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THE ONGOING CONFLICT IN THE MIDDLE EAST AND ITS EFFECTS ON CONSTRUCTION PROJECTS IN THE UAE

The ongoing conflict in the Middle East, and particularly the closure of the Strait of Hormuz, has set in train a cascade of events that may impede, delay, or prevent performance of many construction contracts across the region. The UAE is proactively monitoring and managing the situation though an element of uncertainty will remain until the hostilities cease.

Construction projects may face pressure from many directions: shortages of materials, potential shortages of staff and labour, increase in prices, and other legislative and administrative actions, to give only a few examples.

Many projects may experience difficulties that may not have been caused by the parties to the contract, where finding relief through either contract or law will be necessary to alleviate financial pressures.

We consider some of the main types of relief from performance under the FIDIC contract suite (given its prevalence in both the United Arab Emirates (the “UAE”), as well as relief under the Federal Law No. 5 of 1985 (the “UAE Civil Code”).¹ Specifically, we will review the following options available to parties:

- i. Variations or amendments to contracts;
- ii. Force majeure;
- iii. Extensions of time;
- iv. Hardship and other remedies; and,
- v. Termination.



¹ Federal Law No. 25 of 2025 enters into force on 1 June 2026, replacing the existing UAE Civil Code. This article does not examine the new civil code, and care must be taken when reviewing contracts after this date.



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Construction projects in the Middle East often deploy the vast suite of FIDIC contracts (the particular type of which depending on the nature of the project); however, we most commonly see the Fourth Edition of the Conditions of Contract for Works of Civil Engineering Construction 1987 (“**FIDIC 1987**”) and the FIDIC Red and Yellow Book contracts of 1999 and 2017.

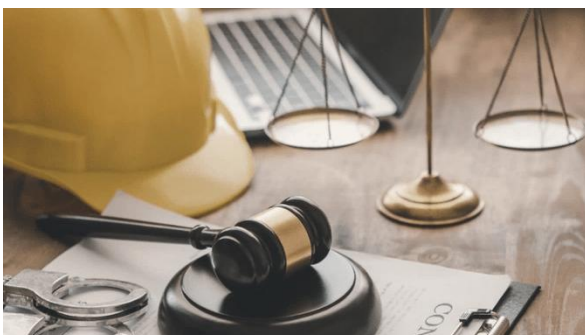
We will look at the ongoing conflict and its effects through the lens of the standard forms of these contracts but note that in practice, many contracts contain amendments that alter the operation of the relevant clauses.

I. Variations or amendments to contracts

The effects of the conflict are likely to continue to prevent or inhibit performance of contractual obligations in the immediate future. In general terms, negotiation between the parties is likely to produce the best commercial outcome that mitigates legal risks for both parties – though this may not always be readily achievable where the relationship is already strained. Before convening any meetings and heading for the negotiation table, parties should consider the non-exhaustive list below as part of its preparations:

- i. What contractual obligations or aspects of performance are being affected, hindered, or prevented entirely by the ongoing conflict?
- ii. Are the effects being documented in accordance with any obligations under the contract?
- iii. What mitigation measures are available to reduce the harm or loss being suffered? Have these already been deployed to the maximum extent possible?
- iv. Are all stakeholders affected (e.g. owners, engineers, subcontractors, or suppliers) and should they be involved in any discussions?
- v. What are the continuing effects of the conflict based on the current situation? What effects are likely if the conflict worsens?

Failing to assess and plan is preparing to fail. Ensuring you properly understand both your position and your rights and obligations under the contract and at law will enable you to work effectively with the relevant stakeholders to achieve an agreeable and workable outcome. Whether variations or amendments to the contracts are enacted through the existing contractual mechanism or a separate agreement will likely depend on the nature of the changes being executed.





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A. Variations or amendments to the contract under the FIDIC suite

Under the FIDIC 1987 and the Red and Yellow Book 1999 contracts, the right to vary the contract is set out in Sub-Clauses 55.1 and 13.1 respectively and resides with the engineer rather than the contractor. It is important to note that the Engineer does not have the authority to amend the contract and requires direct authorisation to do so from the employer. In practice and considering the specific issues arising from the ongoing conflict, variations are only likely to be instructed following discussion between the employer and contractor. This is why we commonly see major variations and amendments made in separate, ancillary agreements to the main contract.

