GEOPOLITICAL UNCERTAINTY IN THE GULF: CONTRACTUAL RISK, FORCE MAJEURE, AND MAC CLAUSES

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Qatar Policy and Regulatory Alert

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Heightened geopolitical tensions across the Gulf region continue to create uncertainty for businesses operating in, or contracting with counterparties in, the Middle East. Key concerns include the potential disruption of shipping routes through the Strait of Hormuz, oil price volatility, supply-chain interruption, and temporary airspace closures, each of which may directly or indirectly affect contractual performance. We continue to advise clients across industries that are particularly exposed to these challenges due to their reliance on long term contractual arrangements, international supply chains, foreign labor and specialist expertise, and regulatory stability.

The global impact of the regional conflict has prompted renewed focus on the legal and contractual tools available to manage and mitigate risk, including force majeure provisions, material adverse change (MAC) clauses, and statutory mechanisms that may apply in extraordinary and unforeseen circumstances ("imprévision" or hardship). Understanding how such tools operate and their limitations is critical for parties seeking to protect their contractual positions in an increasingly challenging environment.

In this alert, we briefly discuss some of the contractual and legal implications of the current geopolitical disruption, specifically through the lens of the Qatar Civil Code (Law No. 22 of 2004), and with particular attention to insurance considerations and force majeure, hardship, and MAC type provisions.

PRIMARY TAKEAWAYS AND PRACTICAL CONSIDERATIONS

- Analyze the Contracts
  - Undertake a clause by clause review of relevant clauses, including force majeure, MAC, change in law, suspension, and variation provisions. Map out notice deadlines, evidentiary requirements, mitigation obligations, and available remedies before taking any formal steps.
- Identify the True Causal Event(s)
  - Avoid generic reliance on terms such as "war" and "hostilities." Consider whether the actual impediment is a governmental order, regulatory restriction, supply embargo, etc., and align the claim accordingly.
- Comply Strictly With Notice Requirements
  - Timely and properly framed notices are critical. Defective notices may invalidate an otherwise legitimate claim.

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- Consider Alternatives to Force Majeure
  - Force majeure imposes a high threshold. In appropriate cases, relief may be more effectively pursued through other contractual mechanisms or, where applicable, the hardship doctrine.
- Preserve Documentary Evidence
  - Maintain contemporaneous records demonstrating causation, impossibility or excessive burden, mitigation efforts, and the financial and program impact of the event relied upon.
- Review Insurance Policies
  - Identify exclusions that may affect the coverage of certain risks, including war, hostilities, political violence, terrorism, cyber war, and trading exclusions. Assess the potential need for specialist cover. Also, insurance strategy, contractual response, and dispute planning should be coordinated across legal, commercial, treasury, and risk teams.

Insurance Considerations

Most property, business interruption, marine, aviation, and liability policies in the Gulf region contain broad war and hostilities exclusions, often triggered without a formal declaration of war. The escalation of regional tensions, including strikes, drone activity, airspace disruptions, and maritime incidents has exposed significant coverage gaps for policyholders, who may have assumed that “all risks” protection would respond.

Insurers are increasingly scrutinizing whether losses stem from state acts, proxy groups, or terrorism, which directly affects whether war exclusions apply. Under these circumstances, policyholders are exposed to the risk of insurance claim disputes and delayed indemnity, particularly for infrastructure, energy, hospitality, and logistics assets.

Marine war risk and cargo premiums for vessels transiting the Strait of Hormuz, Red Sea, and Persian Gulf have risen sharply, with some underwriters suspending cover altogether in high risk zones. In addition, energy related businesses face tighter terms for offshore assets, terminals, and pipelines, reflecting the compounded risks inherent with interconnected assets together with the strategic importance of the region's infrastructure.

All of these issues directly affect supply chains; engineering, procurement, and construction contractors; and energy offtake arrangements across the Gulf Cooperation Council.

Parties should ensure that contractual risk allocation aligns with available insurance cover. Where a contract places delay, suspension, or termination risk on a party, the absence of corresponding insurance protection may result in uninsured exposure. As such, early review of policy terms, targeted enhancements to coverage, and coordinated risk planning is essential for businesses seeking to protect their position amid ongoing regional uncertainty.

Force Majeure

Force majeure provisions in contracts commonly provide for relief in the event of war or hostilities. It is therefore no surprise that many participants in construction and energy projects in the region have already either (a) sent a notice of force majeure under relevant contracts, or (b) received a notice of force majeure from other project participants in response to the evolving situation.

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However, the mere occurrence of war and hostility events does not, of itself, trigger force majeure relief.

