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International Arbitration

Oman
Law & Practice
and
Trends & Developments

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Law and Practice

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1. General

1.1 Prevalence of Arbitration

International arbitration is widely used in the Sultanate of Oman as a method of resolving disputes. It is common for contracting parties one of whom is international to resort to international arbitration subject to internationally recognised rules of arbitrations, whilst domestic parties will invariably include a dispute resolution clause in their contracts to have future disputes referred to domestic arbitration under the Law of Arbitration in Civil and Commercial Disputes, Royal Decree 47/1997. Muscat is increasingly selected as the seat, or legal place, of arbitration.

Domestic parties have also been content to leave the resolution of any disputes arising between themselves to the Primary Commercial Court of Oman.

1.2 Trends

Pursuant to Royal Decree No 26/2018, the chairman of the board of directors of the Oman Chamber of Commerce and Industry was authorised to spearhead the establishment of the Oman Commercial Arbitration Centre (OCAC), which was launched in July 2019 and is expected to become operational in the last quarter of 2020. The OCAC regulations have been circulated for review and are being commented upon by interested parties.

All arbitration proceedings being conducted from Oman have been delayed due to the COVID-19 pandemic.

1.3 Key Industries

There continues to be an increase in international arbitration with respect to construction disputes in Oman, particularly in respect of infrastructure.

The large construction and infrastructure projects are undertaken in Oman by 100% foreign-owned companies operating from Oman, or by joint venture companies with foreign participation, which have insisted upon the inclusion of arbitration provisions that provide for the resolution of disputes through international arbitration.

1.4 Arbitral Institutions

The International Court of Arbitration of the International Chamber of Commerce (ICC) is the most frequently used arbitral institution for international arbitration in Oman considering its reputation as one of the world's leading arbitral institutions.

2. Governing Legislation

2.1 Governing Law

The Law of Arbitration in Civil and Commercial Disputes, Royal Decree 47/1997 as amended (the ACCD), is the national legislation governing international arbitrations in Oman. The ACCD is broadly based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law.

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

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

Secondly, the Model Law contains a detailed chapter (Chapter IV) on interim measures and preliminary orders, including the test to be met, the procedures for such applications, and grounds upon the occurrence of which the courts may grant or refuse the recognition and enforcement of such awards. Article 24 of the ACCD only provides that, if the parties have agreed, the tribunal may issue such orders as "necessitated by the nature of the dispute", and that the courts may enforce such orders.

2.2 Changes to National Law

No changes have been introduced to the ACCD in the past year in Oman.

3. The Arbitration Agreement

3.1 Enforceability

Article 10(1) of the ACCD defines an arbitration agreement as an agreement between disputing parties to refer to arbitration for settlement of all or part of disputes that have arisen or may arise out of their contractual or non-contractual relationship.

In order to be valid and enforceable in Oman, an agreement to arbitrate must be:

- executed by individuals or legal entities who are legally competent to enter into an arbitration agreement (Article 11);

- in writing, whether signed by both parties or contained in correspondence exchanged between the parties (Article 12); and
- clear and unambiguous as to the law and rules subject to which the arbitration proceedings are to be conducted.

3.2 Arbitrability

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 that may not be made subject to reconciliation or compromise under Omani law, such as:

- the 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 that apply to such matters by the courts that have been allocated jurisdiction over the same.

3.3 National Courts' Approach

Arbitration agreements that satisfy the requirements of the ACCD are upheld and enforced strictly by the Omani courts, which will decline jurisdiction to hear a dispute should the defendant in litigation adduce evidence of an arbitration agreement between the parties prior to submitting its substantive defence or otherwise consenting to the court's jurisdiction.

3.4 Validity

Pursuant to Article 23 of ACCD, an arbitral clause in a contract is considered independent and separable from other provisions of such contract. Accordingly, the invalidation or termination of the contract shall have no effect on the validity of the arbitral clause.

4. The Arbitral Tribunal

4.1 Limits on Selection

According to Article 16(1) of the ACCD, an arbitrator may not be:

- a minor;
- under guardianship;
- deprived from exercising his or her civil rights because of a criminal conviction or misdemeanour offence for breach of honour or trust; or
- an un-rehabilitated bankrupt.

Arbitrators are not required to be of a particular sex or nationality, unless the parties to the arbitration have agreed otherwise (Article 16(2), ACCD). Finally, the number of arbitrators has to be uneven, otherwise the arbitration will be considered invalid (Article 15(2), ACCD).

