

Tourism contractual obligations in light of the pandemic in the Sultanate of Oman

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Introduction

Since the emergence of the novel coronavirus disease ('COVID-19') and its impact in paralysing many sectors of the economy, whether impacting trade within the country or between countries, substantial financial damage has resulted to the economies of most countries. The pandemic is the cause of a global economic recession due to the cessation of activities in various sectors and the consequent economic disruption. How quickly the various countries' economies recover, after containing the virus or any second wave, cannot be estimated with any degree of certainty. Among the sectors most seriously affected by the pandemic is the tourism sector; one of the most important sectors for those countries that depend on tourism as a key economic driver or a strategic growth sector.

International transport lines have had to slow down extensively, whether land, air or sea due to the closing of borders. Protective measures have resulted in the cessation of most means of tourist movement. Cessation of most cruise ship and airline activities, has led to the suspension of tourist delegations to countries that depend on tourism for national income, which in turn has caused numerous issues and dilemmas for hotel reservations and tourist trips contracted prior to the pandemic. Many such arrangements have not been implemented by the parties to the relevant contracts because the tourists have been unable to travel due to mandatory state policies, aimed at containing the virus by closing all its land, sea and air borders. This has raised many questions in respect of tourism contracts. Questions arise

in respect of: the impact of the pandemic on these contracts; the legal basis, if any, for the annulment of such tourist contracts; and the possibility of people who are unable to benefit from the agreed services obtaining refunds or compensation, due to a foreign cause to which they have no relation or have in any way caused.

The extent to which Omani legislation regulates tourism contracts under exceptional circumstances and/or force majeure

The Omani legislature has not introduced any specific legislation regarding tourism services in the way that most Arab countries have in light of the pandemic. The inevitable consequence is that legal issues have emerged where tourist service providers claim that they have not refused to provide the service (but rather global circumstance and the procedures followed by the majority of their countries prevented them from fulfilling their obligations) while consumers claim reimbursement or later fulfilment of the contract, once the pandemic crisis has abated. Most service providers have refused both of these options granting neither refunds nor postponements on the grounds of force majeure or exceptional circumstances. The judiciary in Oman will, in the coming months, be asked to determine many issues related to tourism contracts including whether the impact of the pandemic constitutes either an exceptional circumstance or force majeure event. In the absence of specific legislation regulating tourism contracts the courts will have to relying entirely on the general contract law as set out in the wider laws of Oman.

Judicial principles governing tourism contracts in Oman under the exceptional circumstances and force majeure doctrines

Since the Sultanate of Oman has not been previously exposed to such an exceptional circumstance or force majeure event, as the outbreak of the global epidemic, there is no special legislation that regulates tourism contracts. Therefore, the Omani law has not developed any specific legal principles that can be relied upon in order to resolve the legal issues resulting from the outbreak of COVID-19 or disputes between a tourist service provider and a tourist service consumer.

Our understanding of French jurisprudence, arising out of the bovine spongiform encephalopathy ('BSE') epidemic, commonly known as mad cow disease, is that a principle called the precautionary principle was applied (which was taken mainly from French Environmental Law). This principle was adopted in the field of consumer health and security, as a complementary commitment to the obligation to ensure safety, and can also be applied to tourism services contracts. The precautionary principle equates to the principle of taking precautionary or preventive measures to avoid harm. The principle can be applied to tourism contracts affected by the Coronavirus pandemic following the World Health Organization ('WHO;') having declared the Coronavirus as a global epidemic and called on all countries to take precautionary and preventive measures to limit its spread and avoid exacerbating its impact in order to protect individuals and societies.

Application of the precautionary principle to tourism contracts, pursuant to the request of WHO, renders it necessary to take all precautions and preventative measures to avoid the risks to which the consumer of a tourism service may be exposed when availing of those tourism services. The basis of the principle is that a contract requires the services to be provided without exposing the consumer to any harm and thereby ensuring the consumer's safety. Pursuant to the WHO determination, COVID-19 is considered to be a fatal epidemic disease. The principle is supported by the Omani Consumer Protection Law and the various legal interpretations in its text. In the absence of other legal principles, the Consumer Protection Law states that travel and tourism services are subject to legal protection in accordance with Appendix 3 of Executive Regulation No. 77/2017 of the Consumer Protection Law No. 66/2014. The Consumer Protection Law does not detail the relevant tourism services so the requirements to ensure the safety of the consumer of tourism services, in accordance with the general principles of the Consumer Protection Law, apply and all

the measures should be taken to remove any foreseeable risks that the consumer may face in all stages of the contract.

Consequently, and in a concept that contradicts this principle, if the tourist service provider is unable to provide a guarantee regarding the safety of the tourist service for the service consumer from COVID-19, the contract is voidable and the consumer of the service is entitled to recover what he or she paid for the service or compensation for that service after the exceptional circumstance abates. Where the reality of the situation shows that the competent authorities in the Sultanate decided to close all hotel establishments and tourist resorts as well as the land, sea and air outlets, this exemplifies the service provider's inability to guarantee the safety of the tourism service, due to the development of COVID-19 and in light of the country's inability to contain this virus despite their attempts to take all precautionary and preventive measures.

Conclusion

Taking into consideration:

- the fact that the tourism sector is considered one of the main sectors of income in Oman, and drivers of diversification away from hydrocarbon dependency; and
- in the absence of legal texts that protect tourism contracts or judicial principles that can be relied upon in exceptional circumstances or force majeure such as COVID-19,

it may be necessary for the legislature to act, in regulating tourism contracts and their effects, and such regulation will be to protect the consumer of the tourism service. This regulation should address the preventative and legal aspects of the tourist activity and impose insurance on the risks arising from tourism contracts. It should reflect the other applicable laws in Oman and also the related texts concerning exceptional or emergency conditions or force majeure that prevent the implementation of parties' obligations, thus covering all the potential loopholes and legal flaws resulting from the tourist contract. In addition, in light of the lack of reference to the precautionary principle in service contracts, especially the tourism services contract, it will be necessary to adopt precautionary measures that guarantee the protection of the consumer of tourism services. While the Coronavirus pandemic is a new challenge before the Omani judiciary, particularly with regard to tourism contracts, it may result in new initiatives to address the legal effects of the emergence of the pandemic and act as the catalyst that drives the issuance of new legislation regulating contracts in active sectors such as the tourism sector.

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