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The International Comparative Legal Guide to:

International Arbitration 2018

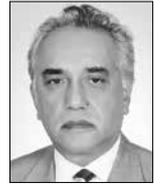
15th Edition

A practical cross-border insight into international arbitration work



Oman

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1 Arbitration Agreements

1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of your jurisdiction?

Pursuant to the Law of Arbitration in Civil and Commercial Disputes, Royal Decree 47/1997 as amended (the ACCD), an arbitration agreement in the Sultanate of Oman must:

- be made between competent persons, whether natural or juristic (Article 11);
- be in writing, whether signed by both the parties or contained in correspondence exchanged between the parties (Article 12); and
- submit to arbitration disputes which have arisen or may arise between the parties in respect of a legal relationship, contractual or otherwise (Article 10(1)).

1.2 What other elements ought to be incorporated in an arbitration agreement?

The parties ought to include the following in an arbitration agreement:

- the scope of the matters subject to arbitration (Article 10(1), ACCD);
- the place of arbitration (Article 3, ACCD);
- the governing law (Article 6, ACCD);
- the procedural rules (Articles 25, ACCD);
- the language for the arbitration (Article 29, ACCD);
- whether the arbitration tribunal is to be comprised of one or more arbitrators (Article 15, ACCD) and the appointment process (Article 17(1), ACCD); and
- whether the tribunal may issue orders for interim and precautionary measures including security for the expense of implementing such orders (Article 24(1), ACCD).

In addition, subject to any procedural rules agreed on by the parties and depending on the needs of the parties, they may also include in an arbitration agreement:

- notice requirements (Article 7(1), ACCD);
- the nationality of the arbitrator(s) (Article 16(2), ACCD);
- when the arbitration is deemed to commence (Article 27, ACCD), and the time within which the tribunal must pass its final award (Article 45(1), ACCD);
- the time for delivery of the Statement of Claim and the Statement of Defence including any counterclaim (Article 30, ACCD) and whether, in the absence of a Statement of

Defence, the claimant may seek a default award (Article 34(2), ACCD);

- whether or not the parties may waive their right to object to breaches of the arbitration agreement or the ACCD and, if so, the time within which to object (Article 8, ACCD);
- conduct of the arbitration in writing by delivery of pleadings with documentary evidence attached thereto, and without hearings for witness statements, *viva voce* evidence or oral submissions (Article 33(1), ACCD);
- dispensing with the requirement in the ACCD that each arbitration session convened by the tribunal shall be recorded in minutes (Article 33(3), ACCD);
- dispensing with the right of the parties to present expert opinion evidence in response to any report submitted by an expert appointed by the tribunal who is summoned for examination (Article 36(4), ACCD);
- if the governing law is not that of Oman, whether the governing law relating to conflicts of laws applies (Article 39(1), ACCD); and
- whether, for tribunals of more than one arbitrator, the award must be unanimous (Article 40, ACCD).

1.3 What has been the approach of the national courts to the enforcement of arbitration agreements?

Arbitration agreements which satisfy the requirements of the ACCD are generally upheld and enforced strictly by the Omani courts, which will invariably decline jurisdiction to hear a dispute should the defendant in litigation adduce evidence of an arbitration agreement between the parties prior to submitting its defence or otherwise attorning to the jurisdiction of the court (see question 3.3).

2 Governing Legislation

2.1 What legislation governs the enforcement of arbitration proceedings in your jurisdiction?

The ACCD governs the enforcement of arbitration proceedings in Oman.

2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do they differ?

The ACCD governs both domestic and international arbitration proceedings.

2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the two?

The ACCD is broadly based on the UNCITRAL Model Law. The significant difference between the ACCD and the Model Law is in respect of interim measures and preliminary orders.