4.2 Default Procedures

Where the arbitration agreement is subject to Omani law and/or provides for governing law or procedural rules that would refer the selection of the arbitrator(s) to the Omani courts, if the parties are unable to agree on the appointment of a sole arbitrator, either party may apply to the President of the Appeal Court for the appointment of the arbitrator (Article 17, ACCD).

If a party requests that the other party appoints an arbitrator to a tribunal of three arbitrators but the other party fails to do so within 30 days of such request, the requesting party may apply to the President for the appointment of an arbitrator on behalf of the other party; similarly, if the two arbitrators appointed by/on behalf of the parties fail to nominate a third arbitrator to chair the tribunal, a party may apply to the President for the appointment of an arbitrator as the chair (Article 17(1)(b), ACCD).

The ACCD contains no provision that specifically applies to a default procedure in the case of multi-party arbitrations.

4.3 Court Intervention

In addition to the procedures outlined in 4.2 **Default Procedures** regarding the appointment of arbitrators, the courts may recuse an arbitrator for lack of impartiality or independence (Articles 18 and 19, ACCD). An arbitrator may not be recused unless there appear to be circumstances that give rise to serious doubts and suspicions concerning the arbitrator's impartiality or independence (Article 18 (1), ACCD).

In selecting and appointing arbitrators, the President of the Appeal Court must take into consideration the terms of the arbitration agreement made between the parties (Article 17(3), ACCD).

4.4 Challenge and Removal of Arbitrators

The grounds for challenging and replacing arbitrators are set out under Articles 18 and 19 of the ACCD. A party may apply to the tribunal for recusal of an arbitrator if there appear to be circumstances that give rise to serious doubts and suspicions concerning his or her impartiality or independent functioning. The application must be submitted to the tribunal within 15 days of the date on which the applicant becomes aware of the constitution of the tribunal or the circumstances justifying recusal.

A party may also appeal a denial of a recusal application to the Appeal Court in international disputes or the Primary Court with respect to domestic disputes, within 30 days of the date of denial notification.

While the law requires that a party must first apply to the tribunal for recusal of an arbitrator, there have been situations in which parties have successfully bypassed the tribunal and applied directly to the Appeal Court to replace an arbitrator.

4.5 Arbitrator Requirements

At the time of accepting an appointment to the tribunal, an arbitrator is required to disclose any circumstances that may cause doubt or suspicion as to his or her independence or neutrality; an arbitrator is also subject to an ongoing obligation to disclose to the parties and any fellow tribunal members any such circumstances that arise after his or her appointment during the course of the proceeding (Article 16(3), ACCD).

5. Jurisdiction

5.1 Matters Excluded from Arbitration

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

- the 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 that apply to such matters by the courts that have been allocated jurisdiction over the same.

5.2 Challenges to Jurisdiction

The tribunal may rule on the question of its own jurisdiction, including questions concerning the non-existence, invalidity or irrelevancy of the arbitration agreement (Article 22, ACCD).

5.3 Circumstances for Court Intervention

The courts may address the issue of the jurisdiction of a tribunal only upon an application for nullification of the final arbitral award (Articles 22(3) and 53(1)(f), ACCD). The nullification of an arbitral award is granted in very limited circumstances in Oman. The courts do not review negative rulings on jurisdiction by arbitral tribunals.

5.4 Timing of Challenge

An application for nullification needs to be filed with the Appeal Court within 90 days of notification of the arbitral award (Article 54, ACCD).

5.5 Standard of Judicial Review for Jurisdiction/ Admissibility

There is no established standard of review on an application for nullification of an arbitral award for questions of admissibility or jurisdiction.

5.6 Breach of Arbitration Agreement

Provided an arbitration agreement is applicable to the dispute, courts of first instance will dismiss any proceedings before them if the defendant pleads for such dismissal prior to submitting a defence or seeking any other relief or remedy (Article 13(1), ACCD). In addition, the courts may refuse an application for ex parte relief if they detect an arbitration agreement that would govern the dispute.

5.7 Third Parties

Omani law would only allow an arbitral tribunal to assume jurisdiction over individuals or entities who are parties to the arbitration agreement. The arbitral tribunal may not assume jurisdiction over individuals or entities that are not parties to the arbitration agreement, unless they agree to it.

