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Industry Update

The Middle East Conflict: Key Legal Considerations for Project Contracts

By [Ibaad Hakim](#), [Habeeb Rahman](#), [Ronak Desai](#), [Chales Anderson](#), [Yulia Turkina](#) and [Elliott Hunt](#)

Ongoing hostilities in the Middle East and disruption to maritime transit through the Strait of Hormuz are creating immediate risks for projects in the Gulf Cooperation Council (GCC) region and those dependent on Gulf shipping routes.

Businesses across different sectors whose contractual performances are affected by the conflict are reviewing existing agreements and analysing applicable laws to identify contractual and statutory remedies available.

At a Glance

- The conflict and accompanying disruption affecting maritime transit through the Strait of Hormuz are creating immediate contractual risks for business and commercial activity in the GCC region.
- This risk span across various areas and may affect projects and commercial activity in different ways, including physical damage, supply chain disruption, sanctions/export restrictions, government intervention to prioritize domestic supply and logistical constraints affecting labour, equipment and transport.
- Companies operating across the energy, shipping, infrastructure, construction and technology sectors, in particular, are scrutinizing applicable laws and reviewing existing contractual agreements to assess the remedies available to them in the event their contractual performance is affected by the conflict. The impact on contractual performance may be ongoing and parties may need to focus their immediate attention to mitigating the impact of the conflict on projects and commercial activity.
- For future contracts, companies should carefully consider whether contractual terms sufficiently address the risks associated with the conflict and/or whether additional protections are required.
- Potential medium- to long-term implications of the conflict remain uncertain at this stage. However, it will likely create an environment of increased business uncertainty, difficulty for future planning (and ascertaining risk contingencies), and commodity, equipment and material price volatility, necessitating closer engagement between contractual counterparties over the risk allocations under future commercial contracts in the region.

Disruption to a Critical Shipping Corridor

The conflict continues to cause significant disruption to the supply of materials, equipment and goods throughout the region and particularly maritime transit through the Strait of Hormuz, a critical shipping corridor connecting the Persian Gulf to the Gulf of Oman through which approximately one-fifth of the world's oil supply, together with substantial volumes of liquefied natural gas (LNG) and petrochemical feedstocks, passes each day.

Disruption affecting a shipping route of this scale has implications that extend well beyond energy markets. Restrictions on vessel transit can delay cargo movements, disrupt global procurement chains and affect the delivery of critical equipment used in infrastructure, industrial and technology projects. This is already presenting challenges for contractors across the Middle East who are increasingly facing difficulties mobilizing, performing works and maintaining ongoing operations.

For companies reliant on maritime transport through the Gulf, these disruptions raise immediate questions about contractual performance. Further, depending on the duration and intensity of future phases of the conflict, disruptions may become prolonged, impacting long-term arrangements.

Where Contractual Pressure Is Likely to Emerge

- **Energy and commodity markets** are typically affected most immediately. Long-term supply and offtake agreements, including for crude oil, LNG and refined products often contain strict delivery and performance obligations, including take-or-pay commitments and availability guarantees. Restrictions affecting vessel loading or transit may therefore affect the ability of sellers to meet delivery obligations under these agreements and raise questions regarding whether any delivery failures qualify as force majeure, whether diversion or substitution rights are available and how make-up rights will operate following missed deliveries.
- **Shipping and maritime contracts** may also come under pressure. Vessel delays and availabilities, route changes and increased war-risk insurance premiums may affect performance under charterparties and related cargo agreements. These issues frequently arise where vessels remain technically able to transit the region, but operational constraints or insurance costs affect voyage scheduling. Allocating and apportioning responsibility and cost resulting from such challenges remains a key consideration in such contracts.
- **Large construction and infrastructure projects** may encounter similar challenges where specialized equipment — including turbines, transformers or high-voltage electrical components — cannot be delivered on schedule. Delays affecting global supply chains may operate to jeopardize project milestones and completion timelines, and alternative procurement arrangements may result in price increases. In addition, the practical challenge of performing construction work in a conflict zone where energy infrastructure may be targeted should not be overlooked.