First, whereas Article 17 of the Model Law provides the tribunal with the power to order interim measures and preliminary orders, Article 24(1) of the ACCD requires that the parties agree that the tribunal may issue orders for interim and precautionary measures. In the absence of such agreement, a party would need to apply to the courts for such measures pursuant to Article 14 of the ACCD. The parties could expressly agree that the tribunal has such powers, or could agree to adopt procedural rules which provide for such tribunal powers (e.g. the ICC Arbitration Rules at Article 28 regarding conservatory or interim measures).

Second, the Model Law provides a detailed chapter (Chapter IV) on interim measures and preliminary orders including the test which needs to be met, the procedures for such applications, and grounds for courts granting or refusing recognition and enforcement of such awards, whereas Article 24 of the ACCD only provides that, if the parties have agreed, the tribunal may issue such orders as “necessitated by the nature of the dispute” and that courts may enforce such orders.

2.4 To what extent are there mandatory rules governing international arbitration proceedings sited in your jurisdiction?

The only mandatory rule for international commercial arbitrations is that the Court of Appeal at Muscat (the capital of Oman) has supervisory jurisdiction, whereas for domestic arbitrations the Primary Court has jurisdiction (Article 9, ACCD).

3 Jurisdiction

3.1 Are there any subject matters that may not be referred to arbitration under the governing law of your jurisdiction? What is the general approach used in determining whether or not a dispute is “arbitrable”?

Disputes involving criminal allegations may not be arbitrated. In addition, disputes which are not in respect of a legal relationship between the parties may not be arbitrated.

3.2 Is an arbitral tribunal permitted to rule on the question of its own jurisdiction?

The tribunal may rule on the question of its own jurisdiction (Article 22, ACCD).

3.3 What is the approach of the national courts in your jurisdiction towards a party who commences court proceedings in apparent breach of an arbitration agreement?

Provided an arbitration agreement is applicable to the dispute, court proceedings will be dismissed if the defendant pleads for such dismissal prior to submitting a defence or making any other request of the court (Article 13(1), ACCD). In addition, the courts may

refuse an application for *ex parte* relief if they detect an arbitration agreement which would govern the dispute.

3.4 Under what circumstances can a national court address the issue of the jurisdiction and competence of an arbitral tribunal? What is the standard of review in respect of a tribunal’s decision as to its own jurisdiction?

The courts may address the issue of jurisdiction of a tribunal only on application for nullification of the final arbitral award (Articles 22(3) and 53(1)(f), ACCD). There is no established standard of review on an application for nullification of an arbitral award on the basis that the tribunal has exceeded its jurisdiction.

3.5 Under what, if any, circumstances does the national law of your jurisdiction allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?

Omani law does not permit tribunals to assume jurisdiction over natural or juristic persons which are not party to the agreement to arbitrate unless the non-party voluntarily submits to the jurisdiction of the tribunal.

3.6 What laws or rules prescribe limitation periods for the commencement of arbitrations in your jurisdiction and what is the typical length of such periods? Do the national courts of your jurisdiction consider such rules procedural or substantive, i.e., what choice of law rules govern the application of limitation periods?

Omani law does not set out limitation periods in which arbitrations must be commenced. It is expected that the limitation periods for filing court proceedings may be made applicable to arbitrations. There is no typical length of limitation periods for court proceedings. While there is a general limitation period of 10 years for breach of mercantile obligations unless a shorter period is provided by law pursuant to Article 92 of the Commercial Law, R.D. 55/90 as amended, Omani law provides many exceptions including within the Commercial Law as follows:

- six months for an action by some endorsers against others or against the drawer of a bill of exchange (Article 514);
- one year for a defect for an action on a warranty (Article 118);
- one year for an action on a contract for the carriage of goods (Article 157); and
- three years for an action against the acceptor of a bill of exchange (Article 514).

Omani courts do not draw a distinction as to whether limitation periods are procedural or substantive.

3.7 What is the effect in your jurisdiction of pending insolvency proceedings affecting one or more of the parties to ongoing arbitration proceedings?