6. Preliminary and Interim Relief

6.1 Types of Relief

The tribunal is only permitted to award preliminary or interim relief if the parties have agreed that it has such power. The type of relief the tribunal may order is not specified beyond “suitable temporary or precautionary measures necessitated by the nature of the dispute” (Article 24(1), ACCD), which may include injunctive relief such as a provisional attachment order in respect of the alleged debtor’s assets.

The tribunal would not be required to seek the assistance of the court to do so, but the party in whose favour such an order is made may need to apply to the courts for enforcement, pursuant to Article 14 of the ACCD.

6.2 Role of Courts

Upon application by a party to an arbitration agreement, the courts may issue orders granting interim or precautionary relief either before commencement of the arbitration proceeding or during the course of its progress (Article 14, ACCD). A party may apply for such relief where the tribunal does not have the power to grant such relief or has the power by agreement of the parties but refuses to grant such relief, or where the tribunal has

granted such relief and enforcement is sought and/or a party has refused to abide by the tribunal's order. The most common interim relief sought in arbitration proceedings is provisional attachment of the alleged debtor's assets.

There is no provision under Omani law that provides for the use of emergency arbitrators.

6.3 Security for Costs

Security for costs is generally unknown in Omani law. However, pursuant to Article 24(1) of the ACCD, with respect to preliminary or interim relief the tribunal has the power to order adequate security for covering the expenses of the interim measure.

7. Procedure

7.1 Governing Rules

Except for the rule of Civil and Commercial Procedural Law contained in RD 29/2002 and limited mandatory rules of procedure contained in the ACCD, which the parties may mutually agree to adhere to in the conduct of the arbitration proceedings under Omani law, there are no rules governing arbitration proceedings in Oman and the parties would be at liberty to agree upon any international rules and procedures for the conduct of their arbitration proceedings in Oman.

The limited procedural rules provided for in the ACCD apply to all arbitrations in Oman (Article 1, ACCD); however, the parties are free to agree on the rules of procedures to be followed (Article 25, ACCD), including the rules of evidence, provided such procedures are not contrary to the laws of Oman in arbitrations where Omani law governs.

The ACCD rules of procedure include the following:

- the number of arbitrators must be odd (Article 15(2), ACCD);
- parties have a right to equal treatment and must be given adequate and sufficient opportunity to submit their claims (Article 26, ACCD);
- the arbitration proceedings must commence on the day on which the defendant receives the applicant's notice of arbitration, unless the parties agree on some other date (Article 27, ACCD);
- copies of the submissions, documents and other records submitted by one of the parties to the arbitration have to be forwarded to the other party (Article 31, ACCD);
- the parties must be notified of the dates of arbitral hearings in advance (Article 33(2), ACCD);
- arbitral hearing sessions must be recorded in the form of minutes, a copy of which must be circulated among the parties unless they agree otherwise (Article 33(3), ACCD); and
- the deposition of witnesses and experts must occur without the requirement of taking an oath (Article 33(4), ACCD).

7.2 Procedural Steps

There are no mandatory provisions that would supersede any international rules of procedure that the parties may have agreed to. In the absence of international rules of procedures being agreed to, the following procedural steps will also be required pursuant to the ACCD, in addition to the rules referred to in 7.1 **Governing Rules**:

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

7.3 Powers and Duties of Arbitrators

The ACCD provides the tribunal with the following powers:

- determination of the place and time of hearings, and of inspection of property (Article 28);
- determination of the language of the proceeding, including whether documentary evidence needs to be translated into such language (Article 29), unless otherwise provided for by the arbitration agreement;
- deciding on its own jurisdiction, and on the existence, validity or relevancy of an arbitration agreement (Article 22(1));
- deciding on the arbitration procedures if the parties have not agreed on such (Article 25) and making procedural orders (Article 42);
- determining the governing law if the parties have not agreed on such (Article 39(2));
- appointing one or more experts for the submission of a report and specifying the scope of their respective mandate(s) (Article 36(1));
- convening a hearing for the examination of the expert after receiving his or her report (Article 36(4));

- applying to the President of the Primary Court to fine witnesses who fail to appear for examination or refuse to answer questions on examination (Article 37(1));
- for tribunals of more than one arbitrator, passing an award based on a majority vote after deliberation, unless the parties have agreed that unanimity is required (Article 40); and
- consideration of applications for clarification of the operative pronouncement of the award (Article 49), correction of any typographical or mathematical errors in the award (Article 50), and passing an additional award in respect of any claim not adjudicated on in the award (Article 51).