Why Force Majeure Clauses Matter

Force majeure is one method of determining how the parties to a contract have allocated the risk of an unexpected disruption that is beyond their control. At its core, a force majeure clause is a risk allocation mechanism. It reflects a negotiated agreement between the parties about who bears the consequences when performance becomes impossible or materially hindered by circumstances outside either party's control.

Force majeure clauses operate to relieve an affected party from their contractual obligations. In the absence of such relief, depending on the governing law of the contract, the affected parties would either (i) have to rely on the statutory provisions (which are often not clearly detailed or tailored to the specifics of a particular contract) or (ii) be subject to default, breach and contractually-stipulated penalties, such as delay liquidated damages. Some agreements also permit termination if the force majeure event continues beyond a prolonged and defined period.

Under English law and most common law systems, there is no general doctrine automatically excusing contractual performance simply because circumstances have become more difficult or commercially burdensome. The doctrine of frustration — the closest common law equivalent — sets a high threshold, requiring that performance has become radically different from what was undertaken, not merely more expensive or operationally challenging.

Civil law systems prevalent across the GCC, including the UAE, Qatar and Saudi Arabia, do provide statutory relief in cases of force majeure and, in some jurisdictions, analogous hardship doctrines where changed circumstances render performance excessively onerous. The UAE Civil Code, for example, addresses both impossibility of performance and the court's discretion to reduce oppressive obligations where exceptional unforeseen events make performance a serious threat to a debtor. However, the statutory provisions are broadly drafted and do not reflect the specific risk allocations negotiated between sophisticated commercial parties. It therefore remains standard practice in the region to address force majeure and related relief expressly in the underlying contract and to structure entitlements around the specific obligations, timelines and commercial arrangements agreed between the parties.

For these reasons, this alert focuses primarily on contractual entitlements. That said, the governing law of a contract will always operate in the background, and in some cases statutory provisions may supplement, limit or interact with the contractual regime in ways that are not immediately apparent. Specific legal advice on the applicable law position is recommended where the stakes are significant.

When Force Majeure Relief May Be Available

There is no definitive rule for determining what constitutes force majeure or when force majeure may be invoked. The circumstances constituting force majeure and whether relief is available depends on the language of the relevant contract and the specific circumstances affecting performance.

Although the language of force majeure provisions varies between agreements, most force majeure provisions require that the relevant event:

- Be beyond the reasonable control of the affected party
- Occur on or after a specified date (usually tied to signing of the contract) and be unforeseeable at such date
- Prevent, delay or materially hinder performance of the relevant contractual obligation
- Not be avoidable through the exercise of reasonable diligence

Many clauses also include examples of qualifying events that may either be exhaustive or illustrative only. Examples of events typically included are war or hostilities, acts of terrorism or sabotage, blockades, government action including embargoes or sanctions, or disruptions affecting transportation infrastructure. Many force majeure regimes also specify exclusions from the force majeure definition, including economic hardship or price increases, upstream supply shortages and equipment failure not caused by a force majeure event. These exclusions can sometimes be used as a defence in situations similar to this conflict if a party is able to argue that the conflict does not directly impact on the relevant contractual obligation.

Past conflicts in the Middle East predictably resulted in force majeure being invoked by companies operating in the region. For instance:

- **The Tanker War (1984–88):** During the Iran-Iraq War, attacks on vessels in the Gulf led to widespread invocation of force majeure across oil supply agreements and charterparties. War risk insurance premiums spiked dramatically, and many sellers claimed inability to load or transit. This is the closest historical parallel to the current situation and generated substantial arbitral case law on the causation and mitigation requirements under force majeure clauses.

- **Iranian sanctions (2012 onwards):** When EU and U.S. sanctions effectively closed Iranian oil off from Western buyers, force majeure and change-in-law clauses were both invoked across long-term supply agreements. The key disputes centred on whether sanctions constituted a government action force majeure event or a change in law, and whether buyers or sellers bore the risk of regulatory intervention

Whether the clause can be invoked as a result of the conflict will depend primarily on four issues: (1) the scope of the force majeure definition and the operative clause itself, (2) whether the disruption prevents performance under the contract (or merely makes it more expensive and burdensome), (3) whether a clear causal connection exists between the disruption and the failure to perform, and (4) whether contractual requirements have been complied with, such as obligations to provide timely notice and substantiating documents and to take steps to mitigate or overcome the impacts of the force majeure event.