If, following a merchant’s declaration of bankruptcy or at the request of its creditors, the Primary Court makes a declaration of bankruptcy, the trustee in bankruptcy may, with the permission of the bankruptcy judge after seeking the views of the bankrupt and the supervisor appointed by the court from among the creditors, take carriage of the bankrupt’s case in any arbitration and/or admit the claim or defence of the party opposite to the bankrupt (Article 660, Commercial Law).

4 Choice of Law Rules

4.1 How is the law applicable to the substance of a dispute determined?

In the absence of an agreement between the parties as to the governing law, the tribunal shall apply the law which it considers to be relevant to the dispute (Article 39(2), ACCD). The Civil Transactions Law, R.D. 29/2013, promulgated in 2013 details Omani conflict-of-laws/private-international-law rules at Articles 10 to 28 which may be followed by the tribunal in determining the governing law.

4.2 In what circumstances will mandatory laws (of the seat or of another jurisdiction) prevail over the law chosen by the parties?

A provision of foreign law may not be applied if such provision is contrary to Islamic Sharia, public order, or morals in Oman (Article 28, Civil Transactions Law).

4.3 What choice of law rules govern the formation, validity, and legality of arbitration agreements?

The governing law of the arbitration, whether agreed to by the parties or selected by the tribunal as most relevant to the dispute (Articles 6 and 39(2), ACCD).

5 Selection of Arbitral Tribunal

5.1 Are there any limits to the parties' autonomy to select arbitrators?

Other than an agreement between the parties as to the language of arbitration (Article 29, ACCD) and/or nationality of the arbitrators (Article 16(2), ACCD) which may limit the selection, an arbitrator may not be under guardianship, may not be an un-rehabilitated bankrupt, and may not be banned from exercising his or her civil rights because of a criminal conviction or misdemeanour offence for breach of honour or trust (Article 16(1), ACCD).

5.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

Where the arbitration agreement is subject to Omani law and/or provides for governing law or procedural rules which would refer the selection of arbitrator(s) to the Omani courts, if the parties are unable to agree on the appointment of a sole arbitrator, either party may apply to the President of the Court of Appeal for the appointment of the arbitrator. If a party requests that the other party appoint an arbitrator to a tribunal of three arbitrators but the other party fails to do so within 30 days of such request, the requesting party may apply to the President for the appointment of an arbitrator on behalf of the other party; similarly, if the two arbitrators appointed by/on behalf of the parties fail to nominate a third arbitrator to chair the tribunal, a party may apply to the President for the appointment of an arbitrator as the chair (Article 17(1)(b), ACCD).

5.3 Can a court intervene in the selection of arbitrators? If so, how?

In addition to the procedures outlined above at question 5.2 regarding

the appointment of arbitrators, the courts may recuse an arbitrator for lack of impartiality or independence (Article 19(3), ACCD).

5.4 What are the requirements (if any) imposed by law or issued by arbitration institutions within your jurisdiction as to arbitrator independence, neutrality and/or impartiality and for disclosure of potential conflicts of interest for arbitrators?

At the time of accepting an appointment as or to the tribunal, an arbitrator is required to disclose any circumstances which may cause doubt or suspicion as to his or her independence or neutrality; an arbitrator is also subject to an ongoing obligation to disclose to the parties and any fellow tribunal members should such circumstances arise after his or her appointment during the course of the proceeding (Article 16(3), ACCD). A party may apply to the tribunal for recusal of an arbitrator if circumstances appear giving rise to serious doubt and suspicion concerning his or her impartiality or independent functioning and may appeal a denial of a recusal application to the courts (Articles 18(1) and 19, ACCD).

6 Procedural Rules

6.1 Are there laws or rules governing the procedure of arbitration in your jurisdiction? If so, do those laws or rules apply to all arbitral proceedings sited in your jurisdiction?

