



SPOTLIGHT ON OMAN

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AN OVERVIEW OF THE MAJOR RECENT ACTIVITY IN OMAN

Project financing in Oman has emerged as the preferred alternative to conventional methods of financing infrastructure and other large-scale projects in the field of oil and gas pipelines, refineries, electricity generating facilities and water and desalination projects.

Oman has projects worth over US\$125 billion planned or under way. These range from new health-care facilities such as the US\$1 billion international medical city in Salalah, regional hospitals and over 100 schools to new airports at Duqm, Ras Al Hadd and Sohar, the expansion of Muscat international airport, a new cargo terminal for Salalah port, new quays and a 200 million barrel storage hub at Duqm (one of the largest in the world), and a network of smaller fishing facilities and expansion of industrial facilities at Sohar. US\$270 million worth of projects are under development by the government-owned Oman Tourism Development Company

In addition to airport expansion, a key element of Oman's eighth five-year plan (2011–2015) is an extensive road-building programme to boost tourism and improve access between interior Oman and industrial port zones such as Sohar and Duqm. Three agreements for the building of Oman's ambitious 2,244km-long national railway project were signed in February 2014. This strategic railway network (forecast to cost an estimated 5 billion–6 billion rials) will link the Yemeni border with the UAE, and the Gulf inland with the Indian Ocean when complete in 2018. Oman's power and water networks are being upgraded and the government has an ambitious plan to develop independent power projects and independent water and power projects across Oman to meet projected demand. Other projects include wastewater and

dam construction around the country.

The major recent activity in Oman is the financing for Oman Oil Refineries and Petroleum Industries Company's US\$7 billion investment in three major projects: the Sohar Refinery Improvement Project, the Muscat–Sohar Product Pipeline and the Liwa Plastic Project. A consortium of 21 international and domestic financial institutions is financing US\$2.8 billion in respect of these projects.

The Japan Bank of International Cooperation signed a loan agreement totalling approximately US\$105 million with Muscat City Desalination Company, SAOC incorporated in Oman for the Al Ghubrah independent water project. This is the first project financing for a seawater desalination project in Oman which did not include power generation.

LEGAL AND REGULATORY FRAMEWORK IN THE PROJECT FINANCE SECTOR

The legislative and regulatory framework has evolved, and continues to evolve, to provide security and protection to project financier's interests. It also provides incentives including the creation of registered, perfected, first priority security interests for the benefit of project finance lenders. These take the form of registered legal mortgages, commercial mortgages, share pledges, contractual and other assignments over and with respect to immovable property, tangible and intangible property and rights inclusive of shares and securities and bank accounts, in existence as of the date of creation of security interests. There is no concept in Omani law of the floating charge as exists in other jurisdictions such as the UK, although the Ministry of Commerce and Industry has allowed the registration of such charges provided for in a commercial mortgage.

With regard to the priority of security interests in general, Royal Decree 32/94

establishes preferential rights for the Omani government regarding liabilities outstanding in its favour over any registered securities created by a debtor in favour of another creditor (including secured creditors), and departments, agencies and commercial organisations in which it has a 51 per cent majority shareholding.

Omani law allows for the appointment of security agents and trustees for holding collateral on behalf of project lenders. Such security agents and trustees would typically be an Omani-licensed bank whose role is to facilitate the creation and enforcement of security interests while avoiding the inference of a foreign bank which, in seeking to create and enforce security interests, conducts business in Oman while unlicensed to do so.

Project lenders may act as buyers in any judicial sale subject to any restrictions on foreign ownership of real estate under Omani land laws. Although project lenders do commonly enter into direct agreements with project company counter-parties to project agreements allowing them to exercise step-in rights, such arrangements are yet to be tried and tested before the Omani courts.

There are no restrictions on foreign exchange controls and the remittance of investment returns, foreign earnings from Oman or loan repayments to outside of Oman, other than the requirement to deduct withholding tax at source on certain specified payments to foreign companies without a permanent establishment in Oman.

For projects that are required to be privatised, the government and regulatory authorities grant the necessary consents and permits required by developers for the implementation, operation and maintenance of their projects provided a valid application is submitted and the relevant information is provided in a

timely manner. A key consent required by industrial projects and projects in the power-generating sector is the preliminary environmental permit issued by the Ministry of Environment and Climatic Affairs for which developers are required to prepare an environmental impact assessment report for approval.

As a matter of Omani insurance law, project insurances must be placed with Omani insurance companies. Typically, the national insurance companies reinsure the entire risks with overseas reinsurers. Any such insurances and reinsurances may be assigned by the project companies for the benefit of their lenders.

Private ownership of assets is safeguarded and no person may be prevented from disposing of his or her property except within the limits of the law. Private property may only be expropriated for public interests according to the circumstances and manner stipulated by law against fair compensation.

All companies incorporated in Oman irrespective of foreign ownership are treated for taxation purposes on par with Omani companies (the maximum corporate tax payable by any company in Oman is 12 per cent). Project companies may obtain tax holidays for periods of five years from the commencement of production or business operations, extendable for a further term of five years with the approval of the Council of Financial Affairs and Energy Resources. Entities licensed under the Sector Law, however, are not entitled to tax exemptions.

International arbitration contractual provisions and awards are recognised by the Omani courts and by the Oman Arbitration Law. Oman is now a signatory to the New York Convention on the Enforcement of Foreign Arbitral Awards.

