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Banking & Finance

Oman

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2020

Law and Practice

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1. Loan Market Panorama

1.1 Impact of Regulatory Environment and Economic Cycles

With the combination of a continuously low oil price and the global, regional and local impact of COVID-19 (see **1.2 Impact of the COVID-19 Pandemic**) the loan markets are operating slightly below their usual or expected capacity. Nevertheless, smaller projects and other loan transactions are continuing to be approved and they are being structured using debt from, usually, a combination of local and international banks as well as ECA-backed funding.

1.2 Impact of the COVID-19 Pandemic

The spread of COVID-19 has adversely affected the Omani economy and business. The Omani Government has announced a series of relief measures to attempt to mitigate the economic impact of the pandemic.

In the context of the loan market in Oman, the Central Bank of Oman (CBO) announced a wide-ranging incentive package on 18 March 2020 to provide additional liquidity of more than OMR 8 billion (approximately USD20.8 billion) for the economy. Some of the main components of this package include:

- capital conservation buffers being reduced by 50%, from 2.5% to 1.25%;
- lending/financing ratio increased by 5%, from 87.5% to 92.5%, on the condition that this additional scope be reserved for lending to productive sectors of the economy, including the healthcare sector;
- lenders being permitted to accept requests for deferment of loans/interest payments, particularly by SMEs, for a period of six months without adversely impacting the risk classification of those loans;
- lenders being permitted to defer the risk classification of loans to government projects for a period of 6 months;
- local banks being permitted to reduce existing fees for various banking services and to avoid introducing new ones during 2020; and
- financial institutions being permitted to reduce interest rates on foreign currency swap operations by 50 basis points and to increase the tenor of swap facilities by up to six months.

Additional Measures

In addition to the above, the CBO announced additional measures on 23 March 2020, urging banks to identify the most critical functions needing to be carried out without disruption. These functions include electronic/digital payments, trade transactions, online services, treasury operations, international payments/remittances, emergency loans, processing of salary payments, government transactions, cheque processing, call

centre operations, ATM/CDM services and fraud/cyber risk monitoring services.

The CBO further directed that remittance services should be provided at a minimal cost given the closure of money exchanges, that banks should waive charges levied on point of sale (POS) transactions and that the use of old cards is permitted wherever debit/credit cards could not be renewed or if renewed cards could not be delivered to customers.

Finally, the CBO extended by six months the deadline for the completion and submission by borrowers of audited financial statements.

Other pertinent relief measures announced include:

- postponing loan instalments for small and medium establishments;
- deferring loan instalments payable to Oman Development Bank for a period of six months;
- granting rent exemptions to factories in industrial cities for a period of three months;
- exempting companies from Commercial Register renewal fees for a period of three months; and
- permitting automobile sale agencies and finance companies to postpone instalments in relation to car loans for a period of three months.

1.3 The High-Yield Market

Oman does not operate within the high-yield market. It issues notes, bonds, EMTNs and Islamic products (mainly through the sukuk structure). These are priced to the market and demand and, although they are often oversubscribed, Oman's bonds are cheap in comparison to other GCC nations.

1.4 Alternative Credit Providers

Alternative credit providers are active in Oman, although their sphere of operation is limited to consumer finance.

1.5 Banking and Finance Techniques

The lending market in Oman is relatively stable and techniques and structures have changed little over time. Islamic finance has become a firm feature of the market, although more in the context of raising finance through the capital markets than through debt instruments. Local and international banks continue to remain the main source of funding for most projects or corporate financing needs.

1.6 Legal, Tax, Regulatory or Other Developments

The CBO continues to work on strengthening regulatory oversight as well as safeguarding consumer and investor protection in line with regional and international standards. Further,

Oman is committed to strict compliance with anti-money laundering regulations.

As in most other jurisdictions, the biggest threat to the success of the financial sector in Oman is the challenge faced by banks in ensuring stability across the sector, the efficiency of the judicial system, as well as providing for the protection of consumers. The CBO has set up a dedicated Financial Stability Unit which undertakes regular reviews to ensure continued stability, reduce volatility, and identify systemic risks. Cyber security threats and geopolitical risks are ever-present and have increased significantly in recent years.

Oman has also taken a number of measures to address risks arising from money laundering and terrorism financing, including setting up a separate anti-money laundering and terrorism financing unit, operating within the CBO.

The New FCIL

The new Foreign Capital and Investment Law (FCIL), Royal Decree 50/2019, came into effect on 7 January 2020 followed by the issuance of the Implementing Regulations, MD 72/2020 by the Ministry of Commerce, Industry and Investment Promotion (MOCI).

The FCIL allows for full foreign ownership of companies for the conduct of all commercial activities other than those which are restricted by the MOCI for Omani nationals. The FCIL enables foreign investors intending to establish a 100% foreign owned company in Oman to obtain a single approval for establishing, operating and managing a foreign investment company in Oman from the Investment Service Center. The Cabinet of Ministers, following a recommendation by the Minister of the MOCI, may grant an all-inclusive approval for strategic projects contributing to the development of public facilities, infrastructure, new or renewable energy, roads, transportation and ports.

The FCIL provides for the grant of incentives for foreign investors, including the provision of state land on long term leases or usufruct agreements for conduct of the investment project. Foreign investment projects may be granted tax holidays and custom duty exemptions under the Tax Laws, Royal Decree 28/2009 (“Tax Law”) and the Encouragement of Industries Law, Royal Decree 1/79 (“Industries Law”).

