

Construction and projects in Oman: overview

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OVERVIEW OF THE CONSTRUCTION AND PROJECTS SECTOR

1. What are the main trends in the local construction and projects market? What are the most significant deals?

Main trends

The construction and projects market in the Oman is in good health. Bearing in mind Oman's relatively small population of only 2.8 million people, the scale of the construction and infrastructure development projects that have already been committed or are under construction is impressive.

The public sector is by far the largest procurer of construction services in the Sultanate of Oman (*see Question 2*). In the 2011 budget, the government announced Oman's eighth five-year plan, to run from 2011 to 2015. It envisages a total capital outlay of US\$79 billion, of which the bulk is set to be invested in large construction projects across the country. The chief beneficiaries of this investment programme will be the following sectors:

- Transportation: particularly airports, ports, highways and, in the longer term, railways.
- Tourism: several up-scale resort and hotel projects are planned or under construction across Oman, capitalising on its:
 - mountain, desert and coastal scenery;
 - ecotourism potential.
- Oil and gas: although making steady progress towards diversifying into more downstream-orientated industries such as petrochemicals, steel and aluminium, Oman remains at heart a hydrocarbons-based economy. It has a number of world-class exploration and production projects under development, including investment-heavy enhanced oil recovery schemes.

In addition, significant projects in the power generation and transmission, wastewater treatment and water desalination, healthcare and housing sectors are also under construction or in advanced stages of planning.

Major projects

Major projects already under construction or in advanced stages of engineering, design and/or planning include:

- **Oman Convention & Exhibition Centre.** This has a project cost of US\$1 billion, and an estimated completion date of 2016.

- **Sohar Airport.** This has a project cost of US\$500 million, and an estimated completion date of 2014.
- **Salalah Port expansion.** This has a project cost of US\$450 million.
- **Oman's national rail network.** The project cost is not yet known, and the estimated completion date is 2018.
- **Duqm city, drydocks and refinery.** The project cost is a total of US\$20 billion.
- **Ghubrah Independent Water Project.** The project cost is US\$380 million, and the estimated completion date is 2014.
- **Batinah Expressway.** The project cost is US\$2.59 billion.
- **Muscat & Salalah International Airport expansion.** The project cost is US\$5.2 billion.
- **Salalah Medical City.** The project cost is US\$1 billion.

PROCUREMENT ARRANGEMENTS

2. Which are the most common procurement arrangements if the main parties are local? Are these arrangements different if some or all of the main parties are international contractors or consultants?

As in other jurisdictions, the main parties involved in projects in Oman will be the:

- Project owner or developer (usually referred to in the contract as the employer or the purchaser).
- Employer's engineering, architectural and other consultants.
- Employer's contractor(s).
- Contractor's subcontractors and suppliers.

Public sector procurement

The public sector is by far the biggest procurer of construction services in Oman (*see Question 1, Main trends*). Public works are generally awarded by competitive tender. With very limited exceptions, such as defence procurement, public sector procurement is governed by the Tender Law (*as promulgated by Sultani Decree No. 36/2008, as amended by Sultani Decree 19/2011 and 120/2011*), which provides that procurement must comply with the principles of:

- Transparency.
- Equal opportunities.

- Equality.
- Freedom of competition.

The Tender Law does not distinguish between local and international contractors, or consultants, although as a rule:

- Contracts for purely local projects can be in the Arabic language.
- Contracts for international projects, where consultants and/or contractors are wholly or partly foreign-owned, will be in the English language.

Common contractual structures

Generally, the platform documents used will be the standard form contracts published by the government (Oman Standard Conditions), which cover:

- Civil and building works in the traditional employer design/contractor build format (expected to be reissued in a modified and updated format (see Questions 6 and 37)).
- Plant and mechanical and electrical (M&E) works in contractor design/build or EPC (energy, procurement and construction) format.

For more information concerning the Oman Standard Conditions, see Question 6.

EPCM (energy, procurement and construction management) is not unusual for projects in the hydrocarbons sector.

Onshore/offshore split contract structures are routinely used on international projects (see Question 35).

Payment structures

The following payment structures are the most common:

- Fixed price (lump sum) with payment on milestones achieved.
- Traditional measure and value (where the payment is based on certification of measured quantities of work completed).

Target cost, guaranteed minimum price (GMP) or other such arrangements are not generally used.

TRANSACTION STRUCTURES

3. What transaction structures and corporate vehicles are most commonly used in both local and international projects?

Local projects

To spread risk and pool expertise and resources, local contractors, including locally incorporated subsidiaries of foreign contractors, will typically enter into unincorporated joint ventures to undertake the large and complex civil works projects which characterise Oman's infrastructure development programme.