Enforcement of collateral

Enforcement of commercial mortgages, pledges, and legal mortgages in Oman is made by an application to the Primary Commercial Court of the Sultanate of Oman for an order that the assets may be sold by way of public auction. The practice of Omani courts in order to enforce a commercial mortgage, pledge or legal mortgage is to require a judgment

in favour of the security holder. In a straightforward debt recovery action, obtaining judgment takes six months on average, subject to the party's right to appeal the judgment to the Appeal Court and thereafter to the Supreme Court.

Once final judgment is obtained, the creditor applies to the court for enforcement. The enforcement of the most basic security will usually take up to three or four months. Where circumstances are more complicated, the process could take up to three years or even longer. During that time the mortgagor would continue to hold and control all charged assets and could continue to run its business unless the Court appoints a third-party administrator or custodian to hold or manage the chargor's assets, so as to ensure that such assets are not depleted or their value is not eroded.

Enforcement is generally carried out by way of public auction of the charged assets. With the exception of land, there are no express rules setting a minimum price which must be reached at public auction. Secured creditors have no say in the matter and therefore have very little control over the level of the proceeds realised from the enforcement of their security.

In the case of land, the court may seek the assistance of an expert to decide a "basic price". If this price is not reached, the property is re-auctioned and the minimum price is reduced by 10 per cent until a sale is achieved. Creditors have the right to object to the enforcement proceedings at any time, for example, if the sale price was too low. However, the legislation does not specify the effect of raising an objection and it would not necessarily halt the enforcement proceedings. Any party is allowed to bid for assets sold under public auction and the only way secured creditors would be able to prevent the acquisition of the assets for an unacceptable price would be to bid themselves.

Recent or proposed changes

The most significant legislation introduced in 2013 has been the Civil Transaction Law RD 29/2013 (the Civil Code). Traditionally Oman has distinguished between commercial acts

and other acts without the existence of a formal civil code. The Civil Code now enunciates the basic principles of the law of obligations (mainly contract and tort) and supplements a number of other pre-existing legislations dealing with mortgages and pledges.

Greater clarity is now available for Omani courts and judges in respect of regulating and providing for the creation and enforceability of security interests for the benefit of lenders lending in Oman (whether foreign or local). Such provisions have been further supplemented through the regulations by the Civil Code of assignment, novation and the exercise of rights of set-off, all of which rights are of significant importance in project finance transactions implemented in Oman, particularly where banks seek to exercise their rights of step-in and enforcement of other security interests. The Civil Code legislates for circumstances in which contracts may be considered to be terminable, ie, non-binding contracts, termination of contracts in case of deceit, fraud, and mistakes. If the purpose for which the contract is entered into is found to be contrary to shariah law, Omani public order and morals, such contracts will be considered void from the outset. Omani law, for the first time, provides for a contracting party's right to seek a remedy in specific performance as opposed to a claim for monetary damage, where such damage may not suitably address the loss of the affected party due to the non-performance of the party in breach.

INDUSTRIES OR TYPES OF CLIENT THAT ARE PARTICULARLY ACTIVE IN THIS SECTOR
Infrastructure projects, projects in the field of oil and gas sector, refineries, telecommunications, power generation facilities and water and desalination projects are particularly active in this sector.

DEVELOPMENTS PREDICTED FOR THIS SECTOR IN THE NEXT YEAR OR SO

Local currency financing

As local banks are growing in size and experience, we envisage local-currency funding to be made increasingly available for project financing in Oman. This development will be helpful to sponsors

of infrastructure projects that generate local-currency revenues, as it will allow them to avoid mismatches between those revenues and dollar-denominated debt.

Project bonds

We predict project bonds to be an attractive option for project sponsors especially on re-financing of projects which have a stable/predictable cash flow. A number of key infrastructure projects in the region are considering issuing project bonds.

Islamic Finance

Islamic banking and finance is emerging as one of the fastest-growing segments within the financial services industry in Oman. The launch of two Islamic banks and seven Islamic windows in conventional banks, and the issue of the Islamic Banking Regulations (IBR) by

the Central Bank of Oman, represent a turning point in the alternative financing options available for projects in Oman. The benefit of issuing sukuk bonds is that the deal can be offered to both conventional and Islamic banking sectors so there is more diversity in funding sources. The Islamic unit of Bank Muscat, Oman's largest lender, has plans for a US-dollar and Omani-rial sukuk issue worth US\$300 million; this would be the first sukuk sale by a bank in Oman.

Greater public participation

In accordance with the law of management and privatisation of the electricity sector and its dependent water, a stipulated percentage of a licensed entity's issued share capital is required to be offered for public subscription through a public offering to occur within a period of four years commencing

from the date of a project company commencing its commercial production. Omani independent water and power producer Sembcorp Salalah, which recently offered 35 per cent of its shares by way of an initial public offer, intends to invite proposals for a 400 MW Salalah-2 independent power project.

The Oman Power and Water Procurement Company has received pre-qualification technical offers from as many as 12 international companies in respect of a new greenfield water desalination project in Quriyat, near Muscat, with a capacity of 46 million imperial gallons per day.

A Class I telecommunications licence, issued in 2013 by the Telecommunications Regulatory Authority, provides for public participation to occur within four years of commencement of operations.