The New Bankruptcy Law

The new Bankruptcy Law Royal Decree 53/2019, issued on 1 July 2019, took effect on 7 July 2020 (the “Bankruptcy Law”) and consolidates the insolvency and bankruptcy regime in Oman. The new Bankruptcy Law, for the first time, provides for:

- introduction of the restructuring process;

- creation of the schedule of experts;
- disapplication of the Bankruptcy Law to banking companies;
- no requirement for the outstanding debt to be OMR10,000 or more for commencement of bankruptcy proceedings;
- completion and/or suspension of protective and bankruptcy proceedings; and
- introduction of new bankruptcy offences and penalties.

VAT

VAT is expected to be introduced in 2021, and to be implemented at the GCC-agreed rate of 5%. Although the biggest impact will be felt by consumers, bank lending and financial markets are also expected to suffer mildly, depending on the extent to which VAT is applied.

2. Authorisation

2.1 Authorisation to Provide Financing to a Company

The conduct of banking business in Oman (as defined by the Banking Law Royal Decree 114/2000, the “Banking Law”), inclusive of the provision of financing to companies, requires a licence from the CBO. Any persons conducting banking business without being licensed to do so will be subject to sanctions (including fines and imprisonment).

Application and Licence

As part of the application process for obtaining a banking licence, the applicant must specify the type of banking business it intends to perform. By way of example, this may be commercial or investment banking, lease financing, hire-purchase activities or the operation of money exchange centres.

The CBO reviews each application and the supporting or incidental documentation submitted by an applicant to determine whether the applicant satisfies the requirements of the Banking Law, the commercial, financial and economic needs of Oman and such other factors as may be provided by CBO regulations and/or other applicable laws.

The CBO shall, if satisfied, issue a licence for specific banking business activities, conventional and/or Islamic banking, that the applicant has applied for. The licence will state which types of banking business may be carried out by the licensee.

3. Structuring and Documentation Considerations

3.1 Restrictions on Foreign Lenders Granting Loans

Foreign banks may conduct banking activities with Omani counterparties including the advance of credit facilities to Omani borrowers without establishing a presence in Oman. This is not considered to be the conduct of banking business in Oman and hence a foreign bank when advancing credit facilities to an Omani borrower would not need to be licenced by the CBO.

3.2 Restrictions on Foreign Lenders Granting Security

The grant of security or guarantees to foreign lenders is not restricted or prohibited. The grant of security, for the benefit of foreign lenders, in the form of legal/commercial mortgages or share pledges, is common practice. Foreign lenders may appoint a local bank as their onshore security agent for holding and enforcing security on their behalf where necessary.

3.3 Restrictions and Controls on Foreign Currency Exchange

There are no foreign currency exchange controls or restrictions currently in force in Oman.

3.4 Restrictions on the Borrower's Use of Proceeds

There are no restrictions on the borrower's use of proceeds from loans or debt securities provided that the purpose is not unlawful under Omani law. Unlawful purposes may include dealing in arms or other restricted or prohibited goods such as alcohol, pork products or tobacco.

3.5 Agent and Trust Concepts

The Banking Law provides that licensed banks may hold assets in a fiduciary capacity and the CMAL provides that licensed banks and CMA licensed companies may establish trust accounts on behalf of their customers investing in securities. Trust companies may be established to act as trustees pursuant to the CMAL Regulations with regard to the issuance of sukuk.

The concept of agency is recognised in Oman and may be adopted for holding security interest in financing transactions.

3.6 Loan Transfer Mechanisms

The most usual method of transferring a loan between lenders in Oman is by novation. The transfer of security may be problematic, and much will depend on the type of asset secured and whether or not the pre-existing security agent will continue to hold security for the benefit of the transferee lenders. If no security agent/trustee has been appointed and the transfer of the loan and security interest held in respect of the same will

be effected for the benefit of a new lender then a fresh security package/arrangement may need to be negotiated and registered upon novation of the loan agreement.

3.7 Debt Buy-Back

Subject to the terms of the documentation governing the debt incurred (and, potentially, the articles of association of an issuing company), debt buy-back by a borrower or a sponsor is permissible.

3.8 Public Acquisition Finance

"Certain funds", being the requirement of a potential purchaser to show proof of its ability to meet the purchase costs, is not a feature of Omani acquisition finance transactions. In any event, true acquisition finance structures are rare.

4. Tax

4.1 Withholding Tax

Withholding tax is payable at the rate of 10% on interest, dividends and other payments for services which come within the scope of the withholding tax regime as provided for by the Tax Law.

MD 14/2019, issued on 28 February 2019, amending the Executive Regulations of the Tax Law, confirms that inter-banking transactions, providing for and managing liquidity or finance with a term of less than five years, will not be subject to withholding tax under the Tax Law.

Further following a Royal Directive of 15 May 2019, received by the CMA, the Oman Government has suspended the assessment and collection of withholding tax on dividends and interest payments for a period of three years, subject to further extension if so required, effective from 6 May 2019.

4.2 Other Taxes, Duties, Charges or Tax Considerations

Registering a legal mortgage in Oman may have a significant financial impact on borrowers as the current fees for registering a legal mortgage at the Ministry of Housing and Urban Planning (MOH) are equal to 1% of the secured liabilities and are capped at OMR300,000.

Other security registration fees are negligible or, at the very least, insignificant.

