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Enforcement of Judgments

Oman

Law & Practice
and
Trends & Developments

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Law and Practice

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1. Identifying Assets in the Jurisdiction

1.1 Options to Identify Another Party's Asset Position

The options for identifying another party's assets in the Sultanate of Oman may be limited to information that is publicly available or that which can be obtained from the concerned ministries who maintain registers for registration of ownership and security interests over assets owned by a party. Such options include:

- the land register (the "Land Registry") maintained by the Ministry of Housing (MOH)
- the commercial registry ("Commercial Register") maintained by the Ministry of Commerce and Industry (MOCI);
- Muscat Clearing and Depository SAOC (MCDC) who maintains shareholder registers for closed joint stock companies and public joint stock companies, in which a pledge may be recorded over shares by the shareholders in favour of third parties (the "MCDC Shareholder Register"); and
- vehicle registries maintained by the Royal Omani Police (ROP) for registration of motor vehicles and mobile rigs (the "ROP Vehicles Registry").

The enforcement judge in the enforcement department (the "Enforcement Department") at the Primary Commercial Courts may issue directives to the concerned regulatory authorities for provision of information relating to a judgment debtor's assets, which is otherwise not accessible to members of the public, ie, the judgment creditor.

Trustees in bankruptcy appointed following the passing of a bankruptcy order against a merchant or a liquidator may trace and take charge of the insolvent merchant's assets or the corporate entity under liquidation for the discharge of the insolvent debtor's liabilities.

Land Registry

The Land Register is maintained by the MOH as a central land register in accordance with the Land Registry Law (Royal Decree 2/98) wherein all interests in real estate, whether in the form of freehold title, leasehold interest, usufructs, licenses and mortgages, are required to be registered upon payment of appropriate fees. The Land Registry will contain particulars of the interest registered, its owner/beneficiary, and such other particulars required to be recorded thereon in accordance with the Land Registry Law.

Whilst the Land Registry Law allows for public inspection of the registry upon payment of a fee, in practice, a mechanism for allowing members of the public to undertake a public search

on the Land Registry has not as yet been implemented. Hence, any searches on or information from the Land Registry may only be ascertained pursuant to a formal court order, unless a judgment creditor has at the time of extending any credit to the debtor, in advance, obtained information with regard to real estate by way of security against which any judgment obtained may be enforced.

The Commercial Register

In accordance with the Commercial Registry Law (Royal Decree 03/74), the MOCI is required to maintain the Commercial Register in which, in accordance with Article 7 of the Commercial Registry Law, all commercial entities, incorporated and established to undertake business in the Sultanate of Oman are required to be recorded with their trade names, registered owners (ie, shareholders and partners), their shareholding and interest in the company, capital of the company, commercial activities of the company, the company's address and any encumbrances registered over the company's commercial assets by way of commercial mortgages or otherwise.

Members of the public are permitted to undertake a company search on the Commercial Register with the payment of a nominal fee. Through any search on the Commercial Register, all the above information may be obtained although the enquiries may not disclose what substantial assets the company owns. The Commercial Register will only contain information on the ownership of limited liability companies, partnerships and sole propriety concerns; the ownership of shares in closed joint stock companies and public joint stock companies may only be available with the MCDC.

MCDC Shareholder Register

MCDC has been established pursuant to Royal Decree 82/98 for the purposes of maintaining a register of all closed joint stock and public joint stock companies with particulars of all shareholders of such companies and their respective shareholdings in the companies. The MCDC Shareholder Register for each company registered with it will contain names of the shareholders, their shareholdings and any encumbrances registered over any such shareholdings by way of a pledge in the public and closed joint stock companies.

Currently, it is not possible for members of the public to undertake a search on the MCDC Shareholder Register to ascertain what shareholdings may be held in a particular public or closed joint stock company by individual shareholders and what if any share pledges may have been registered by them. Information from the MCDC with regards to ownership of shares and/or any security interests registered over the same may be obtained by the creditor from the debtor at the time of advancing credit to the debtor or through a court order following a final judgment

having been obtained against the judgment debtor. Alternatively, such information may be requested and obtained by the Enforcement Judge following the commencement of enforcement proceedings.

ROP Vehicles Registry

Pursuant to Royal Decree 28/93, all vehicles and mobile rigs are required to be registered with the ROP and any security interests created over such assets may also be recorded on the ROP Vehicles Registry. The ROP Vehicles Registry is not open for public inspection and any information may only be obtained pursuant to a court order.