International projects

Projects requiring specialist expertise and resources that are not available locally (for example, in the airports, power and water and hydrocarbons sectors), are likely to attract foreign and local contractors working together in unincorporated joint venture structures (see above, Local projects).

Government or other public sector procurers will not typically establish special purpose vehicles (SPVs) or similar vehicles when acting as an employer. However, as in other jurisdictions, project procurement under long-term public-private partnership (PPP)-style concessions, notably in the power and water sectors, will be undertaken through project-specific SPVs (see Question 29).

FINANCE

4. How are projects financed? How do arrangements differ for major international projects?

For the large PPP-style projects typically seen in the power and water sectors, limited recourse financing (where the security is principally over the project assets alone rather than those of the sponsors' or investors' assets) is usually obtained. These financing arrangements are predominantly based on the precedents of the Loan Market Association (LMA) and will involve a syndicate of lenders, which is likely to include international financial institutions.

Government or public authority projects are usually self-financed, although there are indications that projects which have traditionally been entirely government financed (for example, road construction) may in future be procured using private investment or financing.

Privately funded projects (other than PPP-style projects) consist mainly of smaller real estate or tourism development projects which are financed by lenders on a corporate or full recourse basis.

The following are not typically used to finance projects in Oman:

- Mezzanine finance arrangements. Even large projects rarely have mezzanine finance arrangements and therefore inter-creditor arrangements are also rare. In addition, mezzanine finance arrangements tend not to come in a conventional form (one form that has been used is the subordinated loan notes arrangement).
- Bond issues.

SECURITY AND CONTRACTUAL PROTECTIONS

5. What forms of security and contractual protections do funders typically require to protect their investments?

Security

Security typically taken by lenders in Oman does not differ significantly from the norm in other jurisdictions in the region. It is likely to include one or more of the following:

- A commercial mortgage over company assets, plant and machinery. Omani law does not recognise the concept of a floating charge.
- A legal mortgage over the land or site. This may take the form of a mortgage over a sub-usufruct. For example, a usufruct (that is, the right to use, enjoy and occupy land or property belonging to another person for a fixed term, not exceeding 50 years) may be granted to a free-zone entity out of government land (which is the subject of the construction project). (Oman has a number of free trade zones intended to promote investment from domestic

and foreign companies.) The free-zone entity will then grant the borrower a sub-usufruct, over which the lenders will take a legal mortgage.

- Guarantees from the employer's parent company or shareholders of the employer.

Employers will generally require contractors to provide either or both of:

- Performance bonds (where the issuer undertakes to pay if the contractor fails to meet its obligations), in unconditional or on demand form, issued by a local insurance company or bank.
- Parent company guarantees.

Contractual

The employer will aim to transfer risk in a cost-effective way to the contractor in the construction contract. Where off-balance sheet financing (that is, financing which does not appear as a liability on a company's balance sheet) is used, funders will be concerned to ensure that the transfer enhances the risk profile of the project and borrower. The funders will require direct agreements, which grant the usual step-in rights enabling the funders to take over in the case of default.

The approach does not differ between a local and international contract.

STANDARD FORMS OF CONTRACTS

6. What standard forms of contracts are used for both local and international projects? Which organisations publish them?

Contracts for building and civil works awarded by public authorities to local and international contractors are typically based on the Sultanate of Oman Standard Documents for Building and Civil Engineering Works, Third Edition 1981. There is an updated 1999 Fourth Edition. However, the earlier edition is still widely used. Publication of the 2012 fifth edition (based on *Fédération Internationale des Ingénieurs-Conseils* (FIDIC 1999)) is still awaited (see *Question 37, Reform proposals*). It appears that a final review is being carried out by the Ministry of Legal Affairs.

For electrical and mechanical works, the Government publishes a separate set of Standard Documents, based on an earlier edition of the FIDIC Yellow Book.

The FIDIC suite of contracts (and for plant projects the IChemE suite) are also widely used and accepted.

The Oman Standard Conditions and the FIDIC suite of contracts are used for both local and international projects.

CONTRACTUAL ISSUES

Contractors' risks

7. What risks are typically allocated to the contractor? How are these risks offset or managed?

International contractors bidding for projects awarded by Omani public authorities can expect FIDIC-style risk allocation. This means that where the contract is a traditional employer design/contractor build:

- The employer typically bears the risk of cost increases due to change in law or "special risks" (for example, war risks).

- The contractor typically bears cost increases due to for example, general inflation in materials, labour or consumable prices and adverse physical conditions (other than weather conditions).

Where the contract is in EPC (engineer, procure and construct) turnkey format, the risks typically allocated to the contractor will include the:

- Suitability of the design or engineering and the completed plant or facility for its specified purpose.
- Suitability of the site and geological conditions and cost of necessary site remediation.
- Materials, labour and consumable cost inflation (except for increased costs due to post-award contract changes in law).

