

IN-DEPTH

Islamic Finance And Markets Law

OMAN



LEXOLOGY

Islamic Finance and Markets Law

EDITION 9

Contributing Editors

John Dewar and Munib Hussain


Milbank LLP

In-Depth: Islamic Finance and Markets Law (formerly The Islamic Finance and Markets Law Review) provides a general overview of the manner in which Islamic, or shariah-compliant, finance is practised in various jurisdictions throughout the world. With an eye towards recent developments, it illustrates the dynamic manner in which Islamic finance has adapted and continues to develop globally.

Generated: September 6, 2024

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. Copyright 2006 - 2024 Law Business Research

 LEXOLOGY

Explore on Lexology 

Oman

Mansoor Jamal Malik and Zarrar Mir

Al Busaidy Mansoor Jamal & Co

Summary

INTRODUCTION

YEAR IN REVIEW

LEGISLATIVE AND REGULATORY FRAMEWORK

COMMON STRUCTURES

TAXATION

INSOLVENCY

JUDICIAL FRAMEWORK

OUTLOOK AND CONCLUSIONS

ENDNOTES

Introduction

Oman's Islamic finance industry has experienced rapid growth and regulation to become a significant sector within the country. According to the Central Bank of Oman, the Islamic banking sector ranked as the world's 15th largest in 2019, highlighting its substantial expansion. The combined total assets of banks and Islamic windows in Oman have reached approximately 7.5 billion Omani rials, which equates to 17.7 per cent of the total banking sector assets in Oman. This growth and expansion has been driven by public demand and supportive regulatory frameworks. Despite various challenges over the years, including the crash in global oil prices in 2014–2016 and the COVID-19 pandemic, Oman's Islamic banking sector has continued to grow robustly and consistently, outpacing conventional banking growth rates. The sector's momentum is expected to persist in the coming years. This trend underscores a competitive drive towards product sophistication within Oman's evolving banking landscape.

Year in review

The Islamic banking sector in Oman has continued to see growth in 2023–2024. Data from the Central Bank of Oman shows that total financing provided by Islamic banks and banking windows in Oman increased by 12 percent to 6.3 billion rials by the end of April 2024. The combined total assets of banks and Islamic windows in Oman have reached approximately 7.5 billion rials, which equates to 17.7 per cent of the total banking sector assets in Oman. This is a 13.2 per cent increase compared to asset value in the preceding year. The year also saw significant development in the Islamic finance legal framework.

New Bond and Sukuk Regulations (E/21/2024) were issued by the Financial Services Authority which are expected to contribute to economic development in Oman in line with the strategic objectives of the Oman Vision 2040. Further regulatory reforms are also expected in the areas of capital markets and banking, with new laws and regulations governing banking, sovereign debt and capital markets expected to come out in 2024–2025

Legislative and regulatory framework

Legislative and regulatory regime

Oman's Islamic finance industry has rapidly become an actively regulated sector of the country. The level of regulation correlates with the rapid growth of Oman's Islamic finance industry; in 2019, the Omani Islamic banking sector became the world's 15th largest, according to statements by Central Bank of Oman (CBO) senior officials.^[1] The Omani Islamic banking sector's market share has been rising steadily in 2023–2024 after reaching 16.4 per cent of total sector assets at end-2022 (end-2021: 15.2 per cent), according to Fitch Ratings. This projected growth is expected to be driven by public demand for Islamic products, supportive regulations, an expanding branch network of conventional banks'

Islamic windows.^[2] According to some estimates, of the total financing and deposits in Oman the share of Islamic banking sector is expected to reach 20 per cent in 2025.

Islamic banking was formally introduced in Oman by Royal Decree (RD) No. 69/2012, which amended the Banking Law^[3] by adding a new chapter dedicated to Islamic banking. Subsequently, the CBO issued Circular IB 1/2012, promulgating the Islamic banking regulatory framework (IBRF), which is a sophisticated regulatory guideline setting out the requirements and conditions for the undertaking of shariah-compliant commercial and investment banking activities and the offering of shariah-compliant products in Oman.