The Enforcement Department

Once a final judgment has been obtained, if the judgment creditor has no security interest created in its favour with respect to the outstanding debt against which it may seek an enforcement of its judgment, an application may be made by the creditor to the Enforcement Department pursuant to Article 340 of Civil and Commercial Procedure Law (CCPL) for it to write to the Land Registrar at the MOH, the Commercial Registrar at the MOCI, the MCDC and the ROP, requesting them to provide information on any assets recorded and registered with them in the name of the judgment debtor and for such bodies to be directed not to allow any transactions in respect of any such assets to be registered in the name of the judgment debtor. Additionally, the Enforcement Department may also issue freeze orders addressed to banks in Oman, through the Central Bank of Oman, directing them to freeze any funds available in a judgment debtor's bank accounts maintained in Oman up to the value of the outstanding undisputed debt.

Bankruptcy and Liquidation

There is currently no Bankruptcy and Insolvency Register in Oman. Any company commencing liquidation process or having been declared bankrupt will be announced and published in the Official Gazette issued by the Ministry of Legal Affairs on a two weekly basis. Once the liquidation process is complete, the same shall be published in the Official Gazette.

However, a company's commercial registration information may with the filing of an online application be accessed through the Commercial Registry by any individual. The Commercial Register will specify whether the company in question is active, insolvent or dissolved. In the case of joint stock companies, their audited financial reports are required to be made public through publication in the press and in the case of public joint stock companies the audited financial statement of accounts may also be accessible on the company's website.

In respect of a company for whom a liquidator or a trustee in bankruptcy has been appointed, such officials will be entitled to obtain all information with regards to a company's assets whether real estate, commercial assets, shareholdings or other mobile assets through the concerned authorities, ie, MOH, MOCI, ROP and MCDC, either directly or where necessary through court orders.

The liquidator and the trustees in bankruptcy will be empowered to dispose of a company's assets for the discharge of its liabilities for the benefit of the judgment debtors uncontested secured and unsecured creditors.

2. Domestic Judgments

2.1 Types of Domestic Judgments

Domestic judgments available in Oman include the following:

- Pursuant to Article 346 of the CCPL, the Primary Court may pass summary judgments.
- The Primary Court or the Appeal Court may pass a judgment in default in case of a defendant failing to appear before the court when summoned to do so and despite it having been given several opportunities to make an appearance, only if the defendant has been properly served.
- The Primary Court, in accordance with Article 190 of the CCPL, may pass interim judgments granting temporary relief, or injunctions pending the passing of a final judgment in the suit after substantive hearings.
- Any judgment passed in accordance with Article 37 of the CCPL, by the Primary Court for an amount of OMR1,000 or less, shall not be appealable and hence may be enforced immediately.
- In accordance with Article [345] of the CCPL, a judgment passed by the Primary Court for claims in excess of OMR1,000 which has remained unappealed after the lapse of 30 days shall become final and enforceable.
- A judgment issued by the Appeal Court shall be enforceable if the Supreme Court does not suspend the enforcement of such Appeal Court judgment.
- Pursuant to Article 347 of the CCPL, the Primary Court has jurisdiction to pass self-executing judgments which allow for the enforcement of such judgments as per their terms with or without security being provided by the judgment creditor, pending the passing of a final judgment through the Appeal Court or the Supreme Court as may be the case.

Self-Executing Judgments

Self-executing judgments are likely to be passed in respect of:

- commercial issues where:

- (a) a debtor has admitted its liability;
 - (b) a previous judgment has become *res judicata* or the judgment was passed on the basis of official action which was not challenged; and
 - (c) the judgment is passed with respect to enforcement of a judgment issued in favour of an applicant seeking to enforce a judgment in respect of which a dispute has arisen;
- judgments passed for the payment of wages or compensation arising from an employer and employee relationship;
 - a judgment issued for the expulsion of an unlawful tenant occupying a property without legal justification; and
 - circumstances where a judgment creditor may suffer substantial harm in case the judgment is not enforced immediately.

The reasons for passing a self-executing judgment must be expressly set out in the judgment itself.

In accordance with Article 349 of the CCPL, the Appeal Court before whom the decision to allow for self-execution judgment to be enforced has been appealed, will have the right to suspend the self-execution if it can be demonstrated that substantial damage may be suffered in case an enforcement of the self-executing judgment is permitted

2.2 Enforcement of Domestic Judgments

Enforcement of domestic judgments will occur pursuant to enforcement orders passed by the Enforcement Department, in accordance with Article 356 of the CCPL, after notification to the judgment debtor personally or at its domicile, work or business place. If the judgment debtor discharges the decreed liability within a period of seven days the enforcement proceedings shall come to an end. If the judgment debtor fails to do so, the enforcement proceedings shall continue.