The effectiveness of such notices depends on strict compliance with both contractual and legal requirements. Force majeure notices must be issued in a timely manner and must clearly identify the relevant force majeure events, as well as their actual impact on the performance of specific contractual obligations. Failure to properly frame the notice, or to comply with notice requirements, may render a force majeure claim ineffective, either because it does not satisfy the requirements of the contract or because it fails to meet the standards imposed under Qatari law.

The Contract Comes First

Subject to compliance with mandatory Qatari laws, force majeure clauses and related notice mechanisms in contracts are generally upheld by the Qatari courts. However, the courts interpret force majeure clauses narrowly. Accordingly, parties should undertake a careful and structured review of the applicable force majeure provisions and "map out" the procedural and substantive steps required to validly invoke them, including notice timelines, evidentiary requirements, and the scope of relief available.

By way of an example, the force majeure provisions in International Federation of Consulting Engineers (FIDIC) form contracts, the most widely used standard form construction contracts in the Middle East, are structured as follows:

Definition of force majeure (defined as "Exceptional Event" in the 2017 edition) is an event or circumstance that:

a. Is beyond a party's control;
b. The party could not reasonably have provided against before entering the contract;
c. Having arisen, the party could not reasonably have avoided or overcome; and
d. Is not substantially attributable to the other party.

FIDIC then includes a nonexhaustive list of events that may constitute an "Exceptional Event," which expressly includes war, hostilities, and acts of a foreign enemy.

Strict notice requirements of an "Exceptional Event": Where a party is prevented from performing any one or more of its obligations due to an "Exceptional Event," that party must give notice to the other party within 14 days of becoming aware of the event. The notice must identify the "Exceptional Event" relied upon and specify which contractual obligations are, or are anticipated to be, prevented from performance as a result of the "Exceptional Event."

The affected party is subject to an express duty to mitigate the consequences of the "Exceptional Event," including by taking reasonable steps to minimize delay and cost.

Consequences of force majeure: It is only if the contractor is prevented from performing any of its obligations under the contract by reason of an event that satisfies all of the above conditions for an "Exceptional Event" and suffers delay or incurs additional costs that the contractor may obtain relief.

A common pitfall in force majeure notices is the reliance on an event expressly listed in the force majeure clause that, in reality, does not directly prevent the performance of contractual obligations. In the context of the current geopolitical turmoil in the region, parties may consider it self evident to invoke events such as "war," "hostilities,"

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or “acts of a foreign enemy” as the basis for force majeure relief. However, even where such events may have occurred, they do not necessarily prevent contractual performance.

In many cases, the actual force majeure event is unlikely to be the hostilities themselves, but rather a governmental or regulatory measure implemented as a consequence of those hostilities. By way of example, where Qatari aviation authorities temporarily close the airspace as a precautionary response to regional conflict, a project participant may be prevented from mobilizing personnel to a construction site, thereby preventing it from progressing the works. In such circumstances, the event preventing performance is the decision of the Qatari authorities, rather than the hostilities per se. Accurately identifying this causal event is critical to the effectiveness of any force majeure notice.

Further, although force majeure is the most obvious relief mechanism in the context of armed conflict, contracts may contain a number of additional provisions that may afford meaningful relief depending on how conflict related impacts manifest in practice. These provisions are often overlooked and may, in some circumstances, provide a more appropriate or lower threshold route to relief than force majeure.

In the example provided above, the unforeseeable shortage in personnel and materials might be better addressed under clause 8.4(d) (clause 8.5(d) 2017) of the FIDIC form, which provides that a contractor may seek an extension of time if the shortage is the result of government actions.

The Qatar Civil Code as Safety Net

Article 188 of the Qatar Civil Code provides that where an extraneous event beyond the control of the parties, which could not reasonably have been foreseen and cannot be prevented, renders the performance of an obligation by a party impossible, the corresponding obligation is extinguished, the obligor is released from liability, and the contract will be deemed rescinded by operation of law.

Where the impossibility to perform is only partial, the obligee may either enforce the contract to the extent of such part of the obligation that can be performed or demand termination of contract.

Although Article 188 does not expressly define the concept of “force majeure,” the Qatari courts have broad discretion to determine, on a case by case basis, whether its conditions are satisfied. In practice, the courts will generally apply Article 188 where the affected party demonstrates the existence of an event beyond the parties' control that renders performance objectively impossible.

Qatari law does not provide an exhaustive list of qualifying force majeure events. However, it is likely that armed hostilities and, in particular, government mandated responses adopted as a consequence of such hostilities, may qualify as force majeure events for the purposes of Article 188.

