

Oman

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A guide to legislation in Oman

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In the past two years there has been no real change from the position that, as in other GCC countries, legislation in Oman exhibits a degree of Egyptian influence. There are exceptions to this general characteristic. Some examples of legislation in Oman have clear common-law influences, the most obvious being the Banking Law of 1974 (now superseded by the Banking Law of 2000).

The powers of the state are vested in HM The Sultan, who rules with the assistance of an appointed Council of Ministers. Oman has no formal constitution, rather, the administrative structure of the government is formed in accordance with royal decrees issued by HM The Sultan. The validity of all acts of government officials other than HM The Sultan is dependent upon the terms of the relevant royal decrees, decisions and regulations. The Basic Law of the State (set down in Royal Decree 101/96) provides the system of governance in Oman. It establishes certain fundamental rights of nationals and expatriates, including the protection of personal liberty and property interests. It also deals with matters such as succession to the throne, if it should fall vacant; and ownership of the natural resources of Oman being vested in the State.

Primary legislation is issued by means of royal decrees issued by HM The Sultan. All subordinate legislation must be issued in accordance with the procedures in the relevant royal decree, and is usually by a ministerial decision or by the issue of regulations by the relevant body. Normally, ministerial decisions and regulations are issued in response to more specific royal decrees.

The *Official Gazette* is used as the means of publishing new primary and subordinate legislation. The date of implementation of legislation is generally the date of its publication in the *Official Gazette*, but may be another date specified in the relevant decree. It is unusual for legislation to come into effect more than a few months after the date of issue of the relevant *Gazette*.

The courts that exist in Oman are: the Commercial Court consisting of First Instance, Appeal circuits and the Supreme Court; the Administrative Court; the Criminal Court; the State Security Court; and the Shariah Court. The application of Islamic *Shariah* law is largely limited to personal and family matters.

As all court proceedings in Oman are conducted in Arabic, all non-Arabic documentation must be translated into Arabic before it is lodged. In addition, Royal Decree 13/97 established the Court of Summary Justice, which can settle claims of up to OR15,000 (\$39,000).

A decision of the Court of Summary Justice may be appealed to the Court of First Instance in the Commercial Court if the amount claimed exceeds OR5,000. If the claim is for less than OR5,000 the judgment of the Court of Summary Justice is final.



A judgment of the Court of First Instance may be appealed to the Court of Appeal in the Commercial Court if the amount claimed exceeds OR25,000. If the claim is for less than OR25,000 the judgment of the Court of First Instance is final.

The Administrative Court (governed by Royal Decree 91/99) became operational in April 2001. This new court is designed to provide a forum for a review of decisions made by Omani government bodies. This court (which comprises First Instance and Appeal circuits) has the power to reverse decisions made by government bodies, and it can also award compensation.

The Supreme Court acts, in certain circumstances, as a third layer of justice (akin to the English House of Lords) if parties wish to challenge judgments made by the Appeal circuits of the Commercial, Criminal, Shariah or Administrative Court.

There is no developed system of precedent in Oman, and the Commercial Court has indicated on numerous occasions that it does not consider itself bound by its previous decisions. However, decisions of the Commercial Court are published in a yearbook.

If directed to previous decisions, the court is likely to take note of those decisions. This arises from the desire of the court for consistency in its decision making. This practice is, however, limited by a legal tradition which treats each case on its own merits.

It is open to any litigant to make reference to decisions of courts of any other state, whether Arab states or otherwise, which the Commercial Court may or may not take note of.

In its decision making, the Commercial Court often refers to Article 44 of Royal Decree 32/84, which provides that, in issuing its judgments the Commercial Court must adhere to the decrees and laws in force in the Sultanate, contracts between the disputing parties, provided that the conditions of such contracts do not conflict with Omani law, public order or propriety or established valid practices in the field of commercial activities and whatever establishes justice between the litigants and leads to the stabilization of commercial transactions.

January 11 1991 saw the introduction in Oman of a codified Commercial Law established by Royal Decree 55/90. In addition to the terms of Royal Decree 32/84, the Commercial Court must also take account of this Commercial Law. This piece of legislation provides, among other things, that the Commercial Court should consider the following matters in interpreting commercial contracts: (i) the terms of the contract; (ii) legislative provisions; (iii) rules of custom and practice and (iv) *Shariah* provisions. We believe that the provisions of the Commercial Law listed above will be applied by the Commercial Court in descending order of priority.

It is fair to say that the general approach adopted is that the parties to a contract, particularly a commercial contract, are free to arrange their own affairs subject to mandatory legislative provisions.

That said, it would be misleading to suggest that the concept of that which is not prohibited is permitted has been developed as a formal legal doctrine. In practice it would be safer to assume that any unusual action may only be safely relied upon if expressly permitted.

Contractual provisions that contradict express statutory provisions in Oman will not be upheld. For example, under the

Commercial Agencies Law, a registered agent is entitled to compensation if the agency agreement is terminated without justification, notwithstanding that proper (contractual) notice may have been given.

Costs do not usually follow the event in cases heard by the Commercial Court, although if the winning party has paid any filing or expert's fees (the court often appoints independent experts to provide assistance on technical matters), they will be awarded with the judgment. It should also be borne in mind that there is no formal system of discovery in the same sense that it exists under say, English law, although the court does have the power to order production of documents which it considers relevant. When lodging pleadings with the court, all evidence in support of such pleadings must also be attached. Documentary evidence is given a high level of significance.