Provisional Attachments

In accordance with Article 371 of the CCPL, a creditor may secure provisional attachments where the creditor has in its possession a bill of exchange or a promissory note signed by or on behalf of a merchant debtor in accordance with the Commercial Law of Oman. Additionally an attachment order may be sought by the creditor if it can demonstrate to the court that in the absence of a provisional attachment order being passed against the debtors known assets, the creditor may be deprived of his rights of recovery against the debtor, ie, the debtor may dispose of his assets against which a judgment when obtained may be readily enforceable. The attachment order will be passed pursuant to Articles 190 and 373 of the CCPL through summary proceedings. Within ten days from the date of passing of the provisional attachment order, the creditor will be required to file its substantive suit seeking a confirmation of the attachment order obtained through sum-

mary proceedings and for the obtaining of a judgment that may thereafter be enforced against the attached assets. The attachment order once confirmed as being justified will continue to remain in place until a final judgment is passed either accepting the creditor's claim or rejecting the same.

Moveable Assets

Articles 378 to 386 of the CCPL provide for the process for seeking an attachment of the judgment debtor's moveable assets in its possession. Articles 387 to 396 provide for the attachment of the judgment debtor's assets in the possession of third parties. Articles 397 to 401 provide for the attachment and sale of real estate owned by the judgment debtor.

In respect of all assets of the judgment debtor whether moveable, immovable or assets held by third parties, the Enforcement Department will prepare an inventory of such assets and have such inventories approved by persons from whose possession the assets are taken from and thereafter if necessary, appoint independent third parties to take control and charge of the assets for their security. If any third party holding assets for and on behalf of the judgment debtor, either at the direction of the judgment debtor or of its own accord provides incorrect information with regard to the assets, destroys, or allows for the same to be lost when requested to provide information to the Court, such third party may be held liable for the outstanding debt of the debtor to the extent of the value of the assets lost from its possession or in accordance with Article 394 of the CCPL, up to the value of the debt for which the attachment was ordered where such third party has refused to declare or provides false declaration with respect to the assets in its possession.

Valuation of assets

Valuation of all moveable, immovable, tangible or intangible assets to be disposed of for the enforcement of a judgment will require the appointment by the court of expert evaluators. Such evaluators may be appointed specifically for the evaluation of different classes of assets to be disposed off, ie, real estate, plant, machinery or equipment owned by and/or shares in companies owned by the judgment debtor.

Auction

Once the Enforcement Department has obtained an evaluation of the assets to be disposed of, advertisements will be made of the time, date and place for the auction in the case of moveable assets in accordance with Articles 381 to 386 of the CCPL and with respect to real estate, the auction process shall take place in accordance with Articles 402 to 410 of the CCPL which allow for the assets to be auctioned to be acquired by the highest bidder provided that the minimum price fixed for the disposal of the assets by the court appointed evaluators has been achieved. If in case the minimum price for the asset is not achieved at

the auction then the judge in charge of the auction proceedings will terminate the auction proceedings and fix a new date for the same at which the minimum price may be reduced by 10% (Article 403 of the CCPL). This process may continue until such time as the assets are disposed of or the judgement debtor decides to discontinue the execution proceedings to avoid any further erosion in the price of the assets.

Distributing proceeds

Once the assets have been disposed of, then in accordance with Articles 411 to 413 the sale proceeds received shall be distributed amongst the creditors on whose behalf the assets have been attached and such other parties who have adjoined the proceedings for recovery purposes. In respect of assets over which a creditor had been granted perfected first priority security, the sale proceeds received from the same shall be paid to such secured creditor following the payments of any statutory claim. Thereafter any amounts available shall be distributed amongst the unsecured creditors on a *parripassu* basis. If all claims have been discharged in their entirety, any balances remaining thereafter shall be returned to the judgment debtor.

Attachment Orders

In accordance with Article 366 of the CCPL, attachment orders may not be passed against the following:

- public or private properties owned by the state, its authorities, public establishments and other governmental bodies;
- the judgment debtor's house, in which they reside with their family if it is proportionate to his financial status;
- the furniture or clothes of the judgment debtor's family living with him in the same house;
- the land, tools and other essentials owned by a farmer or fisherman, if proportionate to the amount required for a reasonable standard of living to be maintained for the judgment debtor and their dependents;
- all of the judgment debtor's necessities such as books, equipment and other accessories that may be required for the purpose of carrying out his profession or handicraft, unless the attachment is levied on them to settle its value or maintenance expenses;
- moveable assets considered as real estate by designation if the attachment on the same is separate from the property designated for effecting service of court summons, unless the attachment is levied to settle its value or maintenance expenses; and
- salaries and wages, unless within one fourth of the basic pay in settlement of alimony debt or governmental debt; in the event that both exist, the alimony debt shall have priority.

In the event that the judgment debtor is deceased, execution shall not be effected on the house designated for his family whom he was legally obliged to support, unless in both cases the house was previously mortgaged as security against a debt taken by the judgment debtor, or the debt was a result of the unpaid sale proceeds.