4.3 Usury Laws

As a general rule, the Primary Commercial Court will uphold provisions relating to the payment of interest on principal and on overdue principal in commercial transactions (including

without limitation, default interest). It will not award interest which may be penal (as opposed to being compensatory for any loss suffered on account of default or delay in repayment of debt). Where there exists no agreement on the applicable rate of interest, the Court may limit the rate of interest recoverable on a judgment to the maximum rate specified by the CBO from time to time or to a level considered by the Primary Commercial Court to be reasonable in accordance with the Commercial Code of Oman Royal Decree 55/90 (“Commercial Code”).

Article 80 of the Commercial Code empowers the MOCI in agreement with the Oman Chamber of Commerce and Industry (OCCI) to specify every year interest rate limits within which interest rates on commercial credits may be charged, taking into account the term of the loan and the purposes and risks thereof. The most recent MD 188/2019 permits creditors to charge interest at a maximum rate of 6.5% per annum on commercial loans and debts unless a lower percentage has been agreed by the parties. This MD includes a statement to the effect that the limitation on rates of interest introduced by it does not apply to loans advanced by commercial banks licensed by CBO in accordance with the Banking Law.

The CBO permits banks to determine the interest rates to be applied to credit that is advanced, with exception of consumer loans. The CBO will not, however, permit any cartel arrangements among banks to artificially inflate the cost of credit or any attempt unreasonably to widen interest rate margins.

5. Guarantees and Security

5.1 Assets and Forms of Security

Security interests under Omani law may be created and registered in the form of legal mortgages over real estate, commercial mortgages over tangible/intangible and movable and immovable assets, and share pledges.

Legal Mortgage

Security interests by way of legal mortgages may be registered over land and constructed property on the Land Registry maintained by the MOH in accordance with the Land Law Royal Decree 5/80 and the Land Registry Law Royal Decree 2/98 (“Real Estate Law”). The registration of a security interest over real estate with the MOH, will create a perfected first priority security interest for the benefit of the mortgagee, who will take priority over claims of unsecured creditors both before and upon a debtor’s bankruptcy subject only to any statutory preference.

Registration of a legal mortgage over land can be cumbersome and expensive when compared to the registration of other forms

of security interest. The MOH typically likes to vet the legal mortgage documentation prior to allowing for registration of the mortgage and hence the registration process may take longer than the registration of other security interests. The costs of registering a legal mortgage are as noted in **4.2 Other Taxes, Duties, Charges or Tax Considerations**.

Commercial Mortgage

Commercial mortgages may grant rights to lenders over the borrower’s movable/immovable and tangible/intangible assets. Commonly, a commercial mortgage will secure the borrower’s business (including its commercial registration number and business name), machinery, equipment, trademarks, intellectual property, goodwill, stock and vehicles.

For the beneficiary of a commercial mortgage to acquire a perfected first priority security interest over the borrower’s assets being the subject matter of the commercial mortgage, the commercial mortgage must be registered on the Commercial Register at the MOCI.

Registration of a commercial mortgage usually takes up to two working days and requires the parties to the commercial mortgage to sign in person at the MOCI and to make a payment of a small registration and witnessing fee.

Share Pledges

Share pledges may be registered over shares in public or closed joint stock companies but not over shares in limited liability companies (LLCs). Share pledge registration may occur on the shareholders register of the concerned company, maintained by the Muscat Clearing and Depository Company SAOC (MCDCC). Such registration will entail the payment of a nominal fee and registration process may be completed within two to three days.

Personal Security

Arises out of contractual arrangements between parties that give rise to contractual claims (rights in personam). Such security will include personal and corporate guarantees, and assignments issued for the benefit of lenders. The lenders will have no priority rights under personal security and will rank as unsecured creditors in the event of the debtor’s insolvency. Lenders may, however, claim against the guarantors for the debtor’s undischarged obligations.

5.2 Floating Charges or Other Universal or Similar Security Interests

Whilst a floating charge is not recognised under Omani law, it is worth noting that the MOCI has, in the past, not objected to the inclusion of wording in commercial mortgages creating a floating charge. Commercial Code provides that, where assets included within the commercial mortgage are not defined, the

commercial mortgage shall only apply to the mortgagor's trade name, its right of lease, its right to contact clients and over its goodwill. This suggests that commercially mortgaged assets must be precisely defined.

5.3 Downstream, Upstream and Cross-Stream Guarantees

Corporate entities may provide guarantees subject to the terms of their constitutive documents and the Commercial Companies Law of Oman Royal Decree 18/2019 (CCL).

Joint Stock Company Restrictions on Grant of Guarantees

In accordance with Article 185 of the CCL, board of directors of a joint stock company may not mortgage or pledge their company's assets except to secure the company's debts incurred in the ordinary course of the company's business; or to guarantee third party debts except for the provision of guarantees provided in the ordinary course of its business for the achievement of the company's objectives, unless explicitly authorised by the company's articles of incorporation or a decision of the ordinary general meeting.

LLC Restrictions on Grant of Guarantees

Article 267 of the CCL provides that managers of a LLC may not mortgage or pledge the company's assets except to secure the company's debts incurred in the ordinary course of the company's business; and guarantee debts of third parties, except for guarantees provided in the ordinary course of the company's business for the fulfillment of its objectives, in each case without the express authorisation having been provided for by the LLC's constitutive contract or by a unanimous resolution of its shareholders.

LLC Loans

In accordance with Article 272 of the CCL it is unlawful for managers and shareholders of an LLC to obtain from the LLC any loans or guarantees for their benefit. Any such transaction will be held to be null and void. A similar restriction is not, however, provided for in respect of the directors/shareholders of joint stock companies. In light of which an LLC may not guarantee the liabilities of or provide loans its parent companies.