The IBRF regulates the following areas: licensing requirements, general obligations and governance, accounting standards and auditor reports, supervision and control, capital adequacy, credit risks, market risks, operational risks, liquidity risks and miscellaneous matters. The IBRF provides for the right to set up fully fledged Islamic banks and Islamic windows of conventional banks, and it sets out the process and requirements to be followed when applying to the CBO for an Islamic banking licence. In this respect, domestic banks, foreign banks and Islamic windows are required to have paid-in capital of no less than 100 million Omani rials, 20 million rials and 10 million rials, respectively, which may be subject to higher capital requirements imposed by the CBO.

Additionally, the IBRF specifies the criteria, requirements, specifications and risks of each type of Islamic finance product (e.g., ijarah, murabahah and mudarabah). In this regard, the IBRF expressly prohibits tawarruq (i.e., commodity murabahah), which, although frowned upon by the majority of Islamic scholars, is allowed in several Gulf Cooperation Council (GCC) countries, including Saudi Arabia. Therefore, Oman's position regarding tawarruq is much more stringent than that of other GCC countries.

Further, the IBRF is comprehensive and focuses on the transactional and operational shariah compliance of all licensed Islamic financial institutions operating in Oman. In this respect, the IBRF leaves the task of verification of shariah compliance of Islamic banking transactions to qualified shariah boards and shariah auditors within each licensed Islamic bank or Islamic window, and does not provide for a centralised authority for the auditing of Islamic banking transactions. The professional requirements, and perquisites, for members of shariah boards are provided by the IBRF and are not left to individual banks to regulate. A central shariah authority was established in 2013 by CBO Regulation No. BM/54/12/2013, inter alia, to advise the CBO in relation to shariah-compliant transactions and to settle shariah-related disputes arising among the shariah auditing boards of financial institutions in Oman.

The shariah-compliant capital market sector is likely to further expand with the recent introduction of the Securities Law RD No. 46/2022. At the current time, the Securities Law provides for companies listed on the Muscat Stock Exchange (MSX) to issue sukuk. In addition to the Securities Law, the Bonds and Sukuk Regulations (Decision E/21/2024) recently issued by the Financial Services Authority (FSA) sets out the procedures and requirements relating to sukuk issuances in Oman (including green and sustainable sukuk). Sukuk, as provided by the Bonds and Sukuk Regulation, can be issued by a joint stock company, limited liability company, investment fund, special purpose company or any other issuer approved by the FSA, either directly by the beneficiary, or through a trustee. Notably, the Bond and Sukuk Regulation's treatment of the function of a trustee is untested, as no definition of this function (even outside of the context of finance) has been provided by Omani law despite the role of a trustee having been provided for by the Banking

Law. The Bond and Sukuk Regulations emphasise the issuer's obligations with regards to disclosures (specifically relating to green and sustainable sukuk), which is likely to enhance the integrity of the capital market and encourage investors who may have sustainability concerns.

As regards Oman's takaful industry, the Takaful Insurance Law^[4] provides a robust and comprehensive framework covering all aspects of the takaful insurance sector and regulates all aspects of a takaful operator's activities (e.g., oversight and reporting requirements, product standards and liquidity levels) subject to the oversight of the FSA, which has been tasked with regulating and supervising takaful operators in the Sultanate. The Takaful Insurance Law requires takaful insurers to be publicly listed on the MSX and to have a minimum capital of no less than 10 million Omani rials. Further, the Takaful Insurance Law requires takaful operators to form an internal specialist shariah committee for auditing a takaful operator's shariah compliance. Other provisions of the Law govern the maintenance of solvency margins, fund setup and management, and the transfer of takaful business from one company to another. The FSA has issued executive regulations of the Takaful Insurance Law by Decision No. 103/2019, which provides, inter alia, for a segregation between the assets of a takaful operator and a takaful fund and the establishment of shariah supervisory boards within takaful operating companies.

There is no express legal or regulatory framework governing shariah-compliant investment funds. However, with regard to real estate investment funds or trusts (REITs), which are a sub-class of investment funds, the REIT Regulation^[5] makes several references to shariah-compliant REITs by providing, inter alia, for the necessity of establishing a shariah committee or using the services of a shariah board or third-party committee to ensure that the activities of the REIT are compatible with the principles of Islamic law. The REIT Regulation sets out the duties, characteristics, requirements and restrictions relating to members of the shariah board to ensure their impartiality and objectivity when auditing a fund's shariah compliance. As with a conventional REIT, the licensing of a shariah-compliant REIT requires a substantial minimum capital.