In all cases, reliance on Article 188 requires more than the mere occurrence of an exceptional or disruptive event. The affected party must demonstrate a direct causal link between the event and the objective impossibility of performing the contractual obligation. Increased difficulty, higher cost, or commercial inconvenience are generally insufficient. Performance must be rendered legally or physically impossible.

Article 188 operates as a statutory safety net, applying irrespective of whether the contract expressly refers to force majeure. However, where the parties have agreed to detailed contractual force majeure provisions, the Qatari courts will generally give effect to those provisions, provided they do not conflict with mandatory rules of

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Qatari law. In such cases, Article 188 may continue to play an interpretative or residual role, particularly where contractual drafting is unclear or silent on a given scenario.

Failure to satisfy the conditions under Article 188 may expose a party not only to the rejection of its force majeure claim, but also to liability for nonperformance.

Hardship

Qatari law recognizes the doctrine of hardship under Article 171(2) of the Qatar Civil Code, which provides a limited mechanism for judicial intervention where exceptional events fundamentally disturb the contractual equilibrium. Unlike force majeure, hardship does not require impossibility of performance. Instead, it applies where exceptional, unforeseeable events render performance excessively onerous, threatening the obligor with excessive loss.

Where the conditions of Article 171(2) are satisfied, the court is empowered to reduce or rebalance the onerous obligation to a reasonable level, after weighing the interests of both parties. However, Article 171(2) may not serve as a basis to terminate the contract, nor does it excuse performance altogether. Rather, the objective is to restore contractual equilibrium.

In the context of current regional geopolitical developments, parties may seek to rely on Article 171(2) where hostilities, sanctions, regulatory interventions, or supply chain disruptions materially distort the economic balance of long term contracts, particularly in construction, energy, and infrastructure projects. However, hardship relief is not automatic, and each case will turn on causation, scale, duration, and impact.

Article 171(2) is a mandatory provision of Qatari law. While parties may contractually allocate risk and include price adjustment, renegotiation, or hardship clauses, such provisions do not exclude the court's discretion to intervene where the statutory conditions are met.

Claims based on Article 171(2) are inherently fact specific, and unsuccessful reliance may expose a party to liability for delay, nonperformance, or breach. Early assessment of contractual risk allocation, evidentiary support, and strategic alignment with force majeure and MAC provisions is critical.

MAC Clauses

MAC clauses are most commonly included in project agreements, share purchase agreements, financing documents, and joint venture arrangements. These clauses are typically intended to allocate risk where unforeseen events materially undermine the commercial assumptions underlying the transaction.

In the context of heightened regional geopolitical tension, parties may seek to invoke MAC clauses based on war, hostilities, sanctions, supply-chain disruption, or governmental measures. However, much like force majeure, MAC clauses are not automatically triggered by such events. Causation is critical. The courts will examine whether the alleged change has materially undermined the contractual bargain itself, rather than merely impacting profitability or convenience.

Unlike force majeure, Qatari law does not recognize MAC as a stand-alone statutory concept. Accordingly, whether a party may rely on a MAC clause depends primarily on contractual interpretation subject to mandatory provisions of the Qatar Civil Code and general principles of good faith. Accordingly, a MAC clause does not remove the court's discretion to assess fairness, causation, and proportionality under mandatory law.

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In assessing a MAC claim, the Qatari courts will focus first and foremost on the express wording agreed by the parties, including, in particular:

The definition of what constitutes a MAC and any applicable materiality thresholds;

Whether the clause relates to the contract, the counterparty, the project, or the wider market;

Agreed notice requirements; and

The contractual consequences of a MAC, including termination, suspension, or renegotiation.

Given the consequences of invoking a MAC clause, parties should exercise considerable caution before relying on such provisions as a basis for suspending performance or terminating a contract. An unjustified reliance on a MAC clause may expose a party to claims for wrongful termination and damages under Qatari law.

CONCLUSION

Early legal assessment and strategic coordination across contractual, statutory, and commercial considerations are essential for parties seeking to protect their interests in an environment defined by uncertainty and heightened risks. Whether a party can successfully invoke force majeure, hardship, a MAC clause, or look to its insurance policy for protection will depend on the wording of the contract, strict compliance with procedural and substantive requirements, and the ability to demonstrate its claims.

A recurring theme across all these regimes is that labels alone are insufficient. Parties must look beyond generic references to “war” or “hostilities” (for example) and focus instead on identifying the specific factual and legal cause of delay, disruption, or loss. That is particularly so where the true impediment arises from governmental or regulatory measures implemented in response to geopolitical events.

At all events, businesses operating in the Gulf region are encouraged to review applicable insurance policies to ensure cover is aligned with contractual risk allocations.

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