Independent water and power projects continue to attract private investment. The tourism and real estate sectors are also experiencing an upturn in investment as foreign property developers and hotel brands seek to capitalise on the government's initiatives and, in particular, the development opportunities presented by Integrated Tourist Complexes.

29. **How do you envisage technology affecting the construction and engineering industry in your jurisdiction over the next five years?**

Renewable energy technology is now considered to be economic at a utility level in Oman. In particular, photovoltaic technology is getting progressively cheaper and more efficient as panel degradation rates decline. It is hoped Oman's exceptional solar density levels (some of the highest in the world) can be effectively leveraged to help diversify power generation and help service energy demand understood to be growing at 8% year on year.

The oil and gas sector is also set to benefit from technological advances. Petroleum Development Oman is already using solar technology to support its enhanced extraction activities and freeing up gas-generated power for the domestic market.

Green building technologies have typically only been incorporated in construction projects at the discretion of developers (Omani law imposes no green building requirements at present) but the general application of such practices is expected to increase.