Given that LLCs are incorporated for the conduct of specific commercial activities management of the LLC will only be able to utilise the assets and/or provide security for the benefit of a third party, ie, a non-shareholder, if any such guarantee or security is provided in the ordinary course of business consistent with the company's constitutive contract and with the approval of its shareholders.

Joint Stock Company Loans

Whilst no restrictions have been provided for by the CCL with regard to a joint stock company advancing loans or providing guarantees for the benefit of its shareholders, ie, a parent company, the provision of any such guarantee if not expressly permitted by the joint stock company's articles of association will need to be approved by the shareholders of joint stock company. It is likely that similar approvals will also need to be obtained with respect to a subsidiary unless the parent company granting a loan to the subsidiary has been incorporated as a holding company, whether in the form of a LLC or a joint stock company. In accordance with the CCL, holding companies, whether incorporated as joint stock companies or LLCs, are permitted as part of their objectives to advance credit facilities and/or to guarantee the debts of their subsidiaries.

Cross-Stream Guarantees

The grant of cross-stream guarantees, ie, guaranteeing the obligations of third parties, who are neither subsidiaries nor parent companies, will need to be approved by the shareholders or the company's management subject to the relevant provisions of the CCL referred to above and provided the provision of any such cross stream guarantees is for the achievement of the company's objectives.

5.4 Restrictions on Target

Whilst there are no specific financial assistance regulations in place at the current time, with regard to a target company's ability to grant security, guarantee or give financial assistance for the acquisition of its own shares, the target will be subject to the limitations and restrictions provided for by Article 185, 267 and 272 of the CCL discussed in **5.3 Downstream, Upstream and Cross-Stream Guarantees**.

5.5 Other Restrictions

Finance for power and water projects in Oman requires, in accordance with the Law for the Regulation and Privatisation of the Electricity and Related Water Sector Royal Decree 78/2004 ("Sector Law"), approval by the Public Services Regulation Authority ("Utilities Authority"). Security documents, including commercial and legal mortgages, are approved in advance and approval usually takes one to two weeks from the date of submission.

In accordance with Article 26 of the Public Private Partnership Law Royal Decree 52/2019 ("PPP Law") a project company may not create any security interest by way of mortgage or otherwise over its land and/or assets movable or immovable, other than for securing financing for the project company and without the prior written approval of the Ministry of Finance (MOF).

5.6 Release of Typical Forms of Security

Release agreements are entered into between the chargor and chargee and are filed with the relevant authority with whom a charge has been registered for a discontinuation of the charge.

5.7 Rules Governing the Priority of Competing Security Interests

As a matter of Omani law, competing security interests will be prioritised on the basis of whether or not the security interest has been registered with the concerned authority and the timing of such registration above other unsecured creditors who will rank *pari passu* as amongst themselves. In case of insolvency priority for settlement of an insolvent debtor's liability shall be given as under:

- any public funds expended on completion of insolvency proceedings;
- statutory creditors, including two years of unpaid taxes, insolvency fees, costs and expenses associated with the proceedings, the debtor's employees' costs and the maintenance costs allocated for the debtor (natural person) and its dependents;
- secured debts, with interest accrued prior to passing of a bankruptcy order and interest accruing after the bankruptcy order; and
- unsecured debt.

There is no legislative recognition of subordination of debts. Any such subordination may be provided for by contract and shall remain subject to the Commercial Code, the Civil Transactions Law of Oman Royal Decree 29/2013 ("Civil Code") with regard to enforcement of subordinated rights and obligations. Subordination agreements may provide for prioritisation of security interest amongst the parties to the subordination agreement and such arrangements should be upheld in case of a debtor's insolvency provided that these will not affect any priority rights available for Government as a creditor or other statutory creditors.

6. Enforcement

6.1 Enforcement of Collateral by Secured Lenders Requirement for Court Judgment

Enforcement proceedings will need to be filed against the borrower, any third-party mortgagor and the guarantor (if the guarantor has not voluntarily discharged the outstanding liability) with the Primary Commercial Court for enforcement of security interests whether in respect of legal mortgage over real estate or commercial mortgage over movable/immovable, tangible/intangible assets or a commercial pledge over shares/assets, or a guarantee, for obtaining a judgement in respect of

the secured debt. In a relatively straightforward debt recovery action, obtaining judgment from the Primary Commercial Court may take about six months where the debt is not contested and no verification of the debt is necessary through court appointed experts. Following passing of a judgement by the Primary Commercial Court and completion of the appeal remedies available to the parties, an application for enforcement of final judgement for recovery of the debtor's debt, may be filed with the Enforcement Department at the Primary Commercial Court for sale of judgement debtor's and/or third party security providers secured or unsecured assets.

The enforcement of simple security will usually take up to four months. Where enforcement is more complicated, the process can take anything up to two or three years. Invariably, during that time the chargor/mortgagor will continue to hold and control all the charged assets.

Enforcement by Public Auction

Enforcement in Oman is principally by way of public auction of the charged assets and the unsecured assets of a debtor, following application by the judgement creditor to the Courts.

Appointment of Experts

The Court will appoint third-party expert to evaluate the assets to be disposed of and to set a minimum price which must be reached at public auction. The creditors will have no say in the matter although if the assessed minimum price is found to be too low, the secured creditor may ask the Court for a further evaluation to be carried out. If the minimum price is not reached at the public auction, the property or the asset may be re-auctioned on a new public auction date with a reduction of 10% in the minimum price determined for the property/asset. Similar reductions may continue to be made thereafter until a sale is achieved or the secured creditors decide to withdraw or suspend the enforcement application.