Even where a disruptive event is clearly outside the parties' control — such as war, hostilities or restrictions affecting maritime transit — the availability of contractual relief will typically turn on several interrelated issues.

Scope of the Clause

The starting point is the wording of the force majeure clause itself. Some clauses contain detailed lists of qualifying events, while others rely on broader language referring to circumstances beyond the parties' reasonable control. Clauses that expressly refer to war, blockades, government action or disruptions affecting transportation routes may be easier to engage in the current circumstances.

Even where an event may qualify as a force majeure event, other requirements may operate to prevent or reduce contractual entitlements. For example, the force majeure definition may require that the relevant event occurred on or after the effective date of the contract. For contracts yet to be entered into (but where execution is imminent and there is a reasonable likelihood of the relevant obligations being impacted), this requirement may operate to prevent entitlement under the force majeure regime. Further, requirements for the relevant event to be unforeseeable may operate to prevent entitlement where the conflict had already commenced at the time of contracting.

Threshold for Non-Performance

Many clauses require that the event prevent performance rather than merely making it more expensive or operationally difficult. Where shipping routes remain technically open but subject to delays, rerouting or higher insurance costs, the distinction between genuine impossibility and increased cost or inconvenience often becomes central.

Causation

The party seeking to rely on the clause must typically demonstrate that the disruptive event directly affected its ability to perform the relevant contractual obligation. Where alternative suppliers or transportation routes remain available, counterparties may argue that the contractual threshold has not been satisfied.

Mitigation Obligations

Across construction, procurement and offtake contracts, mitigation obligations frequently determine whether contractual relief applies. Parties invoking force majeure are typically required to use reasonable endeavours to overcome or mitigate the effects of the event. In practice, mitigation may involve exploring alternative shipping routes or rerouting shipping or logistics, identifying substitute equipment or suppliers, adjusting logistical arrangements or construction sequencing, and/or identifying temporary operational workarounds where feasible. Disputes frequently arise over what constitutes commercially reasonable mitigation, particularly where mitigation measures involve substantial cost. For example:

- Must a supplier procure replacement fuel or feedstock at significantly higher market prices?
- Should a contractor source substitute equipment at materially higher cost to maintain the project schedule?
- Can an operator prioritise domestic infrastructure resilience over export commitments?

These questions often become central in disputes arising from force majeure events.

Notice Requirements

Most force majeure clauses also contain strict procedural requirements, including prompt initial notification and periodic detailed updates regarding the impact of the event, steps being taken to mitigate or overcome the event, and requirements for the affected party to provide substantiating documents and evidence. Failure to comply with those requirements may affect the availability of contractual relief and operate to prevent an affected party from obtaining contractual relief.

In practice, disputes over force majeure rarely turn on a single factor. Courts and counterparties typically assess the contractual wording, the factual circumstances affecting performance and the steps taken by the affected party to manage the disruption.

Looking Beyond Force Majeure Provisions and Practical Steps for Companies

While force majeure provisions may go some way to addressing the effects of the conflict on existing projects, they do have their limitations. Therefore, parties looking to enter into contracts following the outbreak of the conflict may seek to include specific bespoke provisions outside the force majeure regime to address the conflict and related relief entitlements.

Escalations resulting from the conflict may also lead to changes in export controls regimes, sanctions or boycott regimes, emergency governmental directives to prioritize local supply or other forms of government intervention, including changes in laws. Where such changes in laws or government action or restrictions occur, the impacts to and relief available for affected parties will often be dealt with under a change in law regime that sits outside of the force majeure provisions in a contract and may be subject to different conditions, notification requirements and relief entitlements. It is also typical for contracts to provide greater relief, particularly in respect of additional cost, in case of changes in law as compared to force majeure. In fact, during COVID-19, change in law claims, where available, were preferred over force majeure claims.

From a practical perspective, companies assessing the impact of disruption caused by the conflict should also focus on how it may affect contractual performance across their supply chains and project arrangements.

