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The Practice of Law by Foreign Lawyers in the Sultanate of Oman[†]

J.H.A. McHugo*

The legal system in the Sultanate of Oman has developed in a way that has led foreign lawyers to engage in legal work, most notably commercial litigation, in which, in most jurisdictions, it is unusual for foreign lawyers to be involved. Although much of the work of foreign lawyers in Oman is of a transnational nature, there is only a minimal foreign element in a large part of their practice. Foreign lawyers frequently appear before the Authority for the Settlement of Commercial Disputes, the judicial body with jurisdiction in commercial matters. They also advise on and draft agreements in accordance with Omani law. There are, in fact, only two areas in which they do not practice: *Shari'a*—which governs probate, succession, and family law—and criminal law.¹

This article discusses the practice of foreign commercial lawyers operating through branch offices of foreign firms in the Sultanate of Oman. In order to see how the present situation has developed, it is necessary to consider the particular circumstances of modern Oman. Part I outlines some important aspects of

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1. It might be noted that there are two terms in Arabic which may be translated as "law." Only one of these, *shari'a* or *shar'*, is used to refer to the religious law of Islam, although the root of the word may also be used to refer to other systems of law. Thus for example, the word *tashri'*, derived from *shar'* is used to mean "legislation." The other term, *qanun* (derived from the Greek word *kanon*), is used exclusively when referring to nonreligious law. However, in some jurisdictions, such as Egypt, codifications of *shari'a* have been promulgated as *qanun*. In this context, *qanun* is best translated as "code." The licenses granted to branch offices of foreign firms operating in Oman are to practice *istisharat qanuniyya* ("legal consultancy" or "consultation on *qanun*"). It is possible to infer from these terms that the licenses given to branch offices of firms of foreign lawyers do not allow them to practice in the area of Moslem religious law. However, the author would mention that he knows of no foreign lawyer in Oman who has ever attempted to practice religious law, and doubts very much whether any foreign lawyer would consider himself or herself competent to do so. See generally Linat de Bellefonds, *Kanun*, 4 THE ENCYCLOPEDIA OF ISLAM 556 (1978).

Oman's history. Part II focuses on the development of the Omani legal and judicial system since 1970 with regard to commercial law. Finally, part III examines the practice of the foreign lawyer operating in Oman, and illustrates the kind of legal work which he may carry out.

I. THE CIRCUMSTANCES OF MODERN OMAN

Oman was never colonized. Sultan Said Bin Taimur, the ruler of the country from 1930 to 1970, followed a policy of isolation.² Little modernization or economic development occurred during his reign although after the discovery of oil in commercial quantities in 1968 funds became available for rapid development.

In 1970, Sultan Qaboos Bin Said, Sultan Said Bin Taimur's son, took power.³ The transfer of rule from father to son resulted in a profound redirection of the country's path.⁴ On Sultan Qaboos' accession there existed no schools or medical facilities outside of the capital, Muscat, and the southern provincial capital, Salalah.⁵ Furthermore, the Omani Government possessed little of the apparatus of a modern state and none of the apparatus of a modern legal system.⁶

The modern Omani legal system began with the reign of Sultan Qaboos, thus it provides a fascinating opportunity to study the rapid development of a legal system by a country intent on making up for lost time in its emergence into the modern world. Oman is of unusual interest because of two special factors. First, the struggle to modernize the country did not start until recently (although it has been pursued with astonishing vigor). Second, no colonial legal system had ever been enjoined upon Oman and no legal system from an earlier attempt at reform had left any foundation on which Sultan Qaboos and his government could build.⁷ An important consequence of this second factor was the complete absence of a legal profession.

II. THE OMANI LEGAL SYSTEM AS IT AFFECTS COMMERCIAL LAWYERS

A. Legislation

The Omani authorities were, and are, well aware that a modern legal system cannot be created overnight. They appear to have adopted a pragmatic approach,

2. See J.E. PETERSON, OMAN IN THE TWENTIETH CENTURY 136 (1978).

3. *Id.* at 200.

4. *Id.* at 204.

5. For a description of post-1970 development, see *id.* at 205.

6. See *id.*

7. While practicing law in Oman, the author has never once come across any legislation that dates from before the reign of Sultan Qaboos.

promulgating legislation to deal with problems when they become pressing, rather than attempting to adopt a foreign system of law which might not be appropriate to the country's needs.