B. Variations or amendments to the contract under UAE law

Under UAE law, Article 257 the UAE Civil Code embodies the Latin principle of *pacta sunt servanda*, namely the principle that the parties are free to agree on the terms of the contract, so long as the mandatory provisions of the UAE Civil Code are complied with. Consistent with this principle, the parties are therefore able to agree amendments to their contract, so long as these are made with mutual consent.

The general requirements for the formation of an ordinary contract are set out in Article 125 of the UAE Civil Code. Provided there is agreement between the parties (i.e. personnel authorised to act under the contract) as to the terms, an oral variation or amendment is likely to be enforceable.

Many construction contracts contain no oral modification clauses, which are therefore enforceable. To ensure enforceability and avoid unnecessary evidentiary issues, any variation or amendment to the contract should therefore be in writing and contain detailed particulars as to the scope and effect of the agreement.

Best practice dictates that parties ensure that any variations or amendments to the contract are captured in writing and set out in a separate agreement to later avoid unnecessary disputes.





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II. Force Majeure

The potential remedy of force majeure is the topical question on the mind of everyone involved in the construction industry. Does the closure of the Strait of Hormuz constitute a force majeure event? What about the wider bombardment of the UAE with various projectiles? What if the UAE deems it necessary to act upon its right to defend itself?

The answer to these questions lies – as it always does – with a careful and detailed review of the relevant contract.

A. Force Majeure under the FIDIC suite

The FIDIC 1987 contract does not expressly address force majeure. It does however, set out a list of “Employer’s Risks” at Sub-Clause 20.4. Given these largely overlap with the listed examples of “exceptional events or circumstances” of the FIDIC 1999 and 2017 contracts, we address these only in the context of the FIDIC 1999 and 2017 contracts.

Clause 19 of the FIDIC Red and Yellow Books 1999 and 2017 defines “Force Majeure”. The definition is expressed in general terms and illustrated by a non-exhaustive (and, importantly, non-limiting) series of examples. Force Majeure occurs where four criteria are satisfied:

- i. An “exceptional event or circumstance” beyond the affected party’s control must have occurred;
- ii. The event must be of such a nature that the affected party could not reasonably have provided against it before entering into the contract;
- iii. The party relying on the event as relieving it from performance could not reasonably have avoided or overcome the event or circumstance once it arose; and
- iv. The event or circumstance is not substantially the result of an act or omission by the counterparty.



Assuming that there are one or more events of Force Majeure, the contractor must show that it “is or will” thereby be “prevented” from performing “any” of its obligations (and notify that fact to the employer within 14 days of becoming aware of the problem).



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Most notably, the exceptional events or circumstances listed as examples include:

“(i) war, hostilities (whether war be declared or not)... act of foreign enemies.

(ii) ...terrorism...

...

(iv) Munitions of war, explosive materials.”

An important question and potential pitfall arise in the current situation, as to whether the events experienced to date would trigger any or all of these exceptional events or circumstances. Those seeking to claim Force Majeure should keep in mind that the answer to this question will depend on a variety of factors, including:

- i. The exact cause of the impediment to performance – what exactly was the event that prevented performance?
- ii. The extent to which performance was impeded – was it a specific obligation or a mixture? Could the impediment have been mitigated or overcome?
- iii. Has the requisite notice under the contract been provided – are there ongoing notice requirements?
- iv. Supporting evidence – the party invoking Force Majeure carries the burden of proof. Are detailed records being maintained?



The appropriate relief to a claim for Force Majeure will depend on the nature of the exceptional event or circumstances. Article 19.4 provides for an extension of time pursuant to Sub-Clause 8.4 (which is discussed below) and additional payment of Costs (as defined in the contract). Article 19.6 provides a mechanism for optional termination where Force Majeure has prevented *“substantially all the Works in progress”* for a continuous period of 84 days.



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B. Force Majeure under UAE law

Further to the principle of *pacta sunt servanda* pursuant to Article 257 of the UAE Civil Code set out above, force majeure clauses (such as those found in the FIDIC suite) allocating risk to a particular party are generally enforceable under UAE law and will likely be the starting point. The UAE Civil Code also addresses force majeure in Article 273:

“(1) In contracts binding on both parties, if force majeure supervenes which makes the performance of the obligation impossible, the corresponding obligation shall cease, and the contract shall be automatically cancelled.