Contractors bidding for contracts on projects where the employer is one of the major global oil and gas companies can expect to contract under the employer's worldwide standard form contracts. These tend to place full EPC, design verification and sometimes even local conditions (for example, change in law) risk on the contractor. As a result, possibilities for the contractor to claim time or price adjustments under these contracts can be limited.

There are no significant differences in this respect between local and international projects.

Construction risks are offset and managed in the ways usual in other jurisdictions: sub-contracting, insurance, reliance on local partners familiar with local conditions, and so on.

Excluding liability

8. How can liability be excluded or restricted under local law?

Omani has a civil law system, largely derived from Egyptian law. However unlike, for example, Egypt and the neighbouring United Arab Emirates (UAE), Oman, until recently, had no Civil Code. In May of this year, a new Civil Transaction Code was promulgated but will only have effect on 6 August 2013. Until such time, the following firmly established civil law principles are generally accepted to form part of Omani law, and can be expected to be applied by the local courts or tribunals applying Omani law:

- Clauses excluding liability for consequential losses, loss of production and loss of revenue are generally enforceable under Omani law. It is preferable to be specific as to what is meant by "consequential loss" to reduce the likelihood of disputes.
- Contracts governed by Omani law are subject to certain mandatory terms which cannot be excluded. For example, contractors and engineers (and other designers) are bound by decennial liability (that is, liability for ten years following completion and hand over of the completed works) for dangerous or structural defects in buildings or other structures (in the case of engineering or architectural consultancy firms this principle set out in Article 16 of the Engineering Consultancy Law (*promulgated by Sultani Decree 120/1994*)).
- Any provision which entirely exempts a guilty party from liability for breach of contract is treated as void.
- A party to a contract can apply to the court or arbitral tribunal to override contractually agreed compensatory arrangements and adjust the specified compensation to equate it to the actual loss suffered. This is particularly important in the context of construction contracts, which routinely include provisions imposing specified penalties (called liquidated damages in common law jurisdictions) for culpable delay (see *Question 9*).

- A court or arbitrator applying Omani law can, after weighing up the interests of each party, reduce a contractual obligation to a “reasonable level”, if all of the following apply:
 - the obligation is “oppressive” (that is, the obligation is onerous, although it does not have to be impossible to perform);
 - there are “exceptional circumstances” of a public nature; and
 - the obligor is threatened with “grave loss”.

There is some uncertainty surrounding the circumstances in which this principle can be successfully invoked, but contractual attempts to exclude this principle are treated as void.

Caps on liability

9. Do the parties usually agree a cap on liability? If yes, how is this usually fixed? What liabilities, if any, are typically not capped?

Overall caps on liability are common. They may be subject to pre-contract negotiation and the level of the cap can vary depending on, for example, which government department is the contracting authority. The following are commonly negotiated:

- Caps on delay.
- Performance penalties.
- Liquidated damages.

It is also normal to provide carve-outs from the cap on liability for liabilities which cannot lawfully be excluded or capped, such as:

- Third party liabilities.
- Certain strict liabilities.

There are no variations between different sectors and local and international projects.

Force majeure

10. Are force majeure exclusions available and enforceable?

Contractual force majeure provisions are common and can be expected to be enforceable as written. Typically a force majeure event will:

- Excuse liability for non-performance of an obligation.
- Not excuse:
 - failure or inability to pay money otherwise due; or
 - failure to obtain permits or inability to raise finance.

It is an established civil law principle that relief will be granted to a contractor in the event of exceptional and unpredictable events of a public nature. If the contractor’s performance of a contract becomes impossible or delayed due to those events, Omani law recognises that the contractor may be entitled to appropriate relief (*see also Question 8*).

Material delays

11. What contractual provisions are typically negotiated to cover material delays to the project?

Conventional extension of time provisions are found in the Oman Standard Conditions and in the international standard form contracts (FIDIC, IChemE) widely used in Oman.

The extent of relief available to the contractor will depend on the risk allocation profile under the contract. Typically, the following will entitle the contractor to an extension of time:

- Employer-generated changes in scope (variations).
- Employer acts of prevention (for example, architectural or engineering drawings arriving too late, and delays by other contractors).
- Force majeure events (*see Question 10*).

Unlike in modern international standard form contracts, the cumbersome and out-dated “engineer’s decision” procedure (which generally provide that the employer’s engineer’s decision is a necessary first step in the dispute resolution process, and may become binding if not challenged within specified time limits), widely discarded in other jurisdictions, still applies in the Oman Standard Conditions.