The ACCD imposes the following duties on arbitrators:

- to disclose any circumstance that may cause doubt or suspicion as to an arbitrator's independence or neutrality (Article 16(3), ACCD);
- to apply the terms of the arbitration agreement between the parties (Article 39(1));
- to treat the parties equally, giving them adequate and sufficient opportunity to make their submissions (Article 26);
- to notify the parties of hearings and meetings (Article 33(2)), and to record the substance of each session in minutes to be provided to the parties (Article 33(3));
- to provide the parties with any decision appointing an expert and define the scope of his or her mandate (Article 36(1));
- to provide the parties with copies of expert reports and any accompanying documents or evidence submitted to the tribunal by an expert (Articles 31 and 36(2)), giving the parties the opportunity to respond to expert reports (Article 36(3)) and, if the tribunal convenes a hearing for the examination of an expert, giving the parties the right to present one or more experts to provide their opinion in respect of the issues contained in the report of such expert to be examined (Article 36(4));
- to pass the final award within the time agreed by the parties or, in the absence of such agreement, within 12 months of the commencement of the arbitration, which may be extended by the tribunal for up to an additional six months and thereafter only with the consent of the parties (Article 45(1));
- to delivering a signed copy of the award to the parties, in writing, within 30 days of passing the award (Article 45(2));
- to provide reasons in the award and the grounds on which the award is based, unless the parties have agreed otherwise or the governing law does not require the reasons and grounds to be stated in the award (Article 43(2)); and
- to correct any errors in the award (Article 50).

7.4 Legal Representatives

The ACCD does not contain any provisions that speak to qualifications for legal representatives in domestic or international arbitrations. However, the Oman Advocacy Law requires legal representatives of disputing parties to be advocates licensed in Oman; this rule is also applicable to arbitration proceedings. Foreign legal counsel have been permitted to appear before arbitral tribunals jointly with their locally licensed advocates.

8. Evidence

8.1 Collection and Submission of Evidence

The ACCD gives disputing parties the right to agree on the rules for the collection and submission of evidence. Without such an agreement, the arbitral tribunal may choose the appropriate procedure, including the Omani Law of Evidence in Civil and Commercial Transactions, RD 68/2008 (the Evidence Law). The general approach is to attach documentary evidence to the pleadings and reference such documents as exhibits.

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

8.2 Rules of Evidence

In the absence of an agreement between the parties or the adoption by the tribunal of procedural rules that encompass rules of evidence, the Evidence Law would apply. The same rules of evidence would apply to domestic disputes.

8.3 Powers of Compulsion

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

9. Confidentiality

9.1 Extent of Confidentiality

There is no provision in the ACCD that requires arbitration proceedings to be confidential. However, it is prohibited to publish all or part of an arbitral award without the consent of the parties (Article 44(2), ACCD). In practice, the judicial system treats arbitration proceedings as private and confidential. Information

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

10. The Award

10.1 Legal Requirements

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

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

The ACCD requires the arbitrator to pass the final award within the time agreed by the parties or, in the absence of such agreement, within 12 months of the commencement of the arbitration, which may be extended by the tribunal for up to an additional six months and thereafter only with the consent of the parties (Article 45(1)).

10.2 Types of Remedies

Any arbitration governed by the laws of Oman would be limited to the civil remedies available in the courts. By way of example as to the remedies available, the Civil Transactions Law, promulgated in 2013, allows for the recovery of contractual damages (Article 264), non-contractual damages (Article 176), specific performance (Article 258), liquidated damages (Article 267), etc. Article 42 of the ACCD provides arbitral tribunals with the power to issue provisional orders.

Punitive/exemplary and aggravated damages are unknown under Omani law.

10.3 Recovering Interest and Legal Costs

Interest may be recovered contractually (Article 80 of the Commercial Law, RD 55/90 as amended). The rate of interest, if not contractual, is set annually by the Ministry of Commerce and Industry in agreement with the Oman Chamber of Commerce and Industry (Article 80, Commercial Law).

The ACCD contains no provision concerning costs. Parties to arbitration proceedings that are governed by the laws of Oman are entitled to recover costs pursuant to Articles 183 and 184 of the Civil and Commercial Procedural Law, which is generally based on the costs-follow-the-event approach.