Except to the limited extent provided for in the ACCD, there are no rules governing arbitration proceedings in Oman. The limited procedures provided for in the ACCD apply to all arbitrations in Oman (Article 1, ACCD); however, the parties may agree on the procedures to be followed (Article 25, ACCD) provided such procedures are not contrary to the laws of Oman in arbitrations where Omani law governs.

6.2 In arbitration proceedings conducted in your jurisdiction, are there any particular procedural steps that are required by law?

The following procedural steps are required pursuant to the ACCD:

- for tribunals of three arbitrators, a party must nominate an arbitrator within 30 days of a request from the other party, and the two arbitrators selected by the parties/appointed by the court must nominate the chair of the tribunal within 30 days of their own nomination (Article 17(1)(b));
- an arbitrator's acceptance of an appointment must be in writing (Article 16(3));
- the pleadings will be comprised, at a minimum, of a Statement of Claim (Article 30(1)) and a Statement of Defence (Article 30(2)); and
- the party in whose favour the award is passed must deposit it with the court secretariat, translated into Arabic if written in another language (Article 47).

6.3 Are there any particular rules that govern the conduct of counsel from your jurisdiction in arbitral proceedings sited in your jurisdiction? If so: (i) do those same rules also govern the conduct of counsel from your jurisdiction in arbitral proceedings sited elsewhere; and (ii) do those same rules also govern the conduct of counsel from countries other than your jurisdiction in arbitral proceedings sited in your jurisdiction?

The Advocacy Law, R.D. 108/96 as amended, governs the conduct

of counsel in arbitrations conducted within Oman (Article 3(a), Advocacy Law). The Advocacy Law should apply to advocates enrolled in Oman who appear as counsel in international commercial arbitration governed by the ACCD which takes place outside Oman (Article 1, ACCD and Article 3(a), Advocacy Law). The Advocacy Law would only apply to counsel from other jurisdictions in arbitral proceedings in Oman if they are enrolled as an advocate with Oman's Ministry of Justice as, pursuant to Article 3, advocacy includes appearing before arbitration tribunals and, pursuant to Article 2, it is prohibited to practice advocacy in Oman without being enrolled with the Ministry of Justice.

6.4 What powers and duties does the national law of your jurisdiction impose upon arbitrators?

The ACCD sets out the following powers of the tribunal:

- determination of the place and time of hearings and of inspection of property (Article 28);
- unless otherwise provided for by the arbitration agreement, determination of the language of the proceeding, including whether documentary evidence needs to be translated into such language (Article 29);
- deciding on its own jurisdiction, and on the existence, validity or relevancy of an arbitration agreement (Article 22(1));
- deciding on the arbitration procedures if the parties have not agreed on such (Article 25) and making procedural orders (Article 42);
- determining the governing law if the parties have not agreed on such (Article 39(2));
- appointing one or more experts for the submission of a report and specifying the scope of their respective mandate(s) (Article 36(1));
- following receipt of an expert's report, convening a hearing for examination of the expert (Article 36(4));
- applying to the President of the Primary Court to fine witnesses who fail to appear for examination or refuse to answer questions on examination (Article 37(1));
- for tribunals of more than one arbitrator, passing an award based on a majority vote after deliberation, unless the parties have agreed that unanimity is required (Article 40); and
- consideration of applications for clarification of the operative pronouncement of the award (Article 49), correction of any typographical or mathematical errors in the award (Article 50), and passing an additional award in respect of any claim not adjudicated on in the award (Article 51).