Material variations

12. How are material variations to the works usually dealt with in the contract?

Material variations tend to be dealt with in orthodox FIDIC fashion. Under the Oman Standard Conditions, the engineer can direct a variation to the “form, quality or quantity” of the works. The engineer can direct the contractor to carry out any of the following:

- Increase or decrease the quantity of work.
- Omit part of the work.
- Change the character, quality or nature of the work.
- Execute additional work necessary for the completion of the works.

Disputes arise, as in other jurisdictions, as to the precise scope and meaning of the above words.

Variations are valued by reference to the rates and prices set out in the contract if the engineer considers these to be applicable. If applicable rates and prices are not set out in the contract, the engineer and contractor will endeavour to agree the price or rate. Failing agreement, the engineer will fix the price for any variation. As in other jurisdictions, this valuation procedure tends to give rise to disputes. Variations also tend to give rise to disputes concerning the contractor’s related extension of time entitlement (*see Question 11*).

There are no key differences between local and international projects.

Other negotiated provisions

13. What other contractual provisions are usually heavily negotiated by the parties?

The following matters are frequently heavily negotiated:

- Performance securities and parent company guarantees (*see Question 5*).
- Remedies for late or non-payment of sums due.
- Limitations or exclusions of liability and relevant carve-outs (*see Question 9*).
- Liability for risk relating to ground conditions.

- Completion obligations, risks and penalties.
- Governing law (usually Omani but sometimes English).
- Arbitration venue and rules in the event of a dispute.
- Rules governing the consequences and numbers of change in laws and other “political” risk events.

There are no key variations between local and international projects.

ARCHITECTS, ENGINEERS AND CONSTRUCTION PROFESSIONALS

14. How are construction professionals usually selected? Following selection, how are they then formally appointed?

The Tender Law applies to the selection and the appointment of construction professionals by public authorities (*see Question 2*). Construction professionals are usually appointed under conventional professional services contracts. The FIDIC White Book (Client/Consultant Model Services Agreement) is widely used. Bespoke services contracts are also common.

Typically, construction professionals’ appointments will include:

- Provisions imposing the familiar standard of “professional skill and care”.
- Exclusions of liability, such as for indirect and consequential loss.
- Imposition of decennial liability requirements under the Engineering Services Law (*see Question 8*).
- The usual requirements for the consultant to carry professional indemnity insurance. Liability may be capped at the agreed level of professional indemnity cover.

All of the above may be subject to negotiation, although where standard form contracts are used by the public sector, scope for negotiation will be limited.

15. What provisions of construction professionals’ appointments are most heavily negotiated? Are liabilities routinely limited or capped in construction professionals’ appointments?

See *Question 14*.

PAYMENT FOR CONSTRUCTION WORK

16. What are the usual methods of payment for construction work? Are there ways for the contractor and consultants to secure payment or mitigate risks of non-payment under local law?

Methods of payment

Advance payments for construction work are normal. Subsequent payments are generally based on certification of measured quantities of work completed or milestone achieved. The details are a matter of pre-contract negotiation, and there are no specific regulations or other legal requirements.

Securing payment

Employers (particularly in the public sector), do not usually provide any form of security for payment obligations. The concept of a constructor’s lien is not part of Omani law. However, it is accepted that interest can be charged for late payment. The Oman Standard Conditions expressly provide for late-payment interest to be paid and interest is paid in practice.

SUBCONTRACTORS

17. How do the parties typically manage their relationships with subcontractors?

Back-to-back subcontracts (that is, where the subcontractor is bound by all the relevant obligations of the main contract) are normal in Oman, as in other jurisdictions. On larger international projects, the terms of the subcontract may be drafted and negotiated to specifically match those of the main contract. More informal arrangements between the main contractor and subcontractor tend to be adopted on local projects.

Under Omani law, English law terminology such as “indemnify” does not carry any meaning different from “compensate”. Therefore, an obligation on the part of a subcontractor to indemnify a main contractor against the consequences of breach of the subcontract is not likely to provide a full indemnity in the English law sense of that term.

Direct payments by funders or employers to a subcontractor, in the case of default by the main contractor, will be a matter for negotiation between the parties concerned.

LICENSING

18. What licences and other consents must contractors and construction professionals have to carry out local construction work? Are there any specific licensing requirements for international contractors and construction professionals?

A foreign company must establish a formal presence in Oman. There are various requirements to be satisfied, such as:

- Omanisation levels (that is, minimum employment levels of Omani nationals).
- Other registration formalities, which will depend on the nature of the contract awarded. For example, a foreign contractor awarded a contract with a government body will be exempt from certain registration requirements.