All legislation promulgated in Oman is made with the authority of His Majesty the Sultan, either directly or indirectly. There is no other source of legislation. Laws promulgated as annexes to Royal Decrees signed by the Sultan, however, may not always conclude with the Royal Signature. The General Explanations and Stipulations Law of 1973 defines law (*qānūn*) to mean "any legislation, regulations or any Royal Decree or Royal Decision of a legislative nature and all legislative rules, regulations and ordinances issued pursuant to any law."⁸ Royal decrees can vary greatly in their subject matter, but unless it is clear that they are not, it is prudent to assume that they are of a "legislative nature." In the Law of the Administrative Apparatus of the State, the expression "Royal Decrees and Laws" appears on a number of occasions in a way to suggest that, for all practical purposes, laws and royal decrees are the same.⁹

The General Explanations and Stipulations Law of 1973 also provides that the power to legislate may be delegated by law to an individual person.¹⁰ The rules, regulations and ordinances that the designated person issues must not contradict the provisions of the law under which they are issued or the provisions of "any law of higher standing." The person with authority to issue the rules, regulations or ordinances has authority to amend or repeal them in a like fashion and according to the same conditions which are effective for issuing them.¹¹

Delegated legislation largely takes the form of Ministerial Decisions. The functions and responsibilities of the various Ministries and other government units are set out in Appendix A to the Law of the Administrative Apparatus of the State.¹² The appendix is updated to take account of changes made from time to time. It is also common practice for royal decrees and laws to contain a provision empowering the relevant ministry to issue implementing regulations. For example, the Law of Lands of 1980 provides that the Minister of Land Affairs and Municipalities will issue implementing regulations for applications for the registration of land.¹³

The simplicity of this system is its most remarkable characteristic. All royal decrees (including laws) since 1973 have been numbered and published in an

8. Law 3/73, art. 3, 1973 Al-Mujallad (in Arabic) (The General Explanations and Stipulations Law).

9. Royal Decree 26/75, arts. 2, 10–12, 1975 Al-Mujallad (in Arabic) (Petroleum Development Oman trans. (unofficial)) (issuing the Law of the Administrative Apparatus of the State).

10. Law 3/73, art. 11, 1973 Al-Mujallad (in Arabic) (The General Explanations and Stipulations Law).

11. *Id.*

12. Royal Decree 26/75, *supra* note 9, at appendix A.

13. Royal Decree 5/80, art. 27, 1980 Al-Mujallad (in Arabic) (setting forth the Law of Lands).

annual called *Al-Mujallad* (literally, "the Compendium") which can be bought from the Directorate of the Official Gazette in Muscat. Omani legislation is thus easily accessible. Yet because the present system only dates from the early 1970s, there are inevitably many areas in which little or no law has been promulgated. Two important examples of such areas are contract and tort.

In dealing with areas as yet unregulated by promulgated law, commercial lawyers cannot turn to any equivalent of Anglo-Saxon common law which is followed until overruled by legislation. Rather, they must look to the judicial authorities with the power to cope with these "gaps." To this writer, the operation of these judicial authorities is the most interesting feature of the Omani legal system.

B. Judicial Authorities

It has already been mentioned that the Law of the Administrative Apparatus of the State effectively divides up the functions and responsibilities of government among the various ministries and other government bodies. There is a special body devoted to legal affairs, the *Dīwān* (office) of legislation. This is the body which considers contractual and other legal obligations of the government, and can be consulted by other government bodies to give legal opinions.¹⁴ It also considers legislation before it is issued.¹⁵ However, it does not have any judicial function. The Ministry of Justice, Awqaf and Islamic Affairs administers the *Shari'a* Courts but would appear not to concern itself with bodies having a judicial role established by law in other ministries.¹⁶

It is an interesting feature of the Law of the Administrative Apparatus of the State that it expressly gives judicial powers to individual ministries. Thus, Function 10 of the Ministry of Land Affairs and Municipalities is to examine and settle land disputes, while Function 10 of the Ministry of Commerce and Industry is to settle commercial disputes.¹⁷ One might expect an overlap between the judicial bodies set up in the two Ministries; in practice, either body will consider any case brought before it which falls within its jurisdiction.