Detainment

In the event that a judgment debtor in the case of a natural person and authorised officers of a corporate debtor refuse to execute a judicial order or an enforceable judgment, the court issuing the order and the enforcement judge may issue an order for their arrest and detention for a period that may not exceed two months which may be subject to renewal for further periods. Such renewal may be ordered after the lapse of 90 days from their release, if they continue to refuse execution of judgment.

The decision to detain a judgment debtor, or its authorised officers may be appealed through a petition submitted to the Court of Appeal. An appeal may also be made to the court issuing the decision. In such case, the court will refer the appeal to the Court of Appeal for a decision to be issued within seven days.

The decision from the Court of Appeal shall be final and binding and may not further be appealed. Any such appeal shall not result in a suspension of execution, unless the Court of Appeal orders such suspension of execution.

Travel ban

The court may, at any stage of the case and at the request of the creditor, in accordance with Article 427 of the CCPL order a travel ban to prevent a judgment debtor from leaving the Sultanate of Oman. This may only take place if there are reasonable grounds for believing that the judgment debtor may not return to the country. Such request may only be made in a case where the amount claimed is not less than OMR500, unless the amount is payable as legal alimony in support of the debtor's family.

To affect a travel ban, the creditor may be required to provide security in respect of any loss or damage that may be suffered by the judgment debtor as a result of such travel ban if it later transpires that the travel ban was unjustified.

In accordance with Article 428 of the CCPL, the travel ban shall remain in force until the judgment debtor's debt has been settled. However, the court may order forfeiture of the travel ban if:

- any condition required for imposing such travel ban is no longer valid;
- the judgment creditor agrees to forfeit the order;

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- the judgment debtor submits a bank guarantee that is regarded as sufficient and accepted by the court;
- the judgment debtor deposits sufficient money to meet the debt with the court treasury. Such amount shall be considered as attached by law for the creditor's account; and
- the judgment creditor does not commence execution procedures within 30 days from the date on which the judgment became legally capable of being executed.

2.3 Costs and Time Taken to Enforce Domestic Judgments

The time taken to enforce a domestic judgment may vary depending on the availability of assets, their identification, evaluation and disposal through court supervised auction proceedings at a price determined by the court appointed evaluators. If there are no readily available buyers then the enforcement auction proceedings may be postponed for repeat auction proceedings to be held for sale of the assets at a reduced price until such time as the asset may be disposed of or the proceedings are discontinued with the consent of the judgement creditor. Typically, the time for completion of the enforcement process may vary between six months and two years.

The costs associated with enforcement proceedings will include fees payable to third party custodians engaged for holding any assets in storage, evaluation experts and costs to be incurred by the court on the conduct of auction proceedings. Such costs will vary from case to case depending on the assets to be disposed of and their valuations.

2.4 Post-judgment Procedures for Determining Defendants' Assets

See 1.1 Options to Identify Another Party's Asset Position.

2.5 Challenging Enforcement of Domestic Judgments

Once a judgment is final, it is capable of being enforced. However, the Supreme Court may stop the enforcement of a final Court of Appeal judgment if the judgment is further appealed to the Supreme Court.

Additionally, the judgment debtor may, in accordance with Article 363 of the CCPL, object to the enforcement of any final judgment. This is done by way of an application to the Enforcement Department. The application must state the reasoning for such objection, which will instantly result in the enforcement process being put on hold.

Once this is done, the enforcement judge will set a hearing date to determine the validity of the objection and decide on whether the enforcement should continue regardless of the objection. Following the enforcement judge's decision on such objec-

tion, the parties will have seven days to appeal the decision. The enforcement will go forward in the regular manner in the event that an appeal was not filed within the prescribed period. It should be noted however, that any further appeals will not suspend the enforcement process.

2.6 Unenforceable Domestic Judgments

Any domestic judgment passed by the Omani courts will be enforceable as per their terms and in accordance with the CCPL. There are no circumstances provided for by the CCPL in which a domestic judgement may not be enforced.

2.7 Register of Domestic Judgments

Whilst the Omani Courts maintain a register of domestic judgements such register is not accessible to members of the public. The Enforcement Judge also maintains a register in which enforcement applications are recorded. Each application is allocated a separate file number containing all documents relating to the judgment, such as the final judgment, any requests or applications and original court receipts. These documents are kept until the enforcement proceedings are concluded.

This register is not accessible for public inspection.