The Commercial Companies Law (CCL),^[6] replacing the former CCL,^[7] contains regulations with regard to the issuance of both bonds and sukuk. In addition, the CCL imposes a general requirement on commercial companies undertaking shariah-compliant activities to have their transactions comply with the principles of Islamic law, and it has tasked the FSA and the Ministry of Commerce and Industry and Investment Promotion (MOCIIP) to issue specific regulations on the shariah-auditing mechanisms to be implemented within such companies. While in 2021 the FSA issued the CCL executive regulations applicable to public joint-stock companies,^[8] such regulations do not address issues of sukuk and instead sukuk will be regulated by the stand-alone Bond and Sukuk Regulations issued by the FSA in 2024.

Regulatory and supervisory authorities

Regulators of the Islamic finance sector in Oman enjoy broad authority in terms of licensing, investigation and penalisation of breaches of law. The primary regulators of the Islamic finance industry in Oman are the CBO and the FSA.

The CBO is the main regulator of standalone Islamic banks, standalone Islamic banks owned by conventional banks and Islamic windows operating in Oman, and in this respect

the scope of its supervisory and regulatory authority is set out in the Banking Law and the IBRF. The IBRF acknowledges that Islamic banking business increases an Islamic bank's liabilities as it 'bestows greater burden of responsibility on Licensees so far as Shari'a compliance is concerned',^[9] and the CBO has affirmed that it will take serious note of and sanction appropriately any breaches of shariah principles by a licensed Islamic financial institution.

Pursuant to the Banking Law, the CBO has the authority:

1. to license Islamic banks and windows;
2. to establish licensing regulations, procedures and conditions;
3. to inspect and audit the audited financial statements of Islamic banks and windows in Oman and to request clarifications in respect of these;
4. to investigate and audit the activities of Islamic banks and windows in Oman and, in this respect, to ask for and obtain any documents, information or clarification required by it; and
5. to issue guidance, mandatory instructions and warnings to licensed banks in relation to their activities.

The CBO regularly issues publicly available circulars containing its instructions, recommendations and guidance to Islamic banks in Oman.

Among the more significant regulatory powers vested in the CBO, it is empowered to suspend the activities of a licensed bank either partially or wholly, to confiscate its assets and place them under its control and, upon the occurrence of certain events, to impose fines or deny a licensee access to the credit facilities offered by the CBO, including if the licensed bank has breached, or there is proof that it intends to breach, the provisions of the Banking Law, the IBRF or the circulars issued by the CBO, or if the licensed bank becomes incapable of following the instructions and guidance of the CBO, or if the licensed Islamic bank has breached shariah rules and principles. The CBO also has the right to place a bank under its curatorship, which may result in the licensed bank's liquidation. Before imposing any penalty, the CBO may notify the defaulting licensee of its breach and grant it an opportunity to cure any such breach.

The FSA is the regulator for takaful companies, shariah-compliant REITs and, more generally, public joint-stock companies carrying out shariah-related activities. With respect to takaful companies, the Takaful Insurance Law sets out the scope of the regulatory authority of the FSA. The FSA has the authority to receive, accept and reject licensing applications and to determine the process and requirements for the licensing of takaful insurance and related professions (e.g., takaful brokerage and agency).

The FSA also has the authority to inspect and investigate the activities of licensed companies to ensure compliance with the Takaful Insurance Law and the FSA's instructions. In this respect, the FSA has the power to:

1. task an actuary at the expense of a licensed company to evaluate the company's assets, liabilities and overall financial situation and to prepare a report for the FSA;
- 2.

- appoint a member on the board of directors of the licensee with the right to attend and observe board meetings and to express an opinion on resolutions of the board, without being entitled to vote;
3. dissolve a licensee's board of directors and appoint a temporary administration committee for the purpose of managing the licensee;
 4. suspend or cancel (either wholly or partially) the licence of a licensee;
 5. issue warnings and impose penalties on the licensee; and
 6. dismiss members of the board or the executive committee of a licensee.