Contractors and construction professionals must obtain a licence from the Ministry of Commerce and Industry. For construction professionals, the licence is issued in accordance with the requirements of the Engineering Consultancy Law, which specifies the level of qualifications and experience required of construction professionals (*see Question 8*).

All companies must obtain the following to register a presence in Oman:

- A Commercial Registration Certificate from the Ministry of Commerce and Industry.
- A certificate from the Oman Chamber of Commerce and Industry.

It may also be necessary for a company to obtain a Municipality Permit. This must be obtained from the relevant municipality in which the company intends to have property and operate.

19. What licences and other consents must a project obtain?

Permits, licences and consents must be obtained from different government ministries, depending on the nature of the project. In principle, they should be obtained by the “beneficiary” of the project, and include the following.

Before

The following must be obtained before the project:

- Site approval from the Ministry of Environment and Climate Affairs (MECA), the relevant municipality, the Ministry of Housing (MOH) and the Public Authority for Electricity and Water (PAEW).
- Building or construction consent from the relevant municipality and MECA.
- Excavation permits from the relevant municipality, MECA, MOH, Royal Oman Police and any interested service providers (for example, water, gas, electricity, and telephone).
- Other municipality permits, such as demolition permits, transfer of soil permits, offsite activity approval, installation of site works, and campsite/storage site approval.
- Several permits from the Director-General of Civil Defence at the Royal Oman Police required before construction in relation to, among other things, studying of construction projects, transport of hazardous substances (if necessary, and done in conjunction with the Director-General of Traffic, and fire safety equipment clearance.
- In addition to site approval, other PAEW approvals and permits, such as site handover, temporary water supply and mains clearance (in conjunction with MOH).
- Gas crossing excavation permits from the Oman Gas Company.

During

During the project, it is necessary to obtain those permits that are required for the construction programme, including permits from the Director-General of Traffic for:

- The transport of heavy goods.
- Consent to open up highways or other roads for crossing.
- Traffic-routing plans for transportation of personnel, plant and materials.

On completion

The following may be required on completion:

- Municipality permits, such as certificate of completion.
- A permanent electricity connection request to be made to the Muscat Electricity Distribution Company (MEDC).
- A fire safety certificate from the Director-General of Civil Defence.
- Water supply requests to be made to PAEW.

PROJECTS INSURANCE

20. What types of insurance must be maintained by law? Are other non-compulsory types of insurance maintained under contract?

Compulsory insurance

There are no specific construction-related insurances that a contractor must obtain by law. Responsibility for the insurance is a matter for pre-contract negotiation (*see below, Non-compulsory insurance*).

Non-compulsory insurance

Typically contractors will be required to take out and maintain:

- All risks insurance.
- Worker’s compensation insurance.

Construction professionals are usually contractually required to carry professional indemnity insurance.

LABOUR LAWS

21. Are there any labour law requirements for hiring (local and foreign) workers?

The Labour Law (*promulgated by Sultani Decree 35/2003*) and the regulations and decisions made under it regulate all aspects of employment in Oman, including the hiring of Omani nationals and expatriates. All employees must be employed by an Omani national or a company registered in Oman.

Local workers

Omani employees must be registered with the Public Authority for Social Insurance (PASI). There is a standard form contract which is used to register national employees with the Ministry of Manpower and PASI.

Foreign workers

Expatriates require:

- A labour clearance (for the position).
- An employment visa.
- A residence permit.

There is an Omanisation policy in place which provides a minimum percentage of Omani employees for each employer, based on its sector of operation. Some positions, including drivers, receptionists, Ministry liaison officers and Arabic typists, must be filled by Omanis.

22. Which labour laws are relevant to projects?

The Labour Law is relevant to projects, and sets out, among other things:

- Minimum wage requirements. The minimum wage for Omani employees is:
 - OMR225 as basic salary per month;
 - OMR100 as allowances, such as transport and housing allowance.

There is no effective minimum wage for expatriates.

- Maximum working hours are nine hours per day and 45 per week. Overtime work is permitted but the total working hours in a single day must not exceed 12 hours. Employees must be paid for the hours worked beyond the maximum daily working hours. They are also entitled to two rest days after five days of work but may work on those days in return for overtime payments. Ramadan working hours for Muslims are six hours per day.
- Health and safety requirements (*see Question 24*).

Both Omani and expatriate employees are permitted to be members of trade unions.

23. Must an employer pay statutory redundancy or other payments at the end of a project? Are all employees eligible?

There are no statutory provisions with regard to redundancy in Oman. Redundancy is generally considered a wrongful termination in Oman, other than in very limited circumstances. If an employee is wrongfully terminated compensation is payable. The statutory minimum is three months' gross salary plus accrued entitlements.