3. Foreign Judgments

3.1 Legal Issues Concerning Enforcement of Foreign Judgments

Under Articles 352 to 355 of the CCPL on application may be submitted to the Primary Court in Oman for enforcement of judgments and orders passed by foreign courts. An order for enforcement of a foreign judgment or order shall not be passed by the Primary Court unless the court was satisfied that:

- the judicial authority which passed the foreign judgment or order had jurisdiction, in accordance with the rules governing international judicial jurisdictions, as provided for in the law of the country where the judgment or order was passed, and that the judgment or order was to be treated as final in accordance with such law, and was not passed on the basis of deceit and fraud;
- the parties to the suit in respect of which the foreign judgment was passed were summoned to appear, and were represented in a proper and rightful manner;
- the judgment or order does not contain any request which is essentially in violation of any of the laws prevailing in the Sultanate of Oman;
- the judgment or order was neither in conflict with a judgment or order passed earlier by a court in the Sultanate of Oman, nor does it contain anything, which is against public order or morals; and

- the country where the judgment was passed accepts for enforcement judgments passed by the courts of the Sultanate of Oman, in its territory.

Despite the existence of Articles 352 to 255 of the CCPL, to the best of our knowledge, no judgment obtained from a foreign court other than courts of GCC region have as yet been recognised and enforced by the Primary Court. Notwithstanding the contents of the CCPL, we are of the view that, in the absence of specific Omani legislation providing for registration and recognition of non GCC foreign judgments, a foreign judgment would be of evidentiary value only in full hearings before the Primary Court and the matter may have to be litigated de novo before the Primary Court.

Treaties

Oman is a party to several treaties entered into by GCC countries which allow for the enforcement of judgments issued by member countries in other member countries. These treaties include:

- The GCC convention for the Execution of Judgements, Delegations and Judicial Notifications, signed in 1997 and ratified by Royal Decree 17/96.
- The Riyadh Arab Agreement for Judicial Cooperation, signed in 1999 and ratified by Royal Decree 34/99.

Oman has also entered into an agreement with the Government of the Republic of India on Legal and Judicial Cooperation in Civil and Commercial Matters, signed in 2020 and ratified by Royal Decree 18/2020 (the “India Oman Agreement”). The Oman India Agreement provides for the recognition and enforcement of decrees and judgments passed by the courts of each of the two countries in civil and commercial matters and by criminal courts in civil matters in the jurisdiction of the other country being a signatory to the Agreement. The Oman India Agreement will not be applicable to interim or provisional measures except matters relating to allowances.

3.2 Variations in Approach to Enforcement of Foreign Judgments

Notwithstanding from where a foreign judgment has been issued, provided the Primary Court has the jurisdiction to pass a judgement for the enforcement of a foreign judgment, the enforcement procedures applicable to the enforcement of final Omani court judgments discussed above will apply.

3.3 Categories of Foreign Judgments Not Enforced

Any foreign judgment that does not satisfy the conditions set out in Article 352 of the CCPL shall not be enforceable in Oman.

3.4 Process of Enforcing Foreign Judgments

For the enforcement of a foreign judgment in Oman, proceedings will need to be filed before the Primary Court, comprising of three judges, in the Governorate in which the judgment is sought to be enforced. Such proceedings shall be commenced in the same manner as the filing of any proceedings before the Primary Court, ie, the party seeking the enforcement of a foreign judgment will need to submit an applicable in the form of a statement of claim, if represented by a legal counsel, to be supported by a notarised, consularised or apostilled (where applicable) power of attorney and a copy of the judgment to be enforcement. The applicant will also need to provide the court with the locational particulars of the party against whom the judgment is to be enforced for the purposes of serving the court’s process and summoning such party to attend before the court in case of any hearings being necessary.

Appeals

Following passing of a judgment by the Primary Court for the enforcement of a foreign judgment, the affected party will, in accordance with Article 214 of the CCPL have the right to appeal the Primary Court judgment before the Appeal Court within 30 days from the date of passing of the Primary Court judgment. Once this period has lapsed and no appeal is raised, the enforcement process may begin as the judgment will be final. However, if the judgment is appealed, within the 30-day period, it will only become final once the Appeal Court judgment has been passed and the Supreme Court has not suspended its enforcement pending any appeal before the Supreme Court.

Once the appeal remedies have been exhausted and the judgment has become final thereafter the foreign judgment may be enforced as part of the judgment passed by the Omani courts in the same manner as the enforcement of any other domestic judgment discussed above.

3.5 Costs and Time Taken to Enforce Foreign Judgments

The court fee payable for commencement of enforcement proceedings with regard to a foreign judgment through the Primary Court, shall be 2% of the claim amount, provided that the maximum fee shall not exceed three thousand Omani Riyals. Depending upon whether an affected party exercises any rights of appeal available to it with regard to a judgment passed by a Primary Court or a Appeal Court, the duration for completion of the court proceedings leading to the enforcement of a foreign judgment will be the same as that applicable to the enforcement of domestic judgments. See 2.3 **Costs and Time Taken to Enforce Domestic Judgments.**

Following the court judgment becoming final in respect of the foreign judgment, the time to be taken for enforcement of the

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final judgment will vary depending on availability of the assets for enforcement of the judgment and there being interested buyers at the evaluations assessed by the court appointed evaluators. The assets will be evaluated and auctioned in the same manner as in the case of domestic judgments discussed above.