The ACCD imposes the following duties on arbitrators:

- disclosure of any circumstance which may cause doubt or suspicion as to an arbitrator's independence or neutrality (Article 16(3), ACCD);
- applying the terms of the arbitration agreement between the parties (Article 39(1));
- treating the parties equally, and giving them adequate and sufficient opportunity to make their submissions (Article 26);
- notifying the parties of hearings and meetings (Article 33(2)) and recording the substance of each session in minutes to be provided to the parties (Article 33(3));
- providing the parties with any decision appointing an expert and defining the scope of his or her mandate (Article 36(1));
- providing the parties with copies of expert reports and any accompanying documents or evidence submitted to the tribunal by an expert (Articles 31 and 36(2)), providing the parties with the opportunity to respond to expert reports

(Article 36(3)) and, if the tribunal convenes a hearing for examination of an expert, providing the parties with the right to present one or more experts to provide their opinion in respect of the issues contained in the report of such expert to be examined (Article 36(4));

- passing the final award within the time agreed by the parties or, in the absence of such agreement, within 12 months from the commencement of the arbitration which may be extended by the tribunal for up to an additional six months and thereafter only with the consent of the parties (Article 45(1));
- delivering to the parties a signed copy of the award in writing within 30 days of passing the award (Article 45(2));
- providing reasons in the award and the grounds on which the award is based, unless the parties have agreed otherwise or the governing law does not require the reasons and grounds to be stated in the award (Article 43(2)); and
- correcting any errors in the award (Article 50).

6.5 Are there rules restricting the appearance of lawyers from other jurisdictions in legal matters in your jurisdiction and, if so, is it clear that such restrictions do not apply to arbitration proceedings sited in your jurisdiction?

There are restrictions on the appearance of lawyers from other jurisdictions in legal matters in Oman and such restrictions extend to prohibiting anyone who is not enrolled as an advocate in Oman from appearing in arbitration proceedings in Oman. Specifically, pursuant to Article 3 of the Advocacy Law, advocacy includes appearing before arbitration tribunals and, pursuant to Article 2, it is prohibited to practice advocacy in Oman without being enrolled as an advocate with the Ministry of Justice.

6.6 To what extent are there laws or rules in your jurisdiction providing for arbitrator immunity?

There is no statutory immunity for arbitrators in Oman.

6.7 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?

The courts do not have jurisdiction to deal with procedural issues arising during an arbitration, such issues are within the jurisdiction of the tribunal (Articles 25 and 42, ACCD).

7 Preliminary Relief and Interim Measures

7.1 Is an arbitral tribunal in your jurisdiction permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitral tribunal seek the assistance of a court to do so?

The tribunal is only permitted to award preliminary or interim relief if the parties have agreed that it has such power. The type of such relief which the tribunal may order is not specified beyond "suitable temporary or precautionary measures necessitated by the nature of the dispute" (Article 24(1), ACCD) which may include injunctive relief. The tribunal would not be required to seek the assistance of the court to do so, but the party in whose favour such an order is made may need to apply to the courts for enforcement pursuant to Article 14 of the ACCD.

7.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party's request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?

Yes, the courts on application by a party to an arbitration agreement may issue orders granting interim or precautionary relief either before commencement of the arbitration proceeding or during the course of its progress (Article 14, ACCD). A party may apply for such relief where the tribunal does not have the power to grant such relief or has the power by agreement of the parties but refuses to grant such relief or where the tribunal has granted such relief and enforcement is sought and/or a party has refused to abide by the tribunal's order.

7.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?

Provided that the tribunal does not have the power to grant such relief or, where the tribunal has such power that application was first made to the tribunal, the courts would entertain such applications and may grant such relief.

7.4 Under what circumstances will a national court of your jurisdiction issue an anti-suit injunction in aid of an arbitration?

Anti-suit injunctions are not yet known in Omani law.

7.5 Does the law of your jurisdiction allow for the national court and/or arbitral tribunal to order security for costs?

No, security for costs is unknown in Omani law.

7.6 What is the approach of national courts to the enforcement of preliminary relief and interim measures ordered by arbitral tribunals in your jurisdiction and in other jurisdictions?

Where a tribunal has the power by agreement of the parties and grants preliminary relief or interim measures, the courts will enforce such orders.