11. Review of an Award

11.1 Grounds for Appeal

Awards passed in arbitration proceedings governed by the ACCD cannot be appealed (Article 52(1), ACCD). However, a party may file an application with the Appeal Court seeking nullification of an award within 90 days of being notified of the award (Article 52(2) and 54(2), ACCD) where:

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

11.2 Excluding/Expanding the Scope of Appeal

The parties cannot contract out of their right to file an application for nullification (Article 54(1), ACCD). Omani law does not expressly permit parties to agree to expand the scope of grounds for the nullification of an arbitral award, nor to create any right of appeal.

However, if any such expansion of the parties' right to seek nullification – or the creation of a right of appeal – of an arbitration award was not considered to be contrary to Omani law or public order, then any agreement providing for the additional grounds/rights should be enforceable.

11.3 Standard of Judicial Review

There is no established standard of review of the merits of a case on an application for nullification of an arbitral award. In

practice, courts have applied a deferential standard when considering the merits of an award.

12. Enforcement of an Award

12.1 New York Convention

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

Oman is also a contracting state to the following regional conventions and agreements:

- the Riyadh Convention on Judicial Cooperation between States of the Arab League (1983);
- the Gulf Cooperation Council Convention for the Execution of Judgments, Delegations and Judicial Notifications (1987); and
- the Agreement between the Government of the Sultanate of Oman and the Government of the Republic of India on Legal and Judicial Cooperation in Civil and Commercial Matters (2020).

12.2 Enforcement Procedure

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

Since it has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Oman is required to enforce arbitration awards made in other contracting states. A foreign arbitration award may also be recognised and enforced in Oman pursuant to bilateral or multilateral conventions between Oman and the country in which the award was made. In addition, the Law of Civil and Commercial Procedure (the CCP), RD 29/2002, sets out requirements for the execution of foreign awards, including that the award is in respect of a subject that could be arbitrated in Oman and enforced in the foreign country (ie, reciprocity) (Article 353,

CCP), that the award is made by a tribunal with jurisdiction in the country in which it was made and is final according to the law of such country and not grounded on a deception, that the claim on which the award is based would not be a breach of Omani law, that the award does not contradict any judgment or order previously passed by the Omani courts, and that the award does not contravene public policy or conduct in Oman (Article 352, CCP). An application to execute a foreign arbitration award is made to a three-judge bench of the Primary Court, with the other side summoned to appear (Article 352(2), CCP).

The doctrine of sovereign immunity is unknown under Omani law. However, the Supreme Court has interpreted Article 366(1) of the CCP – which prohibits enforcement against the state's properties – as being applicable to the property of foreign states in Oman.

12.3 Approach of the Courts

The question of how an arbitration award might contravene public policy, order or conduct so as to justify refusing to enforce it has not yet been considered in the Omani courts, and it is not clear what legal principles the courts might apply to answer this question. In practice, the courts in Oman have generally been very reluctant to refuse to enforce foreign arbitral awards on public policy grounds.

13. Miscellaneous

13.1 Class-Action or Group Arbitration

Class action arbitration and group arbitration are not recognised under Omani law.

13.2 Ethical Codes

The Advocacy Law of Oman, RD 108/96, contains several provisions concerning the rules of professional conduct that apply to qualified counsels conducting arbitration proceedings in Oman. Such rules include the following standards:

- an advocate must behave with a sense of dignity, sincerity and integrity, and abide by all his/her obligations (Article 34);
- an advocate must abstain from giving any testimony in respect of information or data that has come to his/her knowledge in his/her professional capacity, unless it is intended to prevent the commission of an offence (Article 36);
- an advocate shall undertake to defend the interest and matters entrusted to him with due efficiency, and shall take due endeavours and care to accomplish this (Article 37); and
- an advocate must maintain and safeguard the information provided to him/her by his/her client. The advocate must

not disclose such information unless requested by the client. In general, it is unlawful for advocates to serve and represent conflicting interests.

13.3 Third-Party Funding

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

13.4 Consolidation

Pursuant to Article 117 of the Civil and Commercial Procedural Law, the courts have the power to consolidate separate proceedings. Third parties are entitled to join an arbitration proceeding if the arbitrator and other parties to the proceeding do not oppose the joinder of claims.

13.5 Third Parties

Under Omani law, domestic or foreign third parties cannot be bound by an arbitration agreement or an arbitration award.