3.6 Challenging Enforcement of Foreign Judgments

Once a final judgment is issued, the judgment debtor may object to the enforcement of any final judgment capable of being enforced for reasons other than those adopted by the courts when passing the final judgment. Such objection may be raised through the filing of an application to the Enforcement Department in the Primary Court setting out therein the reasons for the objection, which will result in the enforcement process being suspended. The enforcement judge will then fix a hearing date to determine the validity of the objections raised and decide on whether or not the enforcement may continue regardless of the objection.

Following any decision taken by the enforcement judge on the objection, the parties will have seven days within which to appeal the decision. If no appeal is filed within the prescribed period, the enforcement will proceed. Any further appeals will not result in the enforcement process being suspended.

4. Arbitral Awards

4.1 Legal Issues Concerning Enforcement of Arbitral Awards

Oman has had in place since 1997 a well-defined Arbitration Law Royal Decree 47/97 (the "Oman Arbitration Law"). As a result of which the adjudication of disputes by arbitration subject to the laws of the Sultanate of Oman has gained significant popularity. The Oman Arbitration Law continues to remain the primary framework regulating the conduct of arbitration proceedings in Oman, the enforcement of domestic and international arbitration awards and the nullification of arbitral awards issued in respect of arbitrations conducted pursuant to the Oman Arbitration Law.

The courts when enforcing the arbitral award will also be required to adhere to the procedures provided for by the CCPL applicable for the enforcement of judgments with regards to the disposal of assets owned by the debtor against whom the arbitral award is passed.

Finalising Arbitration Awards

Arbitration awards passed pursuant to the Oman Arbitration Law will not, in accordance with Article 58, become final and binding until the lapse of 90 days within which the parties to the

arbitration proceedings will have the right to ask for clarifications under Articles 49, corrections under Article 51 and to file an application for nullification of an arbitral award pursuant to Article 54 of the Oman Arbitration Law. Nullification of an arbitral award may be granted in any of the following events:

- where there was no agreement in respect of arbitration or if such agreement is void, voidable or time barred;
- where one of the parties to the arbitration agreement, at the time of execution of the arbitration agreement was incompetent in accordance with the laws governing his capacity;
- where one of the parties to the arbitration failed to submit their defence due to not being notified of the appointment of an arbitrator or the arbitration proceeding in a correct manner or any other reason that is proved to be beyond his control;
- where the arbitral award was not issued in accordance with the applicable laws agreed to by the parties;
- where the arbitration tribunal was constituted or the arbitrators were appointed contrary to the applicable law or the agreement of the parties;
- the arbitral award has settled matters not covered by the agreement between the parties or the arbitral award has exceeded the matters covered by the agreement - those matters may be nullified and the nullification shall not have an effect the matters covered by the agreement; and
- the arbitral award is null or the arbitration proceedings were void to the extent affecting the terms of the arbitral award.

Notwithstanding the grounds for nullification referred to above, the court may also, in accordance with Article 53 of the Oman Arbitration Law, nullify an arbitral award if the award is contrary to the public order of Oman. Upon the filing of a nullification application, the applicant will need to specifically ask for a court decision on the suspension of an enforcement of the arbitral award. If no application is filed for nullification of an arbitral award, the award will become final and binding and be ready for enforcement.

Oman ratified its membership to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the "New York Convention") in 1998, pursuant to Royal Decree 36/98, following which any arbitral award issued by another member state is enforceable in Oman subject to the rules of the New York Convention.

Local Arbitration Centre

Whilst Oman has pursuant to Royal Decree 26/2018 established a local arbitration centre, such centre has not as yet become fully operative and the rules and regulations to be made applicable to its operations are currently being drafted. In the absence of which, arbitrations in Oman have been conducted through the

GCC Arbitration Centre, the Dubai International Arbitration Centre and other globally recognised centres, often in accordance with international rules for the arbitration approved by the parties such as the International Chamber of Commerce (ICC) rules. Ad Hoc Arbitrations are fairly common in Oman, in which the parties and arbitrators are able to determine and select the procedures without the involvement of an arbitral institution such as the ICC.

4.2 Variations in Approach to Enforcement of Arbitral Awards

Irrespective of whether the arbitral award sought to be enforced in Oman has arisen from a domestic arbitration or an international arbitration, its enforcement procedures will be the same and no variations will arise provided that the Omani courts have the jurisdiction to enforce such an award.

4.3 Categories of Arbitral Awards Not Enforced

Article 353 of the CCPL provides for the requirement of an arbitral award to be issued in a subject matter for which arbitration is permissible according to the laws of Oman and for the arbitration award to be enforceable in Oman.