(2) In the case of partial impossibility, that part of the contract, which is impossible shall be extinguished, and the same shall apply to temporary impossibility in continuing contracts, and in those two cases it shall be permissible for the obligee to cancel the contract provided that the obligor is so aware.”

The consequences of invoking force majeure under UAE law are potentially far more severe, resulting in the cancellation of the contract. Those seeking to make a claim of force majeure should consider whether performance is truly impossible in the circumstances, and whether this should result in part or the entire contract being extinguished or cancelled, respectively. Careful and thorough review of the specific wording of individual contracts in the context of the specific event/s being claimed is necessary to ensure the most appropriate claim is properly made.

III. Extensions of time

Where invoking force majeure is not available or appropriate, contractors may alternatively claim an extension of time (“EOT”). The starting point for determining entitlement to an EOT is always the wording of the contract; however, there are several important points to keep in mind: (1) the events giving entitlement to a potential extension of time are likely to be different to those applicable to force majeure; (2) it may be easier to claim an EOT than force majeure (in particular, an extension of time claim may not require the contractor to have been prevented from performing its obligations); and (3) the consequence of asserting force majeure and making an extension of time claim may in practice be the same (i.e. an extension of time for the contractor).





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A. EOTs under the C suite

Sub-Clause 44.1(e) of the FIDIC 1987 contract provides that in the event of:

“other special circumstances which may occur, other than through a default of or breach of contract by the Contractor for which he is responsible, than the Engineer shall issue an EOT after due consultation with the Employer and Contractor.” (emphasis added)

The term “other special circumstances” is not defined within the FIDIC 1987 contract and so affords a certain amount of discretion to the Engineer. However, it is likely that effects stemming from the ongoing conflict and the closure of the Strait of Hormuz (e.g. the delivery of essential materials) would constitute special circumstances. Provided all other obligations are complied with under the FIDIC 1987 contract, contractors may be entitled to relief in the form of an EOT.

Unfortunately, this catch-all provision identifying circumstances where the contractor was not at fault was not included within the FIDIC Red and Yellow Books of 1999 and 2017 contracts. Sub-Clause 8.4 sets out five causes upon which an EOT will be awarded to the contractor. Sub-Clause 8.5 provides that when delays are caused to the project by Authorities (as defined in the contract), than an EOT will be awarded. Only Sub-Clause 8.4(b) is potentially available to contractors based on the current state of the ongoing conflict and closure of the Strait of Hormuz. However, this provision still requires identification of an entitlement arising pursuant to another Sub-Clause of the contract. As of the publishing of this article, there are no mandatory directions that have been issued by the various UAE governmental entities in respect of the conflict and therefore, it may be difficult to argue entitlement to an EOT pursuant to Sub-Clause 8.5.



B. EOTs under UAE law

As was the case with force majeure, EOT clauses (such as those found in the FIDIC suite) are also generally enforceable under UAE law. This is particularly important given the UAE Civil Code does not



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include a provision for the award of an EOT *per se*, that arise so often in construction contracts.² Contractors should also bear in mind the general approach to EOTs with respect to concurrent delay, as the usual practice of the UAE courts is to try to apportion the delays between the parties.

IV. Hardship and other remedies available under UAE law

Separate to the concept of force majeure under UAE law, the concept of hardship as set out in Article 249 of the UAE Civil Code is also relevant to the current circumstances as a potential alternative:

“If exceptional circumstances of a public nature which could not have been foreseen occur as a result of which the performance of the contractual obligation, even if not impossible, becomes oppressive for the obligor so as to threaten him with grave loss, it shall be permissible for the judge, in accordance with the circumstances and after weighing up the interests of each party, to reduce the oppressive obligation to a reasonable level if justice so requires, and any agreement to the contrary shall be void.”

The concept of hardship has a number of nuances that distinguish its operation from force majeure under UAE law:

- i. Hardship concerns “exceptional circumstances” that render the performance of an obligation oppressive, whereas force majeure concerns the impossibility of performance;
- ii. The extent of the exceptional circumstances is that it threatens a party with “grave loss”; and,
- iii. The final wording of Article 249 indicates that the operation of the concept of hardship may be mandatory and of a public nature, meaning that parties cannot contract out of this provision. The operation of Article 249 and its principles as set out above should be carefully considered against increase in price clauses, such as Sub-Clause 13.8 of the FIDIC 1999 and 2017 contracts, and the price escalation mechanism in Article 878 of the UAE Civil Code.