The judicial body that was established in the Ministry of Commerce and Industry to settle commercial disputes was termed, appropriately enough, the Committee for the Settlement of Commercial Disputes (the Committee). Although this Committee was inside the Ministry, it was not set up by the Minister acting through delegated legislative power, but through a special chapter in the Commercial Companies Law.¹⁸

14. Royal Decree 26/75, *supra* note 9, at art. 24.

15. *Id.* at art. 23.

16. *Id.* at appendix A.

17. *Id.*

18. Law 4/74, art. 173, 1974 *Al-Mujallad* (in Arabic) (Commercial Companies Law).

When the Committee was established in May 1974, it had an extremely simple constitution. It was composed of nine members appointed by royal decree, who were to have "experience in commercial cases."¹⁹ It had the authority to decide all commercial disputes whether civil or criminal.²⁰ The great speed with which it decided cases and the relative informality of its proceedings were notable features of the Committee from its earliest days. Proceedings were commenced by lodging a written plea with the Committee, a copy of which was served on each defendant within three days. The defendants had twenty days in which to submit a written defense after which the plaintiff had ten days to lodge a reply to the defense. The defendants then had an additional ten days within which to file a counter-reply.²¹ The Committee could shorten or lengthen these periods at the request of a litigant, provided that the defendants were not deprived of the right to make a final reply.²² The Chairman of the Committee would then fix a date for trial.²³ There were also provisions for third parties that considered themselves prejudiced to enter into the dispute by lodging a written plea.²⁴ The decisions of the Committee were final and not subject to appeal, save in the case of a defendant who was not served with notice of the proceedings. Such a defendant could raise an objection within thirty days of receiving notice of the decision affecting him.²⁵

Although the Committee's constitution was revised in 1975,²⁶ the speed with which it made decisions continued to be one of its most prominent characteristics. In fact, the period for submitting a defense was actually shortened from twenty to ten days.²⁷ The new constitution eliminated the Committee's criminal jurisdiction, but it gave the Committee jurisdiction over a wide range of commercial matters, including transactions for the sale, purchase, and lease of property with the expectation of profit; banking and currency transactions; manufacturing; warehousing; transport by land, sea, and air; insurance services; commission and brokerage transactions; hotel, restaurant, and entertainment services; publishing and printing; the exploitation of oil, gas, and minerals; construction and development operations; commercial agencies, including distributorship agreements; disputes between merchants, companies, partners, shareholders, directors, auditors, and liquidators; the interpretation of commercial contracts and laws con-

19. *Id.*

20. *Id.* at art. 175.

21. *Id.* at art. 181.

22. *Id.* at art. 182.

23. *Id.* at art. 183(c).

24. *Id.* at art. 186.

25. *Id.* at art. 189.

26. Royal Decree 54/75, 1975 Al-Mujallad (in Arabic), promulgated the revised text for articles 173-189 of Law 4/74, *supra* note 18.

27. Royal Decree 54/75, art. 181(b), 1975 Al-Mujallad (in Arabic) (amending art. 181(b) of Law 4/74, *supra* note 18).

cerning commercial activities; and any other matters which any law states shall fall within its jurisdiction.²⁸

The 1975 revision also laid down the principles by which the Committee was to abide in issuing its decisions. They were:

- (a) the Decrees, Laws and Regulations in force in the Sultanate;
- (b) the rights and mutual contractual obligations between contracting parties on condition that they do not contravene the provisions of such contracts or contradict any provision contained in a Decree, Law or Regulation or contravene public policy;
- (c) established customs having effect in the field of commercial activity to which disputes raised before the Committee are connected and the principles which are followed in a general sense in relation thereto; and
- (d) whatever achieves justice and equity between parties in dispute and leads to the stabilization of commercial transactions and regulations.²⁹