In accordance with Article 11 of the Oman Arbitration Law, it will not be permissible for arbitration proceedings to be conducted in respect of matters which may not be made subject to reconciliation or compromise under Omani law such as:

- eligibility of an individual to contract;
- the validity of a marriage certificate;
- criminal responsibility and determining its applicable law; and
- property ownership claims.

All of the above are considered to be matters of public policy and will need to be adjudicated upon in accordance with the specific laws applicable to such matters by the courts who have been allocated jurisdiction over the same.

Confirmations to be Made Prior to Enforcement

In accordance with Article 58 of the Oman Arbitration Law, the following must be confirmed prior to enforcement of any arbitral award in Oman:

- the award is not in conflict with a decision previously passed by Omani courts;
- the award does not contain any terms contravening public order of Oman; and
- the losing party has been notified of the award in a proper manner.

Article 116 of the Civil Code, Royal Decree 29/2013 provides that any matter to be transacted in between parties may not be prohibited by Sharia Law or Omani Law. Consequently, any matter in respect of which the parties wish to conduct arbitration proceedings, should not be contrary to Sharia Law or Omani Law, for any award arising therefrom to be enforced in Oman.

4.4 Process of Enforcing Arbitral Awards

As noted in 4.1 Legal Issues Concerning Enforcement of Arbitral Awards, an arbitral award will be considered to be final upon the lapse of 90 days from the date of the passing of the award and thereafter the parties may seek to enforce the award under Articles 54 and 58 of the Oman Arbitration Law and Article 353 of the CCPL.

In accordance with Article 47 of the Oman Arbitration Law, the party in whose favour the arbitral award has been issued will be required, pursuant to Article 9 of the Oman Arbitration Law, to deposit the arbitral award with the secretariat of the Appeal Court if the award is commercial and international and with the Primary Court if the award is local and domestic. The arbitral award must be deposited with the concerned court, in its original form, and if deposited as a copy, it must be signed by the applicant in confirmation of it being a true copy of the original, in the original language and if in a foreign language, then with an Arabic translation.

Application for Enforcement

Following the deposit of the award with the court secretariat, an application for enforcement of the arbitral award may be made at the Primary Court within the Governorate in which the party against whom the award is to be enforced so resides. The enforcement application when submitted will need to be accompanied by:

- the original award or copy signed by the applicant;
- copy of the arbitration clause or agreement pursuant to which the arbitration has been conducted;
- Arabic translation of the arbitral award, certified by a certified firm of translators if the arbitral award was issued in a language other than Arabic; and
- copy of the minutes confirming the deposit of the arbitral award with the court secretariat.

4.5 Costs and Time Taken to Enforce Arbitral Awards

As discussed in 4.4 Process of Enforcing Arbitral Awards, following completion of the 90-day period limit within which an application for nullification may be filed, the enforcement process shall commence. The court fee payable for commencement of enforcement proceedings with regard to an arbitral award

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through the Primary Court, shall be 2% of the claim amount, provided that the maximum fee shall not exceed three thousand Omani Riyals. Depending upon whether an affected party exercises any rights with regard to nullification of the arbitral award, the duration for completion of the enforcement of an arbitral will be the same as that applicable to the enforcement of domestic and foreign judgments, see **2.3 Costs and Time Taken to Enforce Domestic Judgments**.

The enforcement of a foreign arbitral award which has not been issued under Omani law, the process for its enforcement will be the same as that applicable to the enforcement of foreign judgements.

4.6 Challenging Enforcement of Arbitral Awards

Following the arbitral award having become final and its enforcement process having been commenced through the concerned court, any objections with regards to its enforcement may be raised in the same manner as would be applicable to any objections raised with regard to the enforcement of domestic and foreign judgments in Oman. Such objections may be raised through the filing of an application with the Enforcement Department in the Primary Court setting out therein the reasons for the objection, which will result in the enforcement process being suspended. The enforcement judge will then fix a hearing date to determine the validity of the objections raised and decide on whether or not the enforcement may continue regardless of the objection.

Following any decision taken by the enforcement judge on the objection, the parties will have seven days within which to appeal the decision. If no appeal is filed within the prescribed period, the enforcement will proceed. Any further appeals will not result in the enforcement process being suspended.

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OMAN LAW AND PRACTICE

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Trends and Developments

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Al Busaidy, Mansoor Jamal & Co (AMJ) see p.247*

Trends and Developments - Enforcement of Judgments in Oman

Enforcement of foreign judgments

Enforcement of judgments in Oman is a reasonably straight forward process, provided that a judgment debtor's assets can be readily identified and ascertained and against which the court may enforce a final judgment or an arbitral award. Complications may, however, be encountered in cases where a foreign judgment or a foreign arbitral award issued on the basis that a foreign governing law is sought to be enforced in Oman. Under such circumstances, the Omani courts will need to ensure that the relevant conditions for enforcement of the foreign judgment or award, as provided for by Articles 352 to 355 of the Civil and Commercial Procedures Law Royal Decree 29/2002 are satisfied.