² Note however, that a judge can extend the time for performance to a specified time pursuant to Article 272(2) of the UAE Civil Code.



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Parties seeking to make a claim for hardship should be aware that only a “judge” can make the relevant adjustment (assuming the conditions have been met). Where a contract provides for arbitration, then this scope is likely to fall to an arbitrator (assuming any preconditions for arbitration have been satisfied). Issues of timing are likely to come into play (and be of great importance) where the construction project is still live.

Additionally, further relief may also be available pursuant to Article 287 of the UAE Civil Code:

*“If a person proves that the loss arose out of an extraneous cause in which he played no part such as a natural disaster, unavoidable accident, force majeure, **act of a third party**, or act of the person suffering loss, he shall not be bound to make it good in the absence of a legal provision or agreement to the contrary.”* (emphasis added)

The interplay between this provision and the particulars of any contract require careful and professional review. Parties seeking to rely on any of those provisions should seek detailed legal advice prior to doing so.

V. Termination

We touched on the issue of terminating the contract in the context of a force majeure event under the FIDIC contracts, as well as under provisions of the UAE Civil Code. Parties should be acutely aware of the risks of terminating the contract and in particular, the risks of failing to terminate the contract in accordance with the relevant obligations.

While the common law concept of repudiation is not recognised under UAE law, there are relevant provisions of the UAE Civil Code that deals with circumstances where a party fails to fulfil its agreed obligations under the contract.

A. Termination/repudiation under the FIDIC suite

The FIDIC Red and Yellow Books 1999 and 2017 contain several grounds for termination that may become available as a consequence of the ongoing conflict and closure of the Strait of Hormuz. These include termination where the contractor:

- (i) **Article 15.2(b)** – *“abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract”;*
- (ii) **Article 15.2(c)** – *“without reasonable excuse fails (i) to proceed with the Works in accordance with Clause 8 [Commencement, Delays and Suspension], or (ii) to comply with a notice issued under Sub-Clause 7.5 [Rejection] or Sub-Clause 7.6 [Remedial Work], within 28 days after receiving it”;* and,
- (iii) **Article 15.2(e)** – *“becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business*



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under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events”.

A party that is contemplating termination under the contract should:

- i. Consider its available rights as soon as they arise. A contractual right to terminate may (like a right to accept repudiation under common law) be lost if there is a delay in asserting that right; and,
- ii. Examine the contract in detail to ascertain what notices are required and if there are any conditions precedent to exercising a termination right. For example, is the innocent party obliged to give its counterpart an opportunity to cure a breach?

The overarching and fundamental obligations to act in good faith (for example, pursuant to Article 246 of the UAE Civil Code) and not abuse their right as per Article 106 of the UAE Civil Code must be borne in mind at all times, by all parties to the contract, with respect to their conduct and dealings.

B. Termination/cancellation under UAE law

Separate to termination as a matter of contract, Article 272 of the UAE Civil Code does provide recourse to a party where the other party fails to comply with its obligations:

“(1) In contracts binding on both parties, if one of the parties does not do what he is obliged to do under the contract, the other party may, after giving notice to the obligor, require that the contract be performed or cancelled.

(2) The judge may order the obligor to perform the contract forthwith or may defer (performance) to a specified time, and he may also order that the contract be cancelled and compensation paid in any case if appropriate.”

If a contractor incorrectly invokes a contractual force majeure right, or incorrectly asserts that performance of a contract has become impossible, it may have in practice indicated an intention not to carry out its obligations under the contract, thereby giving the employer a right to seek an order from the court for cancellation of the contract under Article 272 of the Civil Code.





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VI. Moving forward and managing your risk in the current situation

The resolution of the conflict and the reopening of the Strait of Hormuz are likely to be critical to the success and continuation of many construction projects in the UAE. Parties should carefully consider their current position and the future effects to ensure appropriate action is taken. There are a wide range of contractual and legal remedies that may be available to parties, but the most effective remedies will depend on the particular wording of individual contracts.

The specialist construction team at BLK Partners remains available to assist with all situations and can be reached at the emails below.



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