It was implicit in these principles that the Committee was to use its discretion when there was no applicable provision of law. The Committee did not favor a doctrine of precedent; its decisions were regarded as private to the parties concerned, and thus of no applicability to anybody else.³⁰ Great stress was laid on the requirement that the Committee follow the principles of justice and equity in order to stabilize and regulate commercial transactions. The membership of the Committee facilitated this type of decision making. The Committee was composed of officials from the Ministry of Commerce and Industry and representatives of the Chamber of Commerce and Industry, who were prominent and respected businessmen. Committee members did not claim to be trained lawyers. Yet because of the intimacy of commercial life in Oman, resulting from the smallness of the merchant community and the relative simplicity of most commercial transactions, they could be relied upon to understand the disputes brought by litigants. When the Committee considered it appropriate, it could ask for information or guidance on legal or technical points from experts in the Ministry of Commerce and Industry such as the Insurance Commissioner's Department on Insurance Matters or other government departments. The Committee could also appoint independent experts to report particularly on technical matters.³¹

The Committee was noted for the facility with which it made its decisions. Cases were frequently heard and decided within one to two months of the first pleading. When a case involved two essentially innocent parties disputing who should bear a loss occasioned by a third party or some calamity, the Committee

28. *Id.* at art. 175; Law 3/74, art. 5, 1974 Al-Mujallad (in Arabic) (The Commercial Register Law).

29. Royal Decree 54/75, *supra* note 26, at art. 179 (Trower, Still & Keeling trans. (unofficial)).

30. Although this is not stated explicitly in legislation, this is the view that the Committee took and that the Secretary to the Committee made very clear to the author in a private conversation in 1982.

31. Royal Decree 54/75, *supra* note 26, at art. 186.

tried, if possible, to salvage something for each party. Settlements between parties before the date of trial were actively encouraged through a refund of the fees paid when lodging a claim. When there was merit to a claim, but it was uncertain how much, the Committee might award a proportion of the claim summarily, rather than enter into lengthy and expensive hearings of the case. When the obligation to pay a debt was clear, but the debtor was unable to pay, the Committee often used its discretion to fix a repayment schedule, even though neither party had requested such an arrangement. Thus, the sum repayable became a judgment debt and the Committee could use its powers of enforcement through the civil authorities to ensure payment.³²

As the country modernized, commerce and legislation rapidly became more sophisticated. The legal issues brought before the Committee were increasingly complex. In 1981, for instance, a detailed Maritime Law³³ covering, *inter alia*, the carriage of goods by sea, the sale of marine insurance, the arrest of ships, and the interpretation of bills of lading was promulgated, and several complex marine cases were brought before the Committee. Perhaps believing that experienced judges who had received complete legal training ought to be available to interpret commercial legislation, Omani authorities decided to create a more formal judicial body for the resolution of commercial matters.

This goal posed several practical problems. While there were not as yet enough qualified Omanis to set up an independent judiciary for deciding commercial disputes, if foreign judges were recruited, it was feared that they might not gain the trust of Omanis, who might well have believed that their country was losing control over its judicial system. Other judicial systems on which the Omanis might have modeled a new judicial body were noted for two disadvantages which the Committee had hitherto avoided—protracted delays before cases were heard, and an excessive degree of formality in pleadings and the filing of documents, which often led to the rejection of cases for reasons of form rather than of substance.

Rather than adopt a foreign system, the Omani Government reconstituted the Committee. It also moved the Committee out of the control of the Ministry of Commerce and Industry and made it an independent body.³⁴ The constitution of this new body, the Authority for the Settlement of Commercial Disputes (the Authority) was changed so that three experienced and legally trained judges sit on the bench with the civil servants and representatives of the Chamber of

32. On the question of enforcement through the Civil Authorities, see Royal Decree 54/75, *supra* note 26, at arts. 180(e), 188(d). The other statements as to the practice of the Committee are based on the author's personal experience of its proceedings.

33. Royal Decree 35/81, 1981 Al-Mujallad (in Arabic) (issuing the Maritime Law).

34. It might also be noted that the move of the judicial function of the Ministry of Commerce and Industry from the Ministry to a specially constituted independent body is possibly the first appearance of the doctrine of the Separation of Powers in the legal system of Oman.

Commerce who had comprised the old Committee.³⁵ The judges need not be Omani citizens. In fact, the first appointees, who began hearing cases in the spring of 1984, are Egyptian. The President of the Authority and the three judges constitute a quorum. The President's side prevails in the case of a tie vote, and it is he (and not the judges) who controls the proceedings.³⁶ In this way, the Omanis have imported foreign legal expertise into their judicial system without losing control of that system to foreign judges.