Careful drafting of employment conditions can deal with this issue effectively and allow the ending of the employment contract without the employer being liable to pay compensation. On expiration or termination of the employment agreement, entitlements to accrued leave must be paid together with, in the case of expatriates:

- An end of service benefit (on completion of statutory minimum service).
- Repatriation expenses.

HEALTH AND SAFETY

24. Which health and safety laws apply to projects?

The Labour Law imposes requirements on employers to:

- Protect their employees from injury and dangers at the work place.
- Acquaint employees with the protective measures adopted in the workplace.

Ministerial Decision 686/2008 imposes more specific obligations in relation to:

- Protective clothing.
- Heating and cooling.
- Illumination.
- Sleeping.
- Eating and working areas.
- Working in summer months.
- Fire.
- Chemical radiation.
- Other hazards.

It also imposes requirements regarding reporting and inspections that apply to all employers. In addition, there are specific provisions regulating work on construction sites.

A breach of health and safety laws may result in a fine of between OMR100 and OMR500 and/or imprisonment for up to one month. A breach may also result in civil claims for damages.

ENVIRONMENTAL ISSUES

25. Which local laws regulate projects' effects on the environment?

The principal environmental legislation in Oman is the Law on Conservation of the Environment and Prevention of Pollution (*promulgated by Sultani Decree No. 114/2001*). In general, the law prohibits the disposal into the Omani environment of pollutants in such quantities and types as may adversely affect the:

- Intactness of the environment, its natural resources or nature conservation areas.
- Historical and cultural heritage of the Sultanate of Oman.

The MECA is the authority responsible for protecting the environment. An environmental permit must be sought from the MECA for any project which may directly or indirectly cause environmental pollution. This will include an initial preliminary permit followed by a subsequent final permit.

In addition, it will be necessary to obtain a camp site approval from the local municipality, as well as from MECA.

Air

Regulations were issued under Ministerial Decision 243/2005, which were intended to enhance the control and management of ozone depleting substances (ODSs).

Water

The Marine Pollution Law (*Sultani Decree 34/74*) provides, among other things, that no person or ship can discharge any pollutant in a pollution-free zone from a ship, shore location or oil transport facility.

Waste

Ministerial Decision 17/93 Management of Solid Non-hazardous Waste imposes obligations on operators of solid non-hazardous waste treatment facilities and sanitary landfills.

Ministerial Decision 18/93 Management of Hazardous Waste governs the management and licensing of hazardous waste. It requires the waste generator to use the best available technology relevant to the type of production to minimise the generation of hazardous waste.

Environmental impact assessments (EIAs)

Prior to applying for an environmental permit for a project (such as a water or power project), the MECA has discretion to require a detailed EIA prior to the application for an environmental permit for the project (*see above*).

Sustainable development

There are no statutorily prescribed green building codes in Oman. However, there are signs of increasing interest in the development of sustainable construction practices.

26. Do new buildings need to meet carbon emissions or climate change targets?

Oman is not subject to any carbon emissions or climate change targets. Nonetheless, it has adopted regulations to govern the issue of approvals for Clean Development Mechanism (CDM) projects under the Kyoto Protocol to the UN Framework on Climate Change. The Directorate-General of Climate Affairs has the responsibility for assessing CDM projects in Oman.

CORRUPT PRACTICES

27. Are there any rules prohibiting corrupt business practices and bribery (particularly any rules targeting the projects sector)? What are the applicable civil or criminal penalties?

The main relevant Omani laws are the:

- Conflicts Law (*promulgated by Sultani Decree 112/2011*).
- Penal Code (*promulgated by Sultani Decree 7/1974*), which makes it a criminal offence for a government employee to:
 - receive gifts to perform, or refrain from carrying out his responsibilities (*Article 155*). The penalty for this crime is imprisonment for three months to three years, and a fine equal to the amounts which the employee had received in order to perform, or to refrain from carrying out, his responsibilities;
 - accept or ask for a bribe to do (or refrain from doing) something incompatible with the duties of his job (*Article 156*). The person giving such a bribe (and any middleman) also commits an offence. The penalty for this crime is imprisonment for a period of up to ten years and a fine equal to the amounts received or given.

The penalties under Articles 155 and 156 apply to the government employee, the person giving the bribes, and the attorneys representing them if they had knowledge or were involved in this transaction.

- Civil Service Law (*promulgated by Sultani Decree 120/2004*). In particular, a government official is prohibited from accepting any form of gift or reward which has “an effect on the performance of his duties under his job” (*Article 104(k)*). Therefore, “facilitation” or “grease” payments are prohibited. Penalties under the Civil Service Law are restricted to penalising the government official who has allegedly accepted the bribe, and include:
 - notice;
 - warning;
 - reduction in pay;
 - suspension from work;
 - termination.