Among these conditions, it will need be demonstrated that the foreign judgment does not conflict with the public order and morals of the Sultanate of Oman, the laws of the Sultanate of Oman and that the jurisdiction from which the foreign judgment has been issued recognises for enforcement judgment issued by the Omani courts.

Foreign law conflicts

With little or no case law currently available in Oman with regard to the enforcement of foreign judgments or arbitral awards through the Omani courts, that is to say non GCC judgments and arbitral awards, it is difficult to forecast as to what approach may the Omani courts adopt in determining whether or not the foreign law is in conflict with public order or morals of the Sultanate of Oman or the laws of the Sultanate. If objections are raised regarding the judgment being sought to be enforced for any of the above reasons, the courts will undertake an examination of the foreign law purportedly in conflict with Omani law, public order or morals.

To this end, Omani courts will need to invite or seek independent expert evidence as to what constitutes the foreign law on the basis of which the foreign judgment or arbitration award is passed for it to determine what, if any, conflicts with Omani law exist. This may result in a time consuming exercise and ultimately the matter having to be decided upon in accordance with local law instead of the original judgment obtained on the basis of the foreign law. In order to overcome some of these problems and delays, Omani judges are undergoing training in

foreign jurisdictions and the panel of experts that the court has is being reviewed from time to time to ensure that the relevant expertise is readily available when required.

The Appeal Court and the Supreme Court also have foreign judges from Arab language jurisdictions with extensive experience in both common law and civil law jurisdictions.

Reciprocal and judicial assistance agreement

On the 9th of March 2020, the Omani Government entered into an Agreement with the Republic of India on the Legal and Judicial Cooperation in Civil and Commercial matters. This Agreement provides for reciprocal and judicial assistance between the two countries in civil and commercial matters, in accordance with their local laws. The Agreement provides for the service and enforcement of judicial orders, summons and other legal and judicial documents or processes, taking of evidence through requests and the execution of judgments, settlements and arbitral awards.

Although the standard enforcement procedures will continue to apply to Indian court issued judgments, settlements and arbitral awards, this Agreement will assist in the recognition and enforcement of judgments obtained in Oman and those obtained in India being enforced in Oman. We anticipate that similar arrangements may also be entered into by the Sultanate of Oman with other friendly nations in due course.

Bankruptcy law (Royal Decree 53/2019)

While there have been no recent developments in the CCPL and Arbitration Law or any additions made to legislation regulating the enforcement of judgments in Oman, with the introduction of the new Bankruptcy law (Royal Decree 53/2019), new procedures have been introduced for the reorganisation and restructuring of insolvent businesses and for protections against bankruptcy to be granted to debtors exposed to insolvency if the court is satisfied that there is a reasonable prospect of the debtor being able to continue with its business and discharge its liabilities without having to be declared insolvent.

Previously, any application for enforcement of judgments were filed through physical attendance of the applicant at the Enforcement Department at the Primary Court, located in the Governorate in which the judgment is sought to be enforced. This was done by filing an application and submitting the sup-

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porting documents such as the judgment issued and court payment receipts. In 2019, online registration and follow up mechanisms have been introduced.

This may take place through the online lawyer portal and by email. The lawyer's portal allows a lawyer to file a suit for enforcement online and to submit all relevant and applicable documents on behalf of the client online, without physical submissions being necessary. The progress and status of enforcement applications may also be followed up through the lawyer's portal without physical attendance at the Primary Court Enforcement Department being necessary, all of which has resulted in significant saving of time and cost for the benefit of the clients.

COVID-19

With the occurrence of COVID-19, the Primary Court realised the need to adapt and introduce changes so as to ensure that the due process of law was not adversely impacted. For the purpose of ensuring that justice continues to be served the courts, in addition to the digitalisation of many aspects of its practices, allowed individuals to follow up through means of email, phone calls and social media platforms in order to reduce the number of persons attending at the Enforcement Department and court hearings for safe guarding of health of lawyers, clients and other visitors. As a result of directives given by the Sultan of Oman, the Omani courts also decided to cancel their summer vacations and to conduct hearings during the summer period so as to make up for time lost during the strict lock down of the cities in Oman.

The courts also introduced night shifts in addition to the normal day shifts in order to reduce the court's work load on a daily basis and to reduce the risks of infections. It is anticipated that many of the lessons learnt by the Omani courts through the COVID-19 pandemic will provide for lasting long term benefits for the Omani courts.

TRENDS AND DEVELOPMENTS OMAN

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