Any party, including the mortgagee, will be permitted to bid for the assets at public auction. The Court will approve the setting off the decreed liability against the purchase price payable for the purchased property/asset by the mortgagee without the secured creditor having to make payment of the purchase price unless the purchase price payable is in excess of the secured debt then the secured creditor will have to pay the differential amount to the Court.

6.2 Foreign Law and Jurisdiction

The Omani Courts have, in the past, expressed their willingness to apply the contractually agreed upon foreign law to a dispute brought before them, provided the relying party is able to demonstrate, to the satisfaction of the Court, the existence of the applicable foreign law. The Civil Code now expressly allows

contracting parties to agree upon a foreign governing law for their contract. To date the Omani Courts have, however, not as yet applied agreed foreign law to a dispute brought before them.

Notwithstanding that a contract may provide for the resolution of disputes before a court of foreign jurisdiction, if one of the parties to the dispute is resident or domiciled in Oman then, in all likelihood, the Omani Courts will accept jurisdiction.

General contractual immunity provisions should be enforceable under Omani law as the earlier Omani law requirement for a waiver of sovereign immunity from government bodies/departments being necessary has been dispensed with by Royal Decree 13/1997. Whilst this remains the current position, however, the enforcement of judgements against government bodies will remain subject to the qualification (under Article 366 of Civil and Commercial Procedure Law, Royal Decree 29/2002) (CCPL) that, when it comes to judgements against government bodies, notwithstanding the ability to file suits against such government bodies, “attachment shall not be effected on ... public or private properties owned by the state, its authorities, public establishments and likewise”.

6.3 A Judgment Given by a Foreign Court

Applications may be made to the Primary Commercial Court for the recognition and enforcement of foreign judgments, arbitral awards and orders. An order seeking execution of a foreign judgment or award will not be permitted by the Court unless applicable conditions provided for by the CCPL have been satisfied. To date, no judgment of a foreign court has ever been enforced by the Omani Courts. Notwithstanding the CCPL, in the absence of specific Omani legislation permitting registration and recognition of foreign judgments, it is likely that a foreign judgment would be of evidentiary value only and the matter may have to be litigated de novo before the Omani Courts.

With Oman having become a signatory to the New York Convention on the enforcement of foreign arbitral awards, arbitration awards obtained from tribunals constituted in New York Convention member states should be held to be enforceable as a matter of Omani law before the Omani Courts.

6.4 A Foreign Lender’s Ability to Enforce Its Rights

It is generally considered advisable for foreign lenders to follow past practice and appoint an onshore security agent for the purposes of holding Omani security on their behalf. That said, whilst there exists limited case law on how the Omani courts would approach enforcement of foreign lenders rights against the borrower, provided the foreign lenders rights are appropriately documented and the terms and conditions subject to

which it has acquired its rights are not contrary to Omani law such rights should be enforceable.

7. Bankruptcy and Insolvency

7.1 Company Rescue or Reorganisation Procedures Outside of Insolvency Restructuring

Articles 6 to 23 of the Bankruptcy Law, provides for a non-binding process through which a debtor may initiate a restructuring plan through the filing of an application with Department of Scrutiny and Monitoring of Commercial Establishments (“Competent Department”) at the MOCI. Such application if accepted will result in the Competent Department constituting a Steering Committee from amongst the panel of experts, approved by it, to assist the debtor in reviewing, preparing and negotiating a restructuring plan for its creditors’ consideration. Following approval of the restructuring plan a restructuring agreement may be entered into by the debtor with its creditors for a period of up to five years within which the debtor will be required to revive its business and to discharge its outstanding liabilities in accordance with the terms of the restructuring agreement.

The restructuring agreement will be ratified by the Primary Commercial Court and will be enforceable as per its terms amongst the debtor and his creditors who are party to the restructuring agreement. Any creditor that is not signed the restructuring agreement whether secured or unsecured will not be bound by the terms of the restructuring agreement.

Preventative Composition

Articles 24 to 68 of the Bankruptcy Law provide for the statutory process, procedures and mechanism for a debtor to arrive at a financial restructuring/reorganisation plan similar to the scheme of arrangement in the UK, or Chapter 11 reorganisation in the USA. A merchant, being any company or a partnership, other than a unincorporated joint venture/or a natural person, who has run into financial difficulties may file an application for protective composition provided that the merchant has committed no fraud or a fault, and provided that such merchant has carried on its business for the last two years prior to the date of filing of application.

Protective composition will not be available for a company in liquidation or a company that is already undergoing a process of protective composition.

The application for protective composition must provide reasons for financial failure, the proposals for composition and the guarantees to be made available for its execution in addition

to the submission therewith the information and documents set out in Article 28 of the Bankruptcy Law. When considering the application for protective composition, the Primary Commercial Court may take preventive measures to safeguard the debtor's funds pending a final decision on the application.

Commencement of Bankruptcy Proceedings

Following commencement of protective bankruptcy proceedings, the debtor's creditors will be invited by notification to attend a creditor's meeting on the designated date prior to which secured and unsecured creditors will have been required to deliver to the composition secretary appointed by the Court, their original documents with supporting statements relating to their outstanding claims with any security provided to them. At the creditors meeting, the protective composition proposal will be considered and may be approved by a minimum of 2/3rd of the value of the debts owed to the unsecured creditors, as accepted by the insolvency judge. The approved protective composition and the minutes of the creditors meeting must be signed by the debtor, creditors voting in favour of the same, the insolvency judge presiding over such meeting and the composition secretary for submission to the Court for its ratification. The protective composition terms and conditions may comprise of the debtor being:

- given a grace period for payment of its debts;
- exonerated from payment of a part of the debt; or
- directed to repay its debts within a period not exceeding five years from the date of ratification of the composition, if the debtor's financial condition improves within such time.