The Takaful Insurance Law provides that the FSA's officers and employees shall have judicial enforcement powers for ensuring compliance by licensees with the Takaful Insurance Law.

With regard to the regulation of REITs (both Islamic and conventional) and public joint-stock companies (whether or not their activities are shariah-compliant), the FSA's supervisory responsibilities are largely the same, as both are based on the provisions of the Securities Law and Executive Regulation of the Takaful Insurance Law. The FSA is responsible for licensing REITs and the establishment of public joint-stock companies. The FSA has the authority to investigate licensed entities and take disciplinary action against them by way of issuance of warnings, the imposition of fines, suspension of dealings on the MSX for a period not exceeding three months and, finally, delisting any listed companies from the market. The FSA has the right to send observers to ensure compliance of unitholders' or shareholders' meetings in accordance with the procedures prescribed by law.

The FSA is also responsible for regulating issuances of sukuk in Oman and for the licensing of corporate entities seeking to issue sukuk in the country.

Common structures

Deposit products

The great majority of Islamic banks and Islamic windows in Oman are domestic. There are currently two fully fledged Islamic banks, Bank Nizwa and Alizz Islamic Bank, with the latter having recently been acquired by Oman Arab Bank and, therefore, having become a subsidiary of Oman Arab Bank. Additionally, at the time of writing, there are five Islamic banking windows of conventional banks in Oman: Meethaq Islamic Banking (Bank Muscat), Muzn (National Bank of Oman), Maisarah Islamic Banking (Bank Dhofar), Sohar Islamic (Sohar International) and Ahli Islamic Banking (Ahli Bank).

Deposit accounts offered by Islamic banks and Islamic banking windows to customers in Oman generally comprise the following.

Islamic current account

This is essentially a qard hasan-structured product (i.e., an interest-free loan structure), whereby the customer provides the bank with financing for the bank's shariah-compliant investment purposes. The principal financing amount is returned to a customer on demand without the addition of any profit or deduction of any losses.

Islamic savings account

This is an unrestricted mudarabah-based savings account (i.e., investment management-based) to which funds are transferred as capital by a customer, in its capacity as investor, to a bank as investment manager for the bank's shariah-compliant investment purposes. Should the bank achieve profit, this will be divided between the bank and the customer according to pre-agreed rates. If, however, losses are incurred, these will be borne by the customer alone unless it can prove the bank's negligence, fraud or misconduct. There are many variants of this account (e.g., salary savings account, prize-draw savings account, term deposit account).

Wakalah account

This is a wakalah-structured account (i.e., an investment agency-structured account) whereby a customer, in its capacity as investor, transfers funds to the account maintained by a bank for the bank to invest on behalf of the customer in shariah-compliant investments. The bank performs its functions as investment agent for a predetermined fee. Should the profit achieved by the bank exceed the agreed profit rate, the bank becomes entitled to a portion of the profit as an incentive.

Consumer finance

The most popular form of shariah-compliant consumer financing in Oman is auto financing, commonly structured on the basis of murabahah. A customer requests that a bank acquires and sells the customer a specified car. The bank purchases the requested asset from a third-party supplier identified by the customer and resells it to the customer for a profit. Both the cost and profit margin (markup) are known in advance and agreed by all parties involved. The resale price is payable by the customer either on a deferred lump-sum basis or on an instalment basis. The bank typically appoints the customer as its agent for the purpose of dealing with the supplier and taking receipt of the car.

Home finance

Home financing is offered to customers in Oman through the ijarah muntahia bittamleek structure. A bank purchases a property identified by a customer from a third-party seller, then leases it to the customer in exchange for payment by the customer of periodical rental instalments inclusive of profit component. The customer issues a binding undertaking to purchase back the leased asset from the bank at the end of the transaction. Upon final maturity, the bank exercises its right under the agreement to have the customer purchase the property.

In addition, home finance is also offered as a diminishing musharakah product, under which a customer and the bank jointly acquire an asset on the basis that the customer will gradually buy out the bank's share of the asset.