8 Evidentiary Matters

8.1 What rules of evidence (if any) apply to arbitral proceedings in your jurisdiction?

In the absence of an agreement between the parties or adoption by the tribunal of procedural rules which encompass rules of evidence, the Law of Evidence in Civil and Commercial Transactions, R.D. 68/2008, (the Evidence Law) would apply.

8.2 What powers does an arbitral tribunal have to order disclosure/discovery and to require the attendance of witnesses?

The Evidence Law does not impose any obligation of disclosure,

and discovery is limited to documents known to exist by one party and in the possession of another who agrees it is in possession or does not contest such possession (Articles 20–21, Evidence Law). The tribunal may summon witnesses (Article 37(a), ACCD).

8.3 Under what circumstances, if any, can a national court assist arbitral proceedings by ordering disclosure/discovery or requiring the attendance of witnesses?

Assuming that the procedural rules applicable to the arbitration provide for disclosure/discovery, the Omani courts can be expected to enforce tribunal orders which do not otherwise contravene Omani law. If a witness fails to appear when summoned by the tribunal, the tribunal may apply to the courts to fine the witness (Article 37(a), ACCD).

8.4 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal and is cross-examination allowed?

Examination of witnesses and experts in arbitrations shall take place without requiring them to take an oath (Article 33(4), ACCD). Otherwise, the examination of witnesses in arbitrations subject to the law of Oman would be conducted pursuant to the Evidence Law, including that witnesses are examined by the adjudicator pursuant to questions put to the adjudicator by counsel for the parties (Article 49, Evidence Law). While the Evidence Law does not provide for cross-examination of witnesses, a tribunal may allow cross-examination of witnesses, depending on the circumstances, just as a tribunal may be persuaded to admit witness statements.

8.5 What is the scope of the privilege rules under the law of your jurisdiction? For example, do all communications with outside counsel and/or in-house counsel attract privilege? In what circumstances is privilege deemed to have been waived?

While lawyers have an obligation to maintain the confidentiality of their clients' information (Article 44, Advocacy Law), the concepts of lawyer-client, litigation, and settlement privilege are not known in Omani law.

9 Making an Award

9.1 What, if any, are the legal requirements of an arbitral award? For example, is there any requirement under the law of your jurisdiction that the award contain reasons or that the arbitrators sign every page?

Pursuant to the ACCD, the legal requirements of an arbitral award are that it shall:

- contain the reasons and the grounds on which it is based, unless the parties have agreed otherwise or the governing law does not require the reasons and grounds to be stated in the award (Article 43(2), ACCD);
- also contain certain identification and contact details in respect of the parties and the arbitrator(s), the text of the arbitration provision, a summary of the parties' claims, pleadings and documentary evidence, and the tribunal's operative pronouncement (Article 43(3), ACCD); and
- be signed by the arbitrator(s) or a majority thereof (Article 43(1)).

9.2 What powers (if any) do arbitral tribunals have to clarify, correct or amend an arbitral award?

On application from a party brought within 30 days of receiving the arbitral award, the tribunal may:

- clarify the operative pronouncement of its award (Article 49);
- correct any typographical or mathematical errors in the award (Article 50); and
- pass an additional award in respect of any claim pleaded but not adjudicated on in the award (Article 51).

Other than the foregoing, the tribunal has no power to amend its award.

10 Challenge of an Award

10.1 On what bases, if any, are parties entitled to challenge an arbitral award made in your jurisdiction?

Awards passed in arbitration proceedings governed by the ACCD cannot be appealed (Article 52(1), ACCD). However, a party may file a suit with the Court of Appeal seeking nullification of an award (Articles 52(2) and 54(2), ACCD) where:

- there is no arbitration agreement, or the agreement is void or voidable, or the time provided in the agreement to bring arbitration proceedings had expired;
- one of the parties was incompetent or incapacitated at the time of the arbitration agreement;
- one of the parties fails to present its case because of lack of notice of the arbitration or any other reason beyond its control;
- the tribunal ignores in its award the governing law agreed on by the parties;
- the tribunal is constituted or arbitrators appointed contrary to law or the arbitration agreement;
- the tribunal exceeds its jurisdiction by adjudicating on issues outside the scope of the arbitration agreement or, in purporting to correct any typographical or mathematical errors, otherwise amends its award; or
- the award is contrary to the public order of Oman (Articles 50(2) and 53, ACCD).