These penalties are without prejudice to any criminal prosecution under the Penal Code (*Article 108, Penal Code*). In relation to criminal penalties, *see above*.

It is unclear how the Oman courts would treat private companies providing travel or hotel expenses, corporate entertainment and gifts to government officials. Any such proposals should be very carefully considered.

The Oman Standard Conditions contain provisions expressly entitling the Employer to cancel the contract if the Contractor is involved in corrupt practices. In those circumstances the employer would be entitled to treat the termination as a termination for contractor’s default.

BANKRUPTCY/INSOLVENCY

28. What rights do the client and funder have on the contractor’s bankruptcy or insolvency?

Whether there are rights on the contractor’s bankruptcy or insolvency will depend on the contract: for example, the Oman Standard Conditions allow the Employer, in the event of the contractor’s bankruptcy, to terminate the contract for contractor’s default and complete the work itself.

PPPs

29. Are public private partnerships (PPPs) common in local construction projects? If so, which sectors commonly use PPPs?

What would be considered to be PPPs in Oman vary in their forms, from:

- Projects ranging from a relatively straightforward outsourcing of operation or maintenance services.
- A more complicated grant of a long-term concession to build, own and operate a power generation or water treatment plant.

Private sector participation has been predominantly seen in the utilities sector and a number of independent, privately financed, power, water and wastewater projects have been implemented.

30. What local laws apply to PPPs?

Oman has adopted a privatisation programme whose objectives and broad terms of implementation are set out in the Privatisation Law (*promulgated by Sultani Decree 77/2004*). The programme envisages, among other things, the grant of concessions and sale of shares in government-owned companies. There is no single, comprehensive legislation which generally regulates the detailed development and implementation of PPPs in Oman. However, there are sector-based laws which have been enacted to allow for privatisation of services in that sector, for example the Law for the Regulation and Privatisation of the Electricity and Related Water Sector (*promulgated by Sultani Decree 78/2004 as “Sector” law amended by Sultani Decree 59/2009*).

31. What is the typical procurement/tender process in a PPP transaction? Does the government or another body publish standard forms of PPP project agreement and related contracts?

The key legislation regulating government procurement is the Tender Law (*see Question 3, Public sector procurement*). The Tender Law:

- Establishes the Tender Board, which has the primary responsibility for such tenders.

- Sets out, among other things, requirements relating to:
 - advertising of tenders;
 - forms of bid submission;
 - bid timetable;
 - bid evaluation.

Typically, the tender process will be carried out in two stages, including an initial pre-qualification stage and a final bid stage.

There is no published or prescribed form of agreement which is required to be used in a PPP project. Project documentation generally takes the form of a well developed precedent that has been successfully used in the past and is generally known to the market.

DISPUTE RESOLUTION

32. Which are the most common formal dispute resolution methods used? Which courts and arbitration organisations deal with construction disputes?

Formal dispute resolution methods

Construction contracts in Oman, other than for small-scale works, and whether awarded by public or private sector project procurers, will invariably provide for disputes to be referred to arbitration. The Law of Arbitration in Civil and Commercial Disputes (*promulgated by Sultani Decree 47/1997*), as subsequently amended, provides Oman with a comprehensive modern legislative regime for arbitration as an alternative to court proceedings. The current edition of the Oman Standard Conditions does not provide that arbitration will be institutionally administered. Parties sometimes, but not invariably, agree to amend this to apply, for example, to ICC administration and rules (*see below, Courts and arbitration organisations*). Court litigation is not commonly used to determine construction disputes, not least because the language of the construction industry tends to be English, and litigation proceedings in Oman are conducted in Arabic with all documentation required to be translated into Arabic.

Courts and arbitration organisations

Contracts awarded by Omani public authorities will typically provide for resolution of disputes by arbitration, if not amicably resolved (*see above, Formal dispute resolution methods*). In that case:

- The seat of arbitration will generally, but not invariably, be Muscat in Oman. The procedure set out in the Law of Arbitration in Civil and Commercial Disputes will apply.
- English will be the language used for the arbitration.

Venues including London, Paris, or Dubai are sometimes agreed by negotiation, including in cases of contracts awarded by Omani public authorities, typically according to the London Court of International Arbitration (LCIA) (www.lcia.org), International Chamber of Commerce (ICC) (www.iccwbo.org/court) or Dubai International Arbitration Centre rules (www.diac.ae).

33. What are the most commonly used alternative dispute resolution (ADR) methods?

Orthodox ADR methods (such as conciliation, mediation and adjudication) have not been widely used in Oman, even on large

projects. Generally, negotiated amicable settlements may be used, rather than formal, or even informal or alternative legal proceedings. There are signs that FIDIC-style dispute adjudication boards (DABs) will increasingly become a feature of major public sector contracts, particularly when the Oman Standard Conditions are brought into line with the FIDIC 1999 suites of standard forms (*see Question 37*).

