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# FORCE MAJEURE IN UAE REAL ESTATE: WHERE THE LAW ACTUALLY DRAWS THE LINE

*Most force majeure claims in UAE property disputes fail. Understanding why — and what it genuinely takes to succeed — is what separates a credible legal position from an expensive mistake.*

## 1. A STATUTORY RIGHT, NOT JUST A CONTRACTUAL ONE

Unlike common law systems where force majeure exists only if the contract expressly provides for it, UAE law treats it as a statutory doctrine. Article 273 of Federal Law No. 5 of 1985 on the Civil Transactions Law (the “**Civil Code**”) provides that where a supervening event renders performance of a contractual obligation absolutely impossible, the obligation is extinguished and the contract terminates automatically. A party whose contract is governed by UAE law can invoke this Article even without an express force majeure clause. Federal Law No. 25 of 2025, which will replace the Civil Code when it enters into force on 1 June 2026, carries the same principle forward under Article 236.

The Civil Code also contains a separate hardship provision under Article 249 (Article 224 under the new law), which applies where performance remains possible but has become excessively burdensome due to an exceptional, unforeseen event of a public nature. This provision does not entail termination of the contract. It empowers the court to adjust obligations to a fair level at the request of either party, and provides expressly that any agreement to the contrary shall be deemed null and void. The distinction between termination and adjustment is one that parties frequently overlook, often to their detriment. Both provisions apply to onshore real estate transactions in the UAE unless the legislature enacts special legislation to address particular market conditions. In all cases, careful consideration must be given to the contractual provisions and their interplay with the applicable law both at the time of the event and at the time any claim is advanced. Parties contracting under the DIFC or ADGM regimes should note that those jurisdictions operate under separate contract law frameworks in which force majeure has no independent statutory existence and arises only to the extent the contract itself provides for it.





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## 2. THREE CONDITIONS, ALL REQUIRED

To establish a valid force majeure, claim under UAE law, a party must satisfy three cumulative conditions: the event was unforeseeable at the time of contracting, it was beyond the party's control and could not have been mitigated, and it rendered performance absolutely impossible. Not merely harder. Not more expensive. Not commercially undesirable. Absolutely impossible. UAE courts apply that standard strictly, and any claim that falls short of it, however sympathetic the factual background, will fail.

***Commercial inconvenience is not legal impossibility. Most force majeure claims in UAE real estate disputes collapse at precisely this point.***



## 3. LEASES: THE DISTINCTION THAT MATTERS

In lease disputes, the critical question is who is absolutely unable to perform its contractual obligation as a direct result of the event being relied upon. Before reaching that question, however, parties and their advisers should address a threshold issue that is frequently overlooked: whether the event in question qualifies as force majeure within the meaning of the law, or whether it is more accurately characterised under the civilian doctrine of “The Extraneous Cause” which is analytically distinct and carries different consequences.

“The Extraneous Cause” refers to an external cause that breaks the causal link between a party's non-performance and any fault attributable to it. This encompasses acts of third parties, acts of God, and, critically in the current environment, decisions or measures taken by foreign states, international bodies, or parties entirely outside the contract that directly prevent performance. Where a third party's act makes a counterparty's obligation impossible to perform, the obligor may be relieved of liability not because force majeure under Article 273 is strictly established, but because the causal chain connecting its failure to perform to any breach is interrupted. The practical consequence is significant: the extraneous cause doctrine may displace liability even where the event does not satisfy



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the full statutory force majeure threshold, and the remedy available will differ accordingly. Parties should therefore consider both doctrines before framing their legal position.

Where a force majeure event prevents the landlord from making the property available, whether through destruction, physical inaccessibility, or a government prohibition on occupation, the tenant's rent obligation is suspended for that period. A party cannot enforce an obligation against the other where it is itself unable to perform its reciprocal obligation. Where the impossibility persists beyond a temporary period such that performance becomes permanently unattainable, UAE law permits termination of the contract rather than mere suspension; the duration and permanence of the impediment are factors courts treat as decisive in that determination.

Where the property remains available but the tenant cannot operate its business because of an external event, the rent obligation generally survives, and one cannot lawfully allege force majeure in an attempt to evade payment. The burden of proof lies with the party making that allegation. If anything, a claim under the hardship provision may be available instead, provided its conditions are met. The COVID-19 period illustrated this clearly: UAE courts consistently preferred adjusting lease terms under Article 249 rather than terminating them under Article 273, because performance remained possible even where it had become commercially onerous. That judicial preference for preservation over termination continues to define how these disputes are resolved and, unless special legislation is enacted, one may expect the same approach before the onshore courts.



#### 4. OFF-PLAN SALES AND DEVELOPER CONTRACTS

For developers, a government order or regulatory measure that physically prevents delivery may engage force majeure. A temporary suspension of construction works as a direct result of a qualifying event, one that could not have been foreseen or mitigated, will suspend the developer's delivery obligation for the duration of that impediment, but will not extinguish it. Where only part of a project is affected, only that portion of the obligation is discharged. Buyers should scrutinize developer-standard force majeure clauses carefully and assess their enforceability against the statutory



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framework governing force majeure, hardship, and the extraneous cause doctrine under the Civil Code. Provisions that allow broad timeline extensions without compensation, or that treat permitting delays and supply chain disruptions as qualifying force majeure events, stretch the doctrine well beyond what UAE law actually provides.

## 5. WHAT PARTIES SHOULD DO

When drafting, force majeure clauses should define qualifying events precisely, set out clear notice requirements, and specify whether obligations are suspended or terminated and on what terms.

When invoking the doctrine, parties should review their contracts carefully and seek legal advice to assess whether they can rightfully rely on force majeure and, if so, what the legal consequences are under both the contract and the applicable statutory framework. If the position supports a claim, parties should act promptly: delay in giving notice and continued performance after an alleged force majeure event are both treated by courts as evidence that performance was never truly impossible. When resisting a claim, the focus should be on the impossibility condition and the direct causal link between the alleged event and the specific contractual obligation said to be affected, because that is where most claims are most vulnerable.

Above all, approach these disputes with realistic expectations. UAE courts favour adjustment over termination. A negotiated recalibration of obligations, reached before litigation becomes necessary, will almost always serve the client's interests better than a force majeure defence taken to its conclusion.

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### CO-AUTHORS:



**Haytham Alieh**  
Partner  
[haytham.alieh@blkpartners.com](mailto:haytham.alieh@blkpartners.com)



**Haya Alieh**  
Trainee Associate  
[haya.alieh@blkpartners.com](mailto:haya.alieh@blkpartners.com)

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