Where contracts contain an arbitration clause, the Commercial Court would normally uphold the requirement to arbitrate, and would not usually hear the merits of a case in respect of a contract where an arbitration clause was included. The Oman Arbitration Law (Royal Decree 47/97) governs private arbitrations in Oman, and provides a framework for such arbitrations that is based on the Egyptian version of UNCITRAL model law.

Oman is a signatory to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention), which was ratified by Royal Decree 33/95.

February 6 1996 saw Oman ratify the Convention on the Enforcement of Judgments, Disputes and Judicial Summons in the Arab Gulf Co-operative Council States. All the GCC states have ratified this legislation, which provides for the mutual enforceability of court judgments rendered by a member state.

Oman is also a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the 1958 New York Convention), and the common view is that Oman ratified this legislation on February 25 1999 by virtue of Royal Decree 36/98.

Apart from the specific applicability of the above two pieces of legislation, the enforceability of foreign judgments and orders depends upon the reciprocal arrangements that exist in that foreign jurisdiction. If Omani judgments can be enforced in that foreign jurisdiction, then judgments of the courts of that foreign jurisdiction can be enforced in Oman, provided that the following conditions are also established:

- i) the Omani Courts do not have jurisdiction;
- ii) the judgment or order has been given by a court having jurisdiction in accordance with international norms;
- iii) the judgment or order has become final;
- iv) the parties were properly represented; and
- v) the judgment or order does not violate law or public order in Oman, and does not contradict any judgment or order already handed down by an Omani Court.

Corporate and commercial

Recommended firms

Al Alawi Mansoor Jamal & Co

Trowers & Hamlin

Denton Wilde Sapté

Said Al-Shahry Law Office in association with Richards Butler

Curtis Mallet-Prevost Colt & Mosle

Al Alawi Mansoor Jamal & Co

With strong links to Clifford Chance, this law firm has excellent banking credentials in Oman. A deep understanding of the banking sector comes from extensive experience in this practice area. Aside from banking, the firm offers full-service capabilities to its clients. Almost universal praise was reserved for partner Mansoor Jamal, an attorney described as “very well known and a strong lawyer” who is both “proactive and aggressive”. Sohaib Isaque also receives mention for the quality of his advice.

Key contact partner

Mansoor Jamal

Leading lawyer

Mansoor Jamal

Trowers & Hamlin

Trowers & Hamlin’s international capabilities make this a first-stop choice for those seeking either domestic or multi-jurisdictional financial law advice in Oman. One client cites it as excellent, commenting “its turnaround is fast, it has more understanding of the customer’s needs and requirements” and “it has more staff at its disposal”.

These qualities attract some of the most desirable clients in the market, including Bank Muscat, which the firm advised on a OR20 million (\$52 million) unsecured bond issue. The firm also advised the National Bank of Oman on a subordinated private placement of OR12 million. Other clients include Sahara Hospitality and BP Oman.

Trowers boasts a fine team, and many of its lawyers are recommended for the quality of their advice. Standing out from the crowd are Adrian Jones and Andrew Rae. Sean Angle is also recommended. One client commented “when something needs to be clarified, he will do it over the phone immediately.”

Key contact partner

Sean Angle

Leading lawyers

Sean Angle
Adrian Jones
Andrew Rae

Denton Wilde Sapté

Denton Wilde Sapté has a strong group of lawyers, whose work has earned the firm a reputation for quality law advice. Imtiaz Shah is one such lawyer, described by a client as “an excellent lawyer – very competent”. Others singled out for praise are managing partner, Andrew Watson, and Lara Sheldon, an practitioner described by one client as a “legal purist”.

Though the firm has a lower profile than others in the market, it still manages to attract clients such as the National Bank of Oman and the Telecoms Regulatory Authority, which Denton Wilde Sapté advised in conjunction with the consulting arm of PricewaterhouseCoopers (now IBM).

Key contact partner

Andrew Watson

Leading lawyers

Imtiaz Shah
Lara Sheldon
Andrew Watson

Said Al-Shahry Law Office in association with Richards Butler

The corporate and commercial practice at Said Al-Shahry Law Office is led by the experienced and well-respected Alastair Neale, who has a solid reputation among clients and competitors. Fayyaz Mahmood is also well respected.

Past clients have included the Gulf International Bank, which the firm advised in connection with a \$150 million loan agreement to an Omani business house. In M&A, the firm assisted Bank Dhofar Al Omani Al Fransi as it acquired Majan International Bank, while in the area of project financing it advised Oman LNG on a \$2.5 billion gas project and acted for the lenders in connection with the \$1.2 billion Sohar Refinery project. It also acted for the Omani government during the Salalah Free Zone Project.

Leading lawyers

Fayyaz Mahmood
Alastair Neale

Curtis Mallet-Prevost Colt & Mosle

This firm has been a key player in the Omani government’s string of privatizations and projects programmes. From 2000 to 2004, Curtis Mallet was nominated as adviser to the Ministry of Finance to oversee the draughting of various documents relating to government-backed projects, including defence procurements.

The firm also acted as deal counsel on the \$250 million Port Sohar development. It acted again for the Ministry of Finance advising on two ship-building contracts – one involving the Kawasaki Shipbuilding Corporation of Japan that was valued at \$149 million, the other concerning Samsung Heavy Industries of Korea, valued at about \$150 million.

Key contact partners

Robert Gruendel

Bruce Mullins

Other notable firms

A popular Arabic firm is **Hamad Al-Sharji Peter Mansour & Co**, which benefits both from its UK-qualified lawyers and its local strength. It also boasts an Omani ex-judge among its numbers. The firm's language capacity and domestic expertise can, on occasion, give it the upper hand over larger, international firms. **Adham & Associates** also has a good reputation in the Omani law market, based on a combination of solid contacts and capable personnel.