The terms of the protective composition are to be satisfied within a period of five years from the date of its ratification unless sooner terminated with the approval of the competent Court. Notwithstanding ratification and approval of the protective composition secured creditors will continue to retain their rights with respect to their outstanding claims and security interest held by them.

There is no mandatory requirement for consensual restructuring negotiations prior to the commencement of a formal "statutory process" in Oman.

7.2 Impact of Insolvency Processes

Impact on Insolvent Debtor

Following declaration of bankruptcy generally:

- the administrator or the secretary of the union of creditors, appointed by the Court shall invite creditor claims for determination of validity of such claims;
- the insolvency judge will be required to immediately seal debtor's business and take inventory of its assets;

- the Court will determine the date from which cessation of payments occurred so that the suspect period may be established not preceding two years from the date of the bankruptcy order;
- no proceedings may be filed against the debtor other than cases relating to assets not forming a part of the bankruptcy estate, or for any cases to be filed against a debtor as a matter of law or cases under the Penal Code of Oman (Royal Decree 7/2018);
- debts incurred by the debtor after passing of a bankruptcy order will not be binding on the creditors;
- the debtor may be prohibited from leaving Oman for period of three months subject to renewals;
- insolvency judge will direct disposal of the bankrupt's assets through a public auction.

Creditor Rights

Following the passing of a bankruptcy order with respect to creditors rights specifically:

- Secured creditors may continue their cases against the bankrupt and seek to enforce their security interests for recovery of the secured debts, subject to such enforcement proceedings being initiated within one year from the date of the bankruptcy order.
- Unsecured creditors will, upon submitting their claims to the trustee-in-bankruptcy and such claims being verified, constitute a group of creditors with its own independent legal personality. They may continue with any ongoing proceedings filed against the debtor prior to the debtor being declared bankrupt.
- No right of set off will be exercisable between the assets and the liabilities of the insolvent debtor unless a link can be established between the two. Such link will be deemed to exist if the assets and liabilities have arisen from one reason and include a current account to which the insolvent debtor is a party. The statute provides for no similar limitations or restrictions with regards to the exercise of a right of set off in respect of a company under liquidation.
- Each creditor and all interested parties shall have the right to inspect the list of creditors' and their claims deposited by the trustee-in-bankruptcy with the Court. The group of creditors will also be given access to periodical reports prepared on the state of the bankruptcy by the trustee-in-bankruptcy and submitted to the insolvency judge.

The bankruptcy process may be closed earlier due to insufficiency or non-availability of funds or assets in the name of the bankrupt which may cover the bankruptcy costs and pay its debts. The creditors will remain at liberty to pursue individual claims against the insolvent debtor. The bankruptcy process may also terminate upon a verification of the debts and it transpiring

that the debts are not acceptable, or if all debts are owed to a single creditor, or if a settlement has been reached between the creditor(s) and the insolvent debtor.

7.3 The Order Creditors Are Paid on Insolvency

The waterfall of claims will be settled in the manner provided in **5.7 Rules Governing the Priority of Competing Security Interests**.

7.4 Concept of Equitable Subordination

It is understood that the concept of equitable subordination is a feature of insolvency law in the USA (under Chapter 11 of the US Code) under which the court may:

- under principles of equitable subordination, subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim or all or part of an allowed interest to all or part of another allowed interest; or
- order that any lien securing such a subordinated claim be transferred to the estate.

Whilst there is no concept analogous to that under Chapter 11 referred to above under the Bankruptcy Law, the Omani Courts may declare transactions conducted by the insolvent debtor within a two year look back period from the date of declaration of its bankruptcy as being unenforceable where such transactions have sought to confer fraudulent preferential treatment or are detrimental to insolvent debtor's creditors. Additionally the Bankruptcy Law also provides for specific transactions (ie, donations, except for nominal, customary gifts, and the settlement of debts prior to their maturity) which if entered into during the suspect period to be, in all events, unenforceable.

7.5 Risk Areas for Lenders

In addition to the lenders being required to take all necessary actions for enforcement of their security interest within their time period, they will need to ensure that they safeguard their rights which may otherwise need to be transferred to a guarantor who may, upon discharging the debtor's liability in favour of the creditor, be entitled to exercise step-in rights in place of the creditor to claim against the debtor in bankruptcy as a unsecured creditor. Lenders should also be aware that, unlike in certain other jurisdictions, insolvency action cannot be commenced out-of-court. A receiver may only be appointed by the Court, and not, as may be the case in other jurisdictions, by the creditors of the debtor. Consequently, lenders have less influence over the insolvency process.

8. Project Finance

8.1 Introduction to Project Finance

Oman continues to undertake many large-scale infrastructure and industrial projects, especially in power, water and petrochemical sectors. Oman has planned or is currently undertaking a large number of construction projects, including Tanweer Hybrid IPPs, Barka V and Ghubrah 3 IWPs. Oman is a highly attractive destination for project finance, partly due to its stable legal and political system. In addition, the Muscat Securities Market remains relatively small and there is more emphasis on project finance as a source of funding in comparison to other jurisdictions with larger equity markets.