The royal decree setting up the Authority's detailed constitution considerably expands the procedures which governed the Committee and contains some interesting new features. The possibility that the state may be a party to proceedings is admitted,³⁷ and there are limited grounds for requesting a case to be reheard.³⁸ There are also provisions allowing parties to request that informal arbitration take place under a group of arbitrators headed by a judge and appointed by the President of the Authority.³⁹ The Authority's guiding principles are similar to those of the Committee:

In issuing its judgments the Authority shall adhere to the decrees and laws in force in the Sultanate, contracts between the disputing parties provided the conditions of such contracts do not conflict with any law, public order or propriety or established valid practices in the field of commercial activities and whatever establishes justice between the litigants and leads to the stabilization of commercial transactions.⁴⁰

The Authority thus retains the equitable jurisdiction and discretion of the Committee. Like the Committee, it also has no doctrine of precedent.

In theory, cases before the Authority are heard in a manner similar to that of the old Committee. In practice, however, there has been a significant change of emphasis. Much more weight is being attached to written submissions. The parties are not asked to speak as they were before the Committee. Rather, they are asked only whether they have anything to add to what they put in their pleadings. They are stopped if they repeat what they have already submitted. Members of the bench then ask the parties questions and may comment on any points which have been raised. This procedure contrasts with the hearings before the Commit-

35. Royal Decree 79/81, 1981 Al-Mujallad (in Arabic) (establishing the Authority for the Settlement of Commercial Disputes).

36. Royal Decree 32/84, art. 36, 1984 Al-Mujallad (in Arabic) (setting forth the regulations for the hearing of disputes and arbitration claims by the Authority for the Settlement of Commercial Disputes).

37. *Id.* at arts. 7(a), 59.

38. *Id.* at art. 54. Although there was no such possibility set out in the legislation setting up the Committee, the author was informed by the Secretary of the Committee in 1982 that it would be possible to re-open a case if significant new evidence came to light.

39. *Id.* at arts. 59–68.

40. *Id.* at art. 44 (Trower, Still & Keeling trans. (unofficial)).

tee, where in practice greater weight seemed to be given to the opening address of each party than to their written submissions.⁴¹

One notable feature of the Committee that is retained in the constitution of the new Authority is the speed with which cases come to court. The defendant has ten days to submit a written defense, and the case will be fixed for hearing within thirty days of the expiration of this period. A party may apply for these periods to be lengthened or shortened, at the discretion of the Authority.⁴² At the end of the hearing, the parties may be allowed seven working days in which to present final memoranda replying to the arguments raised at the hearing. Judgment follows within fifteen days of the expiration of this period.⁴³

It is anticipated by many in the Omani commercial community that the increased emphasis on written submissions and the addition of experienced judges to the bench of the Authority will help stabilize commercial transactions, particularly in areas for which there are no applicable Omani laws.

C. The Foreign Lawyer's Practice in Oman

The Foreign Business and Investment Law⁴⁴ sets out the circumstances in which foreigners and foreign companies may engage in trade and do business in Oman. Generally speaking, they may only do so by jointly incorporating a local company with an Omani shareholder or shareholders.⁴⁵ In practice, foreign participation is usually limited to a minority shareholding. The law also sets out a number of exceptions to the general rule. One such exception concerns professional firms which may set up a branch office (provided that they comply with Omani legal requirements) when there is a shortage of Omani citizens possessing a particular professional skill.⁴⁶ Several firms of lawyers have thus established branches in Oman to fill the vacuum of local lawyers. It was almost certainly this vacuum, rather than any deliberate policy, which led to the appearance of foreign lawyers as advocates in Oman.

Foreign lawyers wishing to give advice and draft agreements for local as well as foreign enterprises must obtain temporary licenses from the Ministry of Commerce and Industry. The licenses, issued at the Ministry's discretion, must be renewed annually. As for commercial litigation, there is as yet no formal license or qualification required in order to appear before the relevant judicial body. Litigants were always able to appear in person before the Committee for the

41. The statements made in this paragraph are based on the experiences of the author in his appearances before the Authority.

42. Royal Decree 32/84, *supra* note 36, at arts. 21, 22.

43. *Id.* at arts. 34, 35.