Identify Supply-Chain Exposure

Disruption affecting a major maritime corridor can affect multiple tiers of suppliers and contractors. Companies should identify shipments currently transiting the region, cargo scheduled to load at affected ports and suppliers whose logistics routes depend on Gulf shipping lanes. Mapping these dependencies helps determine which contractual obligations may be at risk and where delays may propagate through the supply chain. It is also important to consider the practical impacts of a delay on the supply chain, even if force majeure relief is granted. Suppliers and contractors may face cash flow issues due to delays caused by the conflict and, therefore, may need to consider ways in which they may ease some of this pressure. One obvious example, on construction projects, is to release a part of the retention in lieu of a retention bond.

Review Force Majeure, Change in Law and Other Similar Clauses and Notice Requirements

Force majeure and change in law provisions often impose strict procedural requirements, including prompt notice once an event affects performance. Companies should review the relevant provisions in supply, procurement, EPC, shipping and offtake agreements to determine how disruption events are defined and what threshold must be met before performance may be suspended. It is important to not assume that simply because an event appears to be a force majeure event, the relevant contractual provisions would bite. In fact, in certain cases, other remedies may be more appropriate or beneficial. For example, in certain cases a well-drafted cost escalation mechanism for certain key materials may be easier to trigger than a force majeure clause if the impact is mainly higher costs.

Document Disruptions and Their Impact

Where contractual performance may be affected, companies should be documenting the disruption caused and the impact created in a proper and timely manner so that they have all the necessary evidence and supporting documentation. They also may consider issuing protective notices to preserve contractual rights while the scope of disruption becomes clearer. At the moment, we expect many companies are issuing protective notices. From experience, many of these notices may not lead to eventual claims if the parties are able to mitigate or absorb the impact of the relevant event.

Assess Mitigation Options

As mentioned above, many force majeure provisions require the affected party to take reasonable steps to mitigate the impact of the disruption. Companies should therefore evaluate whether any such mitigation options are available. Maintaining contemporaneous records of mitigation efforts — including alternative logistics arrangements considered — may be important if counterparties later challenge reliance on the clause. Also, some force majeure clauses provide that costs of implementing mitigation measures will be split between the parties, e.g., if they exceed an agreed threshold — detailed record of such costs would be of utmost importance in such circumstances.

Evaluate Downstream Contractual Risk

Disruption affecting one contract may create risk under related agreements. Delays in the delivery of materials or equipment may affect project milestones under EPC contracts, delivery obligations under supply agreements or covenants under project financing arrangements. Companies should therefore assess whether disruption in one part of the supply chain could create broader contractual exposure across the project or transaction structure. That said, while there may be impact downstream or upstream, the relevant contractual provisions under those agreements should be analysed independently to understand the extent of the exposure and any gaps.

Looking Ahead

The trajectory of the conflict and its broader implications for regional commerce remain difficult to predict. What is clear is that the legal and contractual consequences will continue to evolve as the situation develops, and that early and proactive engagement, with counterparties, advisors and insurers, will be critical to managing exposure effectively. Companies that take steps now to audit their contractual positions, preserve their rights through timely notice, and document disruption and mitigation efforts will be better placed to navigate both the immediate disruption and any protracted consequences that follow.

For those parties entering into new contracts in the current environment, careful drafting of force majeure, change in law and cost escalation provisions will be essential to ensuring that risk is appropriately allocated from the outset. Paul Hastings will continue to monitor developments and provide further guidance as the situation evolves. In the meantime, our team is available to assist with any questions arising from the issues discussed in this alert.

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If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

Ibaad Hakim
+971-2-403-2816

ibaadhakim@paulhastings.com

Ronak D. Desai
+1-202-551-1826

ronakdesai@paulhastings.com

Yulia Turkina
+971-2-403-2811

yuliaturkina@paulhastings.com

Habeeb Rahman
+971-2-403-2807

habeebrahman@paulhastings.com

Charles Anderson
+971-2-403-2802

charlesanderson@paulhastings.com

Elliott Hunt
+971-2-403-2809

elliotthunt@paulhastings.com

Paul Hastings LLP

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