Managing Crisis-Related Disruption in UAE