OMAN LAW AND PRACTICE

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Al Busaidy Mansoor Jamal & Co is an independent, award-winning, full-service law firm of international quality established in Oman for more than 30 years. The firm's five teams of solicitors and barristers, trained in the UK, the USA, the Commonwealth and leading legal jurisdictions in the MENA region, include most of Oman's elite legal practitioners recognised for their involvement in precedent-setting cases, award-

winning, "first of a kind" deals and projects in Oman and the region. They combine a wealth of experience of international practice with in-depth local knowledge and advanced linguistic capability to act effectively on behalf of clients ranging from government and state-owned enterprises to multinationals, blue chips, financial institutions, start-ups and foreign investors.

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Trends and Developments

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Recent Developments Affecting Arbitration in Oman

As businesses have expanded over the years following the development of the Sultanate of Oman as an emerging jurisdiction, so too have the number of disputes and arbitration proceedings. The disputes most commonly referred to arbitration relate to construction, engineering and infrastructure projects.

There is a continued increase in the number of construction disputes in the Sultanate. These disputes have arisen partially as a result of liquidity constraints in the market due to the ongoing effects of the drop in oil revenues. Further, many of these disputes are related to issues such as slow progress of work, delayed payments and claims for extensions of time, which have a knock-on effect on contractors and subcontractors as well as other related sectors including finance, insurance and real estate.

Many such disputes are taking years to resolve, even when settled amicably without a demand letter being sent or a proceeding being commenced, due to the aforementioned liquidity constraints. The impact of the COVID-19 pandemic and continuing low oil prices are expected to exacerbate the existing dispute dynamics.

Contract performance and administration

A shift has been observed in construction contract performance and administration in Oman. Previously, parties in the sector used to favour a conciliatory approach toward contractual administration and were more inclined to work together to complete construction projects without strict reliance on the requirements of the contract. However, within the past few years parties have increasingly relied on their strict contractual rights and their counter-party's obligations which in turn has caused an increase in the number of litigation and arbitration proceedings in Oman, particularly when the project was performed according to the old conciliatory approach but then one of the parties relies on its strict contractual rights.

Liquidity

The liquidity constraints have also caused a spike in dubious encashment demands on performance security as a quick method to access funds. As a result, there has been an increase in summary applications by contractors and subcontractors,

and occasionally even by the financial institutions issuing the performance security, seeking injunctive relief as an attempt to prevent the liquidation of performance security.

Oman Commercial Arbitration Centre

Another noteworthy development which may affect the use of arbitration in Oman is the launch of the Oman Commercial Arbitration Centre (OCAC).

Although Oman was an early leader in the region in promulgating the Law of Arbitration in Civil and Commercial Disputes in 1997, no arbitral institutions had been established in the Sultanate. In the meantime, many arbitration centres were created in Gulf Cooperation Council (GCC) jurisdictions, such as the Dubai International Arbitration Centre, the Abu Dhabi Commercial Conciliation & Arbitration Centre, the Bahrain Chamber for Dispute Resolution and the GCC Commercial Arbitration Centre. Sometimes, even Omani entities agreed to arbitrate disputes regarding contracts governed by Omani law at such arbitration centres rather than pursuant to Oman's Law of Arbitration in Civil and Commercial Disputes.

In order to promote arbitration in the Sultanate, the government of Oman, in 2018, authorised the chairman of the board of directors of the Oman Chamber of Commerce and Industry to spearhead the establishment of the OCAC, which was launched in July 2019. The authorities have stated publicly that the OCAC is expected to become operational in the last quarter of 2020. The proposed OCAC rules have been circulated in draft for review and are being commented on by interested parties. It is anticipated that this review process could delay the expected operational date of the OCAC.

Further, the Chartered Institute of Arbitrators (CIArb) has announced its plan to set up a chapter and perhaps also a regional office in Oman to promote arbitration and ADR in the Sultanate and more widely within the region. CIArb has formed a steering committee, composed of a barrister in London chambers and several senior practitioners in Oman, with a mandate to facilitate the opening of the CIArb chapter in Oman.

Al Busaidy Mansoor Jamal & Co is an independent, award-winning, full-service law firm of international quality established in Oman for more than 30 years. The firm's five teams of solicitors and barristers, trained in the UK, the USA, the Commonwealth and leading legal jurisdictions in the MENA region, include most of Oman's elite legal practitioners recognised for their involvement in precedent-setting cases, award-

winning, "first of a kind" deals and projects in Oman and the region. They combine a wealth of experience of international practice with in-depth local knowledge and advanced linguistic capability to act effectively on behalf of clients ranging from government and state-owned enterprises to multinationals, blue chips, financial institutions, start-ups and foreign investors.

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