The Basic Law

Wide-ranging legislation is in place to promote business and foreign investment in Oman, including the Basic Law (Royal Decree 101/96) being the constitution of Oman, sector specific laws, ie, Sector Law, the waste management and telecommunication laws, CCL, the Commercial Code, the Civil Code, the New FCIL, Real Estate Law, Tax Law, Industries Law and the Environment Law.

The Basic Law provides for a well-defined governance structure, and judicial system, comprising of the Primary Commercial Court, the Appeal Court and the Supreme Court.

Financing and Foreign Ownership of Projects

Overseas banks may participate in project finance in Oman. Whilst there are limited restrictions on foreign ownership of companies in Oman, 100% of the shares in companies undertaking strategic projects involving power, water or industrial activities may be owned by non-Omani entities. There are well established precedents for project finance agreements in Oman, especially for IPPs and IWPPs.

Exploration and production sharing agreements (EPSA) and power and water purchase agreements have 20-year time scales, giving project companies a suitable period of time to operate their projects with certainty. This also helps give predictability when calculating expected cash flows and returns from projects.

Islamic Finance and Project Agreements

Omani law recognises and provides for Islamic finance as a source of funding for project finance through Islamic banks and windows who may invest their investments in Islamic project finance. Notable examples include financings of the Moon Iron and Steel plant and the Sohar Aluminium plant, both in Sohar. Both of these used a combination of conventional and Islamic financing.

The project agreements entered into with regard to IWP and IPP projects may require a project company to conduct an IPO of a certain percentage of its share capital within a specified time period from the date a project company's incorporation or commencement of its commercial operation.

8.2 Overview of Public-Private Partnership Transactions

The PPP Law took effect in early July 2019. At the same time, a new Privatisation Law Royal Decree 51/2019 ("Privatisation Law") was also published.

The PPP Law is intended to encourage progress of the wide range of PPP projects anticipated to be implemented in Oman in the health, education and road transportation sector. The associated executive regulations for both the PPP Law and Privatisation Law have been issued in the form of MD 4/2020 ("Privatisation Law Regulations") and MD 3/2020 ("PPP Regulations").

PPP agreements are exempted from the Privatisation Law and the Tender Law (Royal Decree 36/2008).

Projects Companies and Role in the Private Sector

A person or a consortium awarded a PPP project must implement and operate the same through a newly formed project company, in the form of a joint stock company, and not by means of an existing company. Such project company may be 100% foreign-owned. The PPP Regulations set out the legal form and minimum capital requirements of the project company.

The MOF is mandated, under the PPP Law, to encourage PPPs and to expand the role of the private sector in investing in projects of social and economic importance.

The Privatisation Law applies to Government utilities and facilities, or wholly or partially Government owned companies, that are selected for privatisation by the Council of Ministers. Privatisations are undertaken in accordance with the Privatisation Law and the Privatisation Executive Regulations by a privatisation unit established within the MOF.

8.3 Government Approvals, Taxes, Fees or Other Charges

Consents and Permits

The consents and permits required for a project will vary from sector to sector. By way of example with regard to an IPP or an IWP project, a licence is required from the Utilities Authority in addition to environmental permits being required from the Environment Authority (the successor to the Ministry of Environment and Climate Affairs, established pursuant to Royal

Decree 106/2020), security related permits from the security agencies, ie, Royal Oman Police, Ministry of Defence, construction permits from the MOH, etc. Consents and permits would need to be obtained pursuant to an express statutory requirement relating to the government body responsible for issuing the same or with regards to the activity contemplated.

Fees and Taxes

Other than in the case of registration of security interests, the obtaining of approvals, permits, authorisations and other registrations will attract a standard administrative fee. To ease the process of obtaining consents and permits for the development and implementation of projects in Oman, the Government has established one-stop-shop under the title of an Invest Easy through whom all permits and consents required for a particular project may be obtained. Similar one-stop-shop has been established by the Free Zone Authority for investors undertaking projects in any of the free zones established in Oman.

Most goods imported into Oman (including project materials and equipment) attract a customs duty of 5% levied on the cost, insurance and freight (CIF) value of the goods imported. Exemptions may be available against customs duty in the Free Zones.

Tax is imposed by the Director of Taxation Affairs pursuant to the Tax Law. Oil companies are taxed at a rate of 55% on their taxable income insofar as it relates to income earned from the sale of oil. The annual tax rate applicable to all companies incorporated in Oman including the branches of foreign entities and permanent enterprises is 15% of taxable income. Tax holidays may be available with respect to certain projects undertaken onshore within Oman pursuant to the Tax Law and the Industries Law whilst no tax is payable in respect of projects undertaken in Free Zones.

With respect to project agreements only usufruct and lease agreements are generally required to be registered with the MOH. With regard to perfection of security interests, see **4.2 Other Taxes, Duties, Charges or Tax Considerations**. All documents filed with any government authority must be in Arabic.

8.4 The Responsible Government Body

Regulation of the Utilities Sector

The power and water sector is regulated by the Utilities Authority pursuant to the Sector Law. Whilst the Utilities Authority is responsible for licensing power generation and water desalination companies, the Oman Power and Water Procurement Company SAOC enters into PPA and WPAs with the concerned licensed entities.

Grant of Concessions for Mining

Pursuant to the Mineral Wealth Law Royal Decree 19/2019 (MWL) concessions may be granted by the Public Authority for Mining (PAM) over land for the implementation of mining project to become effective only after a Royal Decree has ratified the concession agreement. PAM will continue to oversee and monitor the mining activities undertaken by the concession holder pursuant to the terms and conditions of the concession agreement.