44. Royal Decree 4/74, 1974 Al-Mujallad (in Arabic).

45. *Id.* at arts. 1-3.

46. *Id.* at art. 6.

Settlement of Commercial Disputes and are still allowed to appear before the Authority for the Settlement of Commercial Disputes or may appoint an agent to conduct their case. No legal qualifications are required of such agents. It would appear, however, that there is a growing tendency for litigants to use lawyers as their representatives. Given the increasing sophistication of Omani law, this trend is likely to continue.

Foreign lawyers undertake a wide variety of legal work in Oman. They draft agreements between Omani companies or merchants and foreign companies that wish to invest, do business, or grant franchises in Oman, and they participate in commercial litigation and arbitration. They may advise on matters that are purely local in nature as well as those involving a significant international element.

1. Advising Foreign Companies

In general, Omani legislation encourages Omanis to carry on local commerce, but at the same time provides foreign companies with the opportunity to supply products, technology, expertise, and investment capital when required.⁴⁷ The Foreign Business and Investment Law places clearly defined limits on the manner in which foreign companies may trade and do business in Oman or acquire shares in Omani companies. Foreign companies wishing to do business or to invest in the share capital of an Omani company must obtain the permission of the Ministry of Commerce and Industry.⁴⁸ All businesses trading in Oman must be registered in the Commercial Register in the Ministry of Commerce and Industry.⁴⁹ Even distributorship agreements and many franchise agreements which envisage no actual presence by foreign companies in Oman must be registered under the Commercial Agencies Law.⁵⁰ Moreover, there is also legislation which specifies the formal requirements necessary in all contracts entered into with a government body, if the government body is to be bound by the contract in question.⁵¹ For these reasons alone, it would be prudent for a foreign company entering Oman to seek advice from lawyers based in Oman.

The absence of provisions in Omani law on various commercial matters also

47. This basic approach is reinforced by different rates of corporation tax which favor corporations with a majority of shares held by Omani citizens. The taxation rates for the income on non-Omani companies are set out in the Second Schedule to the Law of Income Tax on Companies. Royal Decree 47/81, 1981 Al-Mujallad (in Arabic). As regards the taxation of Omani companies with a foreign shareholding, see Royal Decree 6/77, 1977 Al-Mujallad (in Arabic).

48. Royal Decree 4/74, art. 2, 1974 Al-Mujallad (in Arabic) (issuing the Foreign Business and Investment Law).

49. Law 3/74, *supra* note 28, at art. 4.

50. Royal Decree 26/77, 1977 Al-Mujallad (in Arabic) (Trower, Still & Keeling trans. (unofficial)) (Commercial Agencies Law).

51. Royal Decree 48/76, 1976 Al-Mujallad (in Arabic), *amended* by Royal Decree 12/80, 1980 Al-Mujallad (in Arabic) (issuing the Law Concerning the Execution of Contracts on Behalf of the Government).

affects the drafting of agreements. Thus, only locally based lawyers, whether foreign or Omani, are able to advise clients fully. For instance, most joint ventures take the form of a locally incorporated limited liability company. The Commercial Companies Law⁵² is silent as to whether a shareholder in a limited liability company has a remedy against the company if the company performs acts which are *ultra vires* its memorandum of association. The authorities concerned with company registration formalities are reluctant to accept for registration the memorandum of association of a company in which there is a foreign shareholder if the memorandum contains a wide objects clause. Therefore, if the shareholders wish to clarify what acts will or will not be *ultra vires* the company, they must do so in the Shareholders' Agreement which sets up the company.

Inconsistencies between English and Arabic terminology are another important reason that foreigners consult a locally based lawyer. The term "joint venture," for example, is used in the official English translation of the Commercial Companies Law to translate "*sharikat al-muhāssa*." Most foreign companies expect a "joint venture" will take the form of a limited liability company. As used in the Commercial Companies Law, however, the Arabic term approximates to a "partnership for one adventure" and thus has a form substantially different from the limited liability company.⁵³

As in all jurisdictions the world over, an important task of lawyers is to clear up misconceptions held by clients. One obvious instance of this is the widely held view that the restrictions on foreigners doing business in Oman may be evaded by entering into an agreement (often, inaccurately referred to as a "sponsorship agreement") by which the foreigner trades in Oman under an Omani merchant's name. Such arrangements used to be common throughout the Gulf, and may be legal in some jurisdictions. However, they have not been legal in Oman since at least the early 1970s.

