CLIENT ALERT

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CONTENTS

- Introduction
- Legislative Pragmatism
- Is the new Law innovative?
- Freedom of Contract
- New Law will be of assistance to commerce
- Conclusion

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CIVIL TRANSACTIONS LAW

Introduction

The Civil Transactions Law, enacted pursuant to Royal Decree 29 of 2013, came into force in Oman on 6 August, 2013. It is concerned with the rights and obligations of natural and juridical persons in four broad areas: personal rights and obligations; contractual rights and obligations; rights in rem (real estate); and personal guarantees and insurances in kind.

The primary importance of the new Law lies in its codification of a substantial proportion of Omani jurisprudential principles developed over several decades, with the intention of setting down clearly how those principles are to apply. The new Law is not retrospective in effect and due deference is paid to the principles of Islamic shari’ah. Also, room is left for the continuing development of both public policy and local custom as applied by the courts of Oman.

The new Law constitutes Oman's Civil Code, the long missing final founding stone for the Sultanate's civil law system, the Basic Law (Constitution), the Commercial Law and the Penal Code having been in force already for many years.

Legislative pragmatism

Given that the new Law has been introduced at a time when the commercial legal framework in the Sultanate is very well developed (notably so among member states of the GCC), there was an imperative need for existing statute law to be left undisturbed and this need is met pragmatically, Article 1 stating:

“This Law shall apply...to all matters covered by its provisions other than those regulated by specific other legislation. Where this Law's provisions are silent on any matter, the court shall make its decision in relation thereto in accordance with the established principles of Islamic jurisprudence, failing which, the principles of Islamic shari’ah, failing which, in accordance with custom”

The overarching application of the principles of Islamic shari’ah to Islamic jurisprudence, as applied in Oman, is embedded in the Constitution. The established principles of that jurisprudence, now reduced to writing by the new Law, are all understood to be shari’ah compliant but the saving in Article 1 recognizes another fundamental of applied law, that the principles of Islamic shari’ah, just as much as local custom, is an evolving, reactive body of law in itself.
The new law is not innovative

Partly due to the lack of notice beforehand of the proposed introduction of the new Law and partly due, for the same reason, to a misunderstanding of what the new Law was intended to achieve, SASLO has received expressions of concern from clients worried that the new Law’s provisions will introduce sweeping new changes in the law, to which they may need to adjust on a short time line or which may have an adverse effect on their business. To date, these concerns are in fact unfounded. It might be instructive to look briefly at a few of the areas concerned.

Specific performance

Article 258 (1) of the new Law states that an obligor, following receipt of notice to do so from the other party, shall ‘be compelled to perform his obligation specifically’, but then adds that this compulsion applies only where ‘that is possible’.

Article 258 (2) then further dilutes the possibility of compulsion, as far as the court is concerned, by allowing the court to commute the obligation to a liability to pay monetary damages in place of compellable specific performance, where the latter would ‘overstrain’ the party bound or ‘cause him to suffer serious [economic] damage’. There has been some concern that the new Law’s prescriptive measures may impact

Indemnities

Article 181 states that the quantum of compensation or damages on termination of a contract where restitution is not possible shall ‘in all cases’ be the ‘extent of the injury suffered by the injured party together with his loss of profit provided such loss was a natural consequence of the [liable party’s default]’.

It needs to be emphasized that this (by virtue of Article 1) will not restrict a lending bank’s entitlement to charge default interest at the maximum rate (without sanction of the court) permitted for commercial customers under pre-existing law and regulations.

One shortcoming of the new Law is that it does not address the status of liquidated damages clauses. This evidently will remain a matter for expert testimony in any court proceedings to establish that the clause captures a reasonable estimate of the claimant’s loss, based on principles of fairness as before.

Force Majeure

Force majeure (‘greater force’), the occurrence of events of which may relieve a party to a contract from his obligations, is dealt with at various points in the new Law. Article 172 (1) sets out the basic position when it states:

‘….if an event of force majeure supervenes so as to render performance of [all] contractual obligations impossible, then such obligations shall cease to be binding and the contract shall automatically terminate’

In certain sectors, especially the construction industry, exactly what constitutes an ‘event of force majeure’ takes on great significance, as does the extent to which a party affected by it in the performance of its obligations must nevertheless seek to continue to perform. Here a weakness in the new Law’s delivery of its overarching purpose is revealed.

While Article 172 (1) adequately codifies the pre-existing principles of Omani jurisprudence, an opportunity has been missed both to define what an event of force majeure is and to set down what must be done first to address it in order for the affected party to earn the relief of automatic termination or to avoid the imposition of pre-set contractual penalty payments. This amounts to a difficult task but one which has been adequately dealt with elsewhere in the GCC in similar circumstances, in Kuwait, for example.
It would seem that the architects of the new Law consider this to be beyond their brief, as appears to be also the case with the lack of attention to liquidated damages clauses, as just mentioned above.

**Freedom of Contract**

on, or somehow restrict, the freedom of contract in commercial transactions for which Oman had previously been well known. But this is unfounded. In the past, contracting parties could agree terms that would stand as written in the absence of Omani statute law to the contrary. But those terms, where written law was silent, would still have had to stand up, in any court proceedings, to the application of local custom, the principles of Islamic shari’ah and, in the last resort, to locally applied principles of equity and fairness in order to be enforceable.

**New law will be of assistance to commerce**

With the codification introduced by the new law, contracting parties will now in fact find it easier than before to anticipate how local law will affect their commercial objectives rather than having to wait for any dispute to arise and come before the courts to establish whether their interests are in fact properly protected and those commercial objectives as efficacious as they expected.

**Conclusion**

The new law should be welcomed for the forensic clarification it brings. Its arrival is also most timely, given the rapid emergence of Oman in recent years as one of the most attractive states within the GCC in which to do business from a regulatory perspective.

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