Insurance

Takaful is shariah-compliant insurance whereby each participant (i.e., insured) contributes a specific monetary sum into a collective pool system (i.e., a takaful fund) for the collection of contributions from all takaful participants to protect and guarantee the other participants against loss. Each takaful participant's contribution is based on and determined according to the type of coverage sought (e.g., life, healthcare, property) and the participant's personal circumstances. The basis of takaful is mutual guarantee, cooperation, indemnity and protection of all participants covered by the tabarru'-based takaful scheme. Thus, the objective of takaful is to diversify and distribute the risk of loss or damage among the participants.

Takaful companies in Oman are required by law to be formed as public joint-stock companies. The Takaful Insurance Law remains silent on the ability of foreign takaful companies to set up branches within Oman. Takaful companies offer the same types of products offered by their conventional counterparts. These include, among others:

1. family takaful;
2. health takaful;
3. creditor takaful;
4. motor takaful;
5. property all-risk takaful;
6. fidelity guarantee;
7. contractor's plant and equipment takaful;
8. contractor's all-risk takaful;
9. personal accident takaful;
10. workers' compensation takaful;
11. marine cargo takaful;
12. travel takaful; and
13. fire and perils takaful.

Investment funds

Investment funds can either be incorporated in the form of a joint-stock company or as an unincorporated entity with legal personality. In the latter case, they are required to be formed by a commercial bank or an investment company with a capital of not less than 5 million Omani rials. An investment fund can be either open-ended (i.e., its capital is subject to changes and variation because of issuance and redemption of new units) or closed-ended (i.e., the fund issues a fixed number of units, redeemable only upon expiry of

the fund's term, but the fund retains the right to issue new units). The fully paid-up capital of the investment fund should be no less than 2 million rials and the share of its sponsors should not be less than 5 per cent of its capital. Units held by the sponsors are subject to a lock-in period of three years. The majority of investment funds in Oman are established as open-ended unincorporated funds. Shariah-compliant investment funds remain limited in number compared to conventional investment funds. Examples of shariah-compliant investment funds in Oman include Al Kawthar Fund (established by Tanmia, which is a state-owned investment company) and Al Hilal Mena Fund (established by Ahli Bank).

Real estate investments

Real estate investment is conducted either through real estate investment companies, which typically take the form of a joint-stock company or REIT. The CCL constitutes the main legislation governing joint-stock companies in Oman. The CCL is complemented by the Securities Law and the FSA rules and regulations and code of corporate governance with respect to public joint-stock companies. The minimum capital requirement for a public joint-stock company is 2 million Omani rials and 500,000 rials for a closed joint-stock company. The CCL provides that shariah-compliant commercial companies (including those carrying out real estate investment activities) must comply with the principles of shariah. The CCL further requires the FSA (the regulator of public joint-stock companies) and the MOCIIP (the regulator of closed joint-stock companies and other types of commercial companies) to issue a regulation on the shariah auditing mechanisms to be implemented within such companies.

Real estate investment companies are the dominant participants in the field of real estate investment. The other type of real estate investment vehicle recently recognised in Oman is the REIT. REITs, similarly to conventional investment funds, can be established either in the form of a joint-stock company or as an unincorporated entity enjoying legal personality. All REITs are required to be closed-ended. The issued capital requirement for a REIT is much greater than that for other investment funds, as REITs are required to have capital of no less than 10 million Omani rials (or its equivalent in another currency). If the REIT is intended to be shariah-compliant, the investment manager is required to form a shariah committee or to engage the services of a third-party shariah committee. The qualifications and character required of the members of the committee are set out in the REIT Regulation. The REIT is also required to be managed by professional managers who are licensed by the FSA and have their main duties set out in the REIT Regulation.