Some provisions in Omani law create specific rights that may not be anticipated by foreign companies that have failed to seek advice from a locally based legal expert. For example, provisions in the Commercial Agencies Law give rights on termination or expiration of distributorship agreements.⁵⁴ A foreign supplier may find itself embroiled in expensive litigation if it fails to take account of these rights when negotiating the termination of its arrangements with a distributor.

2. *Litigation by the Foreign Lawyer*

The main features of commercial litigation before the Committee and Authority have been outlined above.⁵⁵ In addition to proceedings before the Authority

52. Law 4/74, *supra* note 18, amended by Royal Decree 54/75, 1975 Al-Mujallad (in Arabic).
53. *Id.* at arts. 51–55.

54. Royal Decree 26/77, *supra* note 50, at arts. 8, 10.

55. *See supra* text accompanying notes 14–43.

for the Settlement of Commercial Disputes, foreign lawyers may sometimes be involved in litigation before the Labor Court in the Ministry of Social Affairs and Labor, which ensures that the provisions of labor contracts are upheld and that the rights of employees under the Omani Labor Law⁵⁶ are observed, and the Lands Committee in the Ministry of Land Affairs and Municipalities. Involvement with other judicial authorities in the country rarely, if ever, occurs. The majority of cases concern disputes between Omani legal persons.

Oman shows signs of becoming an increasingly litigious environment. This may be attributable to the speed with which cases are decided. Parties may prefer to have their disputes sorted out by proceedings before the Authority for the Settlement of Commercial Disputes (or, in its day, the Committee for the Settlement of Commercial Disputes) rather than through lengthier out of court negotiations. It might be noted in this context that there appears to be no "without prejudice" rule that might facilitate out of court negotiations for a settlement.

3. *Advising Local Businesses*

Lawyers in Oman may also give advice on banking, shipping, and related matters. Lawyers may give advice both when there is a significant international element and when legal problems are purely local. An example of the latter would include disputes between shareholders, or shareholders and directors of Omani companies. When advising on banking or shipping matters, a considerable degree of local knowledge is required if a firm is to operate effectively. For instance, the ability to advise a bank which is contemplating lending money for a construction project is of little use if a firm is unable to advise also on the legal requirements and formalities for registering a mortgage designed to protect the bank's interest. In some jurisdictions, the bank might obtain advice from two specialist firms each with an expertise in one of these areas. In Oman, there are probably too few lawyers for this type of arrangement, unless a bank is lending from outside the country and has overseas lawyers to instruct local counsel.

III. CONCLUSION

Oman is not typical of the jurisdictions in which most transnational law firms operate. In most jurisdictions, only lawyers who have local qualifications may appear in court and carry out certain types of legal work, such as transactions for the conveyance of land and the administration of estates. The transnational law firm is thus restricted in the advice it can give in foreign jurisdictions and, unless a partnership with local lawyers is possible, is generally confined to advising on legal matters in which there is a major transnational element.

In contrast, foreign lawyers in Oman may advise and draft agreements for

56. Royal Decree 34/73, 1973 Al-Mujallad (in Arabic).

local as well as foreign enterprises and may conduct commercial litigation. Among firms operating in Oman, there is no distinction between local and transnational work. The branch offices of foreign firms in Oman offer the somewhat unusual spectacle of foreign lawyers giving advice on the law of a legal system which is both distinct in its own right and extremely different from that in which they were trained. Nevertheless, it is probable that change will occur, although the pattern it will take is not yet apparent. When native Omani lawyers begin to practice in significant numbers, an Omani Bar Association will probably be formed.⁵⁷ In the view of this writer, it is likely that the position of expatriate lawyers in Oman will then come to resemble more closely that of the expatriate lawyer in the majority of other jurisdictions.

57. As of 1984, to the best of the author's knowledge, there is only one Omani law firm engaged in private practice in Oman. There are also two British and two Sudanese firms, and one each from the United States, the Kingdom of Jordan, and Pakistan.