10.2 Can parties agree to exclude any basis of challenge against an arbitral award that would otherwise apply as a matter of law?

Prior to the passing of the arbitral award, the parties cannot contract out of their right to file a suit for nullification (Article 54(1), ACCD).

10.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?

Omani law does not expressly permit parties to agree to expand the scope of grounds for nullification of an arbitral award, nor to create any right of appeal. However, if any such expansion of the parties' right to seek nullification – or creation of a right of appeal – of an arbitration award was not considered to be contrary to Omani law or public order, then any agreement providing for the additional grounds/rights should be enforceable.

10.4 What is the procedure for appealing an arbitral award in your jurisdiction?

As mentioned at question 10.1, arbitral awards cannot be appealed. A suit for nullification on one or more of the grounds set out at question 10.1 needs to be filed with the Court of Appeal within 90 days of notification of the award (Article 54(2)).

11 Enforcement of an Award

11.1 Has your jurisdiction signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?

Oman acceded to the New York Convention on 25 February 1999 following proclamation of a royal decree concerning Oman's membership in such Convention (R.D. 36/98) without reservations, declarations or other notifications.

11.2 Has your jurisdiction signed and/or ratified any regional conventions concerning the recognition and enforcement of arbitral awards?

Yes, Oman is a contracting state of:

- the Riyadh Convention on Judicial Cooperation between States of the Arab League; and
- the Gulf Cooperation Council Convention for the Execution of Judgments, Delegations and Judicial Notifications.

11.3 What is the approach of the national courts in your jurisdiction towards the recognition and enforcement of arbitration awards in practice? What steps are parties required to take?

For domestic and international commercial arbitration awards passed pursuant to the ACCD, an award may not be enforced if it conflicts with a decision of the Omani courts in respect of the subject matter of the dispute, it contravenes public order in Oman, or the judgment debtor has not been properly notified of the award (Article 58(2), ACCD). The party seeking enforcement may not apply to the Primary Court for such until expiration of the 90-day period for filing a nullification suit (Article 58(1), ACCD), including in its application a copy of the arbitration provision/agreement (and translation of such if not in Arabic) and a copy of the minutes confirming deposit of the award with the court secretariat (see question 6.2) (Article 56, ACCD).

A foreign arbitration award may be recognised and enforced in Oman pursuant to bilateral or multilateral conventions between Oman and the country in which the award was made. In addition, the Law of Civil and Commercial Procedure (the CCP), R.D. 29/2002 as amended, sets out requirements for the execution of foreign awards, including that the award is in respect of a subject which could be arbitrated in Oman and enforced in the foreign country (i.e. reciprocity) (Article 353, CCP), that the award is made by a tribunal with jurisdiction in the country in which it was made and is final according to the law of such country and not grounded on a deception, that the claim on which the award is based would not be a breach of Omani law, that the award does not contradict any

judgment or order previously passed by the Omani courts, and that the award does not contravene public policy or conduct in Oman (Article 352, CCP). An application to execute a foreign arbitration award is made to a three-judge bench of the Primary Court, with the other side summoned to appear (Article 352(2), CCP).

11.4 What is the effect of an arbitration award in terms of *res judicata* in your jurisdiction? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?

Arbitration awards passed in accordance with the ACCD are considered *res judicata* (Article 55, ACCD) and therefore the *lis* may not be subject to litigation or further arbitration.