Grant of Licence for Oil and Gas Activities

The Oil and Gas Law Royal Decree 8/2011 (“Oil and Gas Law”) is the primary law in the oil and gas sector, regulated by the Council of Ministers, which acts in conjunction with the Ministry of Energy and Minerals and its various departments. The Directorate General of Petroleum and Mineral Resources is the body responsible for granting licences and permits for the conduct of oil and gas related activities. In addition, the Environment Authority is the body responsible for regulating environmental aspects of upstream operations in Oman.

The Oil and Gas Law sets out the general rules that regulate the oil and gas sector and the parties that are granted interest(s) in hydrocarbon assets in Oman. Details in relation to the rights and obligations of parties who have been granted the right to explore and exploit hydrocarbons in Oman are, in addition to the Oil and Gas Law, primarily contained in exploration and production sharing agreements (EPSA) which grant the exploration and exploitation rights to the concerned concessionaire.

8.5 The Main Issues When Structuring Deals

A project company may be incorporated as an LLC, SAOG or SAOC.

In precedent project development transactions in Oman, the project founders have used offshore special purpose holding company structures (whose shares may be pledged in accordance with relevant foreign law) and for such offshore special purpose companies to own shares in the Omani entity.

A key consideration has been whether or not the shares in a project company can be pledged. Whilst this is possible with respect to shares in a joint stock company it may not however be permissible with regard to LLCs. Notwithstanding which a number of projects in Oman have been financed using the LLC structure, this is usually accepted where the lenders consider the underlying project company to be a government entity.

8.6 Typical Financing Sources and Structures for Project Financings

The principal sources of financing available to project companies are direct lending from export credit agencies, and international and local bank funding.

8.7 The Acquisition and Export of Natural Resources

Article 11 of the Basic Law provides that all natural resources are the property of the state, which will preserve and utilise them in the best manner possible, taking into consideration the requirements of the state’s security and the interests of the national economy. No concession or investment in any of the public resources of the country may be granted except by virtue of a specific law (ie, a royal decree) and only then for a limited period.

While the Basic Law provides for the grant of concessions or investment rights regarding exploitation of mineral resources, specific royal decrees, provide for the ratification of EPSAs entered into by the Government and third parties for oil exploration, production, transportation and exportation.

Exploration and Production

Most of the oil and gas exploration and production activities are carried out pursuant to EPSAs and the share of revenue payable to the government is based on the terms of the EPSA. EPSAs provide that the revenue from oil production is to be shared between the government and the concessionaire in an agreed ratio, for example 20:80 or 30:70 as the case may be, after meeting the costs involved. The concessionaire provides all funds required for and bears all costs and expenses in connection with the exploration of oil or gas, as the case may be. A formula may also be agreed between the government and the concessionaire for computation of the amount of income tax to be paid by the concessionaire and included in the EPSA. Royalties payable to the government in respect of mining activities are specified in the related concession licence.

Special rules apply to cross-border sales or deliveries of crude oil or crude oil products. In practice, all of these deliveries are in the nature of export transactions. Such transactions are closely controlled by the shareholders of the relevant operating companies.

8.8 Environmental, Health and Safety Laws

The Environment Authority is the principal authority responsible for the regulation of environmental protection and pollution control in Oman pursuant to the Law of Environmental Protection and the Prevention of Pollution in Oman is Royal Decree 114/2001 (“Environmental Law”).

The Environmental Law regulates a wide range of physical, chemical and biological pollutants, and many of its provisions are directed specifically at potentially polluting work-places, both onshore and offshore. It imposes a general prohibition on the disposal of environmental pollutants and requires owners of polluting work-places to ensure that all applicable emission and discharge standards are complied with. The Environment Authority is responsible for administration of the environmental permit system, applicable to all projects including but not limited to, oil and gas, mining, power and water projects undertaken in Oman.

Project founders are required to prepare environmental impact assessment reports for their projects and submit the same to the Environment Authority for the issuance of preliminary and final environmental permits. Such permits may be issued for specified durations subject to further renewals and subject to such conditions as may be considered necessary by the Environment Authority. A breach of the environment condition may result in imposition of fines and penalties.

The Environmental Law is supplemented by a substantial number of other Royal Decrees and regulations, some of which prescribe discharge and emission standards or require permits to be obtained prior to the commencement of operations. These permits are subsidiary to the main Environmental Permit required under the Environmental Law, and any permits falling within the Environment Authority's competence may be issued by the Environment Authority on the basis of the main permit.

Occupational Safety and Health

The health and safety regulations applicable to employees are provided for in RD 35/2003 (the "Labour Law") and MD 286/2008. MD 286/2008 sets out the regulations relating to vocational health and safety in the private sector. The Ministry of Labour remains primarily responsible for ensuring that employers comply with the health and safety rules and regulations for the safeguarding of their employees in the work place. A failure to comply with the health and safety regulations may result in the imposition fines and penalties on the employer.

OMAN LAW AND PRACTICE

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Al Busaidy, Mansoor Jamal & Co was established 40 years ago and is a full-service law firm of international quality. It is described as a rarity in the Middle East, being an independent, national firm that tops the global legal rankings and widely considered the strongest adviser in the market. AMJ has been involved in innovative, “first of a kind” deals and landmark projects in Oman and the region. The firm has the largest, most

diverse practice in Oman, with a 38-strong resident team of lawyers comprising eight partners, one special counsel, experienced solicitors, barristers, Arab law specialists and Omani advocates, backed by a 35-strong support team. The eight-lawyer team dedicated to the banking, project and Islamic finance practice allows AMJ to advise on a wide variety of transactions.

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