TAX

34. What are the main tax issues arising on projects?

Foreign companies operating in Oman will be liable to pay the following taxes:

- Customs duties on imports (certain items such as cement are exempt).
- Income tax on the profit from any business (currently at a rate of 12%).

35. Are any methods commonly used to mitigate tax liability on projects? Are there any tax incentives to carry out regeneration projects?

Where the contractor's scope of work involves engineering or materials procurement off-shore, EPC contracts will usually be prepared in a "split" structure, which means that:

- The on-shore contract scope will be limited to local procurement, building and civil works and site installation, testing and commissioning.
- The off-shore contract scope will cover engineering, procurement and shipping to port of entry.

The objective is to exclude from local income taxation the value of the off-shore works.

OTHER REQUIREMENTS FOR INTERNATIONAL CONTRACTORS

36. Are there any specific requirements that international contractors or construction professionals must comply with?

International contractors must comply with certain licensing requirements and requirements concerning hiring foreign employees (*see Questions 18 and 21*).

REFORM AND TRENDS

37. Are there any proposals to reform construction and projects law? Are there any new legal or regulatory trends affecting projects?

Reform proposals

At the time of writing, there are no significant proposals for reform in the area of construction and projects law. However, a significant pending change to the form of Oman Standard Conditions for construction of

building and civil engineering works is in progress. The new Oman Standard Conditions will be bilingual (Arabic and English). This should remove any uncertainty caused by inconsistency between its two separate predecessors, the English version issued in 1987, and the Arabic version published in 1999 (see *Question 6*).

The scope of the proposed amendments remains uncertain at the moment. Nevertheless, it would appear that an objective is to bring the Conditions into line with FIDIC 99, as well as to reflect the regulatory changes that have occurred over the past 13 years since the publication of the last edition.

The proposed bilingual Oman Standard Conditions are currently pending final approval from various Government bodies, and the date of publication remains uncertain.

Trends

There have been no significant changes in the manner that major public projects, such as water or power projects, are procured through private finance.

MAIN CONSTRUCTION ORGANISATIONS

The Oman Society of Engineers

Main activities. The Oman Society of Engineers was established by Ministerial Decision in 2001. It is a non-governmental organisation which seeks to advance all matters related to engineers and engineering in Oman. Its objectives are to regulate engineering practices and to support the needs and rights of engineers whilst contributing to the industrial and architectural development of Oman.

W www.oseoman.org

The Oman Society of Contractors

Main activities. The objectives of the Oman Society of Contractors are to:

- Assist in the amicable resolution of disputes among members as well as third parties and clients.
- Build a brand image for Omani construction contractors.
- Promote and advance, in accordance with the needs of the industry, the training of all persons employed in the industry
- Continually review the standard terms and conditions of contracts.

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Practical Law Contributor Profiles



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Recent transactions

- Acting for Korea Electric Power in relation to an independent power project in Jordan.
- Acting for Exterran, Houston in relation to EPC contracts on oil extraction projects in Kazakhstan.
- Acting for Oman Wastewater Services in relation to EPC and supply contracts for the Muscat Wastewater Project.
- Acting for a global oil and gas major in relation to EPC contracts for enhanced oil recovery projects in the Sultanate of Oman.



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Areas of practice. Employment; commercial; start-ups.

Recent transactions

- Advising two confidential clients on trade union issues.
- Advising two confidential clients on human resources policies and employment contracts.



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Areas of practice. Construction; infrastructure and utilities.

Recent transactions

- Advising the Oman Power and Water Procurement Company on Ghubrah Independent Water project.
- Advising Emirates Steel Industries on the development of steel plant projects in the United Arab Emirates.
- Advising the government on the proposed expansion of the Abu Dhabi International Airport in the United Arab Emirates.
- Acting for Korea Electric Power Company in relation to an independent power project in Jordan.
- Advising on the disposal by Exxon Mobil of its equity interest in a Malaysian publicly listed and other companies in the oil refining and distribution sectors.



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Recent transactions

- Acting for Oman Power and Water Procurement Company in relation to a new 42 MIGD seawater reverse osmosis desalination plant.
- Acting for Haya Water in relation to EPC & Supply contracts for the Muscat Wastewater Project.
- Advising Petroleum Development Oman on its general contracting and procurement.
- Advising Oman Oil Refineries and Petroleum Industries Companies on various supply and EPC contracts.
- Advising Oman Methanol Company on contractual issues relating to its turnaround 2013.