11.5 What is the standard for refusing enforcement of an arbitral award on the grounds of public policy?

The question of how an arbitration award might contravene public policy, order or conduct so as to justify refusing to enforce it has not yet been considered in the Omani courts and it is not clear what legal principles the courts might apply to answer this question.

12 Confidentiality

12.1 Are arbitral proceedings sited in your jurisdiction confidential? In what circumstances, if any, are proceedings not protected by confidentiality? What, if any, law governs confidentiality?

There is no provision making arbitration proceedings confidential. It is prohibited to publish all or part of arbitral award without the consent of the parties (Article 44(2), ACCD). However, the judicial system treats arbitration proceedings as private and confidential.

12.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?

Information disclosed in arbitral proceedings may be referred to and relied on in subsequent proceedings between the same parties.

13 Remedies / Interests / Costs

13.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?

Any arbitration governed by the laws of Oman would be limited to the civil remedies available in the courts. By way of example as to the remedies available, the Civil Transactions Law, promulgated in 2013, allows for specific performance (Article 258) and liquidated damages (Article 267). Punitive damages are unknown in Omani law.

13.2 What, if any, interest is available, and how is the rate of interest determined?

Interest may be recovered pursuant to any interest payable contractually

(Article 80 of the Commercial Law, R.D. 55/90 as amended) or for a debt in respect of commercial activities (Article 79, Commercial Law; 410-2006 Commercial Supreme – 18 April 2007). The rate of interest, if not contractual, is set yearly by the Ministry of Commerce and Industry in agreement with the Oman Chamber of Commerce and Industry (Article 80, Commercial Law).

13.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?

Yes, parties to arbitration proceedings are entitled to recover costs given that Omani courts may order and apportion costs (Articles 183 and 184, CCP).

13.4 Is an award subject to tax? If so, in what circumstances and on what basis?

Awards are not subject to tax.

13.5 Are there any restrictions on third parties, including lawyers, funding claims under the law of your jurisdiction? Are contingency fees legal under the law of your jurisdiction? Are there any “professional” funders active in the market, either for litigation or arbitration?

There are no restrictions on third parties, other than lawyers, funding claims under the law of Oman. Article 48 of the Advocacy Law prohibits contingency fees. There are no professional funders active in Oman for litigation or arbitration.

14 Investor State Arbitrations

14.1 Has your jurisdiction signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965) (otherwise known as “ICSID”)?

Yes, it has.

14.2 How many Bilateral Investment Treaties (BITs) or other multi-party investment treaties (such as the Energy Charter Treaty) is your jurisdiction party to?

Oman is party to 37 BITs, of which 10 are signed but not in force and two have been terminated.

14.3 Does your jurisdiction have any noteworthy language that it uses in its investment treaties (for example in relation to “most favoured nation” or exhaustion of local remedies provisions)? If so, what is the intended significance of that language?

There is no noteworthy language which the Government of Oman uses in its investment treaties.

14.4 What is the approach of the national courts in your jurisdiction towards the defence of state immunity regarding jurisdiction and execution?

The doctrine of sovereign immunity is unknown in Omani law.

However, the Supreme Court has interpreted Article 366(1) of the CCP, which prohibits enforcement against the state's properties, as being applicable to the property of foreign states in Oman.

15 General

15.1 Are there noteworthy trends or current issues affecting the use of arbitration in your jurisdiction (such as pending or proposed legislation)? Are there any trends regarding the type of disputes commonly being referred to arbitration?

There are no noteworthy trends or current issues affecting the use of arbitration in Oman. The disputes most commonly referred to arbitration relate to construction, engineering and infrastructure disputes.



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15.2 What, if any, recent steps have institutions in your jurisdiction taken to address current issues in arbitration (such as time and costs)?

In 2015, it was announced that an arbitration centre would be established in Oman under the supervision of the Oman Chamber of Commerce and Industry, although this has not yet happened.



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