Sukuk-based financing

Ijara muntahiya bittamleek is the most prevalent form of sukuk in Oman and has been employed repeatedly by the government in the context of sovereign debt capital market issuances both locally and internationally. Ijara muntahiya bittamleek sukuk certificates are issued by the issuer and each certificate represents a portion of ownership in the underlying ijara assets as well as a right to the periodic distribution amount and dissolution amount generated by these assets. The subscription monies are collected by the issuer, in its capacity as trustee, and are used to purchase underlying ijara assets from the originator. The ijara assets are added to the trust portfolio and are subsequently leased back to the originator, who issues a promise to purchase back (for the benefit of the trustee and the

sukuk holders) the ijara assets upon final maturity or upon the occurrence of an event of default. The originator, in its capacity as lessee, makes periodic rental payments, which are distributed to the sukuk holders by the trustee as profit payments. Upon final maturity or the occurrence of an event of default, the trustee exercises its rights under the promise to purchase, and the originator purchases back the ijara assets and pays the agreed purchase price.

In Oman, the ijara muntahiya bittamleek sukuk usually adopts an asset-based structure (i.e., the originator would issue a binding promise to purchase the leased asset, which the sukuk holders can use as recourse against the originator in the event that it breaches its obligations), rather than an asset-backed structure (i.e., the sukuk holders would only have recourse against the leased asset). The new Bond and Sukuk Regulations (Decision E/21/2024) do not mandate any specific sukuk structure to be adopted and it is therefore likely that the trend of preferring ijara sukuk structures will continue in Oman.

Taxation

The main legislation relating to taxation in Oman is the Income Tax Law,^[10] which governs both Islamic and conventional businesses. The Secretariat General for Taxation (SGT) at the Ministry of Finance is the body responsible for enforcement of the Income Tax Law and for ensuring compliance.

There is no special or separate law governing the taxation of Islamic financial institutions, but the Income Tax Law contains a chapter specific to the income generated from Islamic financial transactions. The aforementioned chapter was recently introduced by RD No. 9/2017, which amended the Income Tax Law for the purpose of, inter alia, clarifying the tax position of Islamic banks as part of an overall tax reform. In this regard, the Income Tax Law currently provides for the taxability of any amounts generated from an Islamic finance transaction obtained by a taxpayer in lieu of interest, which effectively makes virtually all Islamic financial transactions profits taxable on a par with their conventional counterparts. The Income Tax Law further provides that if the purpose of a transaction is to purely achieve a shariah-compliant objective without the transaction including any financial aspect, such as the leasing of real estate or a movable asset, or establishing usufruct thereon, the transaction will not be taxable. Hence, income generated from such a transaction (excluding any interest-like payments) will not be deemed taxable in accordance with Article 76 bis (3) of the Income Tax Law. The chapter relating to taxation of income generated from Islamic finance transactions also provides special rules concerning the deduction of donation amounts paid by the borrower, the impact of credit losses on the calculation of the taxable income, and the submission by the taxpayer of evidence regarding specific matters when submitting its fiscal declaration or during the course of SGT decision-making regarding any petition filed by the taxpayer.

In addition to the Income Tax Law, other laws contain special provisions granting Islamic finance businesses certain privileges and benefits with regard to payment of governmental fees. In this respect, the Banking Law exempts banks licensed to carry out Islamic banking from the payment of governmental fees imposed on transactions involving ownership and leasing of real estate and movable assets conducted by such banks in the context of Islamic finance transactions. Further, the Securities Law grants special purpose vehicles

formed by originators for the purpose of issuing sukuk an exemption from the payment of taxes and fees imposed by all government bodies; hence, they are exempt from the payment of, inter alia, income and withholding taxes.

A value-added tax at a base rate of 5 per cent came into effect as of 18 April 2021 on most goods and services circulating within Oman, including Islamic banking services.

Insolvency

There are no insolvency proceedings specific to the Islamic finance industry only in Oman. Both conventional and shariah-compliant commercial companies are subject to the bankruptcy provisions of the Bankruptcy Law promulgated by RD No. 53/2019, which repealed the insolvency provisions contained in the Commercial Law. The Bankruptcy Law sets out the procedures for preventive composition, restructuring and bankruptcy. The Bankruptcy Law specifically exempts all entities licensed by the CBO and insurance companies from its application, which suggests a new regulation may be issued by the regulators of these entities specifically in relation to applicable bankruptcy and insolvency procedures. The Bank Resolution Framework for Oman, issued by the CBO in April 2019, which governs the process of resolution of failing banks, applies to both Islamic and conventional banks. Further, banks are subject to the bankruptcy provisions contained in the Banking Law and the CBO-issued regulations.

Under the Bankruptcy Law, bankruptcy is declared by the commercial court either suo motu, at the request of an insolvent commercial company or based on a claim filed by the creditors of an insolvent commercial company. As of the date of adjudication of bankruptcy, the bankrupt debtor would relinquish all rights and powers to a court-appointed trustee in bankruptcy for the latter to manage the bankrupt entity's assets, including those acquired or accrued post-declaration of bankruptcy, if any. A bankrupt may not dispose of any of its assets, nor make or receive any payment, unless the sale or receipt of payment is for a bona fide commercial purpose. Upon the declaration of bankruptcy of a debtor, no suit may be brought against it or be proceeded with, except in specific instances enumerated by the Bankruptcy Law.

Judicial framework

Courts

Under the court system in Oman, as provided for by RD No. 90/1999, the Primary Court (Commercial Circuit) (Primary Commercial Court) is the only body in Oman with primary jurisdiction in relation to commercial disputes (whether or not they relate to Islamic finance issues of a commercial nature); these are subject to appeals before the Appellate Court (Commercial Circuit) and the Supreme Court of Oman. Prior to the establishment of the Primary Commercial Court, the Commercial Court and the Authority for Settlement of Commercial Disputes were the judicial bodies with exclusive jurisdiction to adjudicate upon commercial matters. Although there is no court dedicated exclusively to Islamic

finance disputes, there is a Shariah Circuit within the Primary Court, which adjudicates in personal affairs matters such as marriage, divorce and inheritance. Similar to judgments of the Primary Commercial Court, judgments rendered by the Shariah Circuit of the Primary Court are appealable before the Appellate Court (Shariah Circuit) and the Supreme Court.

Parties to Islamic finance-related agreements are free to agree to refer disputes to an arbitral tribunal and to specify the law governing their transaction and the arbitration rules governing arbitral proceedings. An Omani court would be required to dismiss a suit raised before it in respect of which there exists an agreement to arbitrate, provided the defendant in the suit request for its dismissal on the basis of the parties having agreed to arbitration as disputes arising among them.

Cases

Because the legal and regulatory framework of Islamic finance is a relatively recent introduction, there have been only a few cases that shed light on how the Omani courts perceive disputes relating to Islamic finance. In a judgment passed by the Supreme Court on Appeal No. 83/2003, heard on 3 April 2004, the Supreme Court rejected the characterisation by the Appellate Court of an investment agreement as a *mudarabah* agreement. The Supreme Court stated that the principles of Islamic law constitute the basis on which the Court adjudicates on transactions. The Supreme Court referred to Islamic law and stated that *mudarabah* consists of the offering of funds by one party against the performance of an activity by the party receiving the funds; the offering and performance are based on the principle of sharing profits between the parties and, in the event of the occurrence of losses, the person offering the capital would assume the losses in the absence of a transgression or breach by the person investing the money.

The Supreme Court has further provided that profit should not take the form of interest as typically offered by banks; otherwise the *mudarabah* would be invalid. The Supreme Court referred to the contract provisions in question and provided that the presence of a clause according to which the person offering the capital was entitled to a profit share of no less than 5 per cent corrupted the *mudarabah* and rendered it invalid. The Supreme Court argued that *mudarabah* is an investment endeavour susceptible to both the achievement of profits and the incurrance of losses; thus, any undertaking made by the *mudarib* to reimburse the person offering the capital, regardless of whether losses had occurred, would result in the *mudarabah* becoming invalid. The Court stated that should the *mudarabah* become invalid under Islamic law, the capital initially offered to the *mudarib* should be reimbursed by the latter to the counterparty; however, because of the invalidity of the *mudarabah* agreement, the counterparty shall not be entitled to receive any profits achieved by the investment project.

In a further judgment passed by the Supreme Court, on Appeal No. 187/2003, heard on 31 March 2004, the Court disregarded the appellant's characterisation of the disputed agreement (titled as an investment agreement) as a *mudarabah* agreement on the basis of Articles 4 and 5 of the Commercial Law, which provide that Islamic law (although a source of law that a judge may refer to when adjudicating on commercial disputes) should be applied only in the absence of relevant contractual provisions and after exhaustion of other sources of law relevant to the subject matter of the dispute. The Supreme Court distinguished between *riba* interest and compensatory interest by stating that compensatory interest is determined by the Minister of Commerce and Industry on the

basis of the Commercial Law, which provides that an interest rate may be charged on commercial debts within the limits specified by the MOCIIP in coordination with the Oman Chamber of Commerce and Industry. Thus, the Supreme Court concluded that the agreement in question, although not a mudarabah, constituted a valid investment agreement, and was not in breach of law.

Outlook and conclusions

In spite of the negative impact the covid-19 pandemic had on the GCC economies, including Oman, the Islamic banking sector maintained its growth throughout 2020–2022. Fitch Ratings reported in March 2021 that the Omani Islamic banking sector had grown by 9.5 per cent compared with the conventional banking sector's growth of 2.1 per cent, with the market share of Islamic banking and Islamic windows increasing by 14.3 per cent at the end of 2020, compared with 13.6 per cent at the end of 2019, with total assets of 5.1 billion Omani rials. The Islamic banking market share reached 15.2 per cent by end-2021 and 16.4 per cent by end-2022. It is therefore likely that the Islamic banking sector will maintain its upward momentum throughout 2024–25.

It is further noteworthy that Omani Islamic windows and banks have been expressing increased interest in enhancing the sophistication of their products, as evidenced by the initiative taken by Alizz Islamic Bank with the launch of a shariah-compliant Mastercard corporate credit card in June 2021 and Meethaq's launch of SME-specific Islamic financing products in July 2021. This trend is likely to continue given the competitive nature of the rapidly developing Omani banking sector.

Given the success of Oman's international sukuk issuances in 2021 and 2022, it is expected that the raising of funding by way of sukuk by the government and private sector entities will become a common feature, especially in the international markets and finance infrastructure development projects.

The Bond and Sukuk Regulations (E/21/2024), issued by the FSA, are expected to contribute to economic development in Oman in line with the strategic objectives of the Oman Vision 2040. Further regulatory reforms are expected in the areas of capital markets and banking, with new laws and regulations governing banking, sovereign debt and capital markets expected to come out in 2024–25.

There were further structural improvements in 2022 after the CBO introduced an Islamic liquidity management instrument (ILMI) in the form of a wakala money market instrument. This instrument allows Islamic banks and windows to place remunerative deposits with the CBO for a minimum duration of one day to a maximum of three months. The absence of any ILMIs has been a challenge for the Islamic banks in Oman, as Islamic banks and windows have been unable to invest their excess liquidity or to have a shariah alternative to treasury bills. Sharia rules and regulations prevent Islamic banks and windows from depositing funds and investing with conventional banks, which limits the options available to Islamic banks and windows. The CBO is expected to introduce more ILMIs in phases, both for providing liquidity support to Islamic banking entities and for absorbing excess liquidity.

It is likely that such new laws and regulations will have a wide impact on the entirety of the Islamic finance market, which will extend to both Islamic banking and shariah-compliant capital markets.

Endnotes

- 1 See www.omanobserver.om/omans-islamic-banking-sector-is-now-worlds-15th-largest/. [^ Back to section](#)
- 2 See <https://www.fitchratings.com/research/islamic-finance/omans-islamic-banking-share-to-rise-amidst-improving-demand-structure-06-03-2023>. [^ Back to section](#)
- 3 RD No. 114/2000. [^ Back to section](#)
- 4 RD No. 11/2016. [^ Back to section](#)
- 5 CMA Decision No. KH/2/2018. [^ Back to section](#)
- 6 RD No. 18/2019. [^ Back to section](#)
- 7 RD No. 4/1974. [^ Back to section](#)
- 8 CMA Decision No. 27/2021. [^ Back to section](#)
- 9 See Section 4.1.3 of the Islamic banking regulatory framework. [^ Back to section](#)
- 10 RD No. 28/2009. [^ Back to section](#)



Mansoor Jamal Malik
Zarrar Mir

mansoor.malik@amjoman.com
zarrar.mir@amjoman.com

Al Busaidy Mansoor Jamal & Co

[Read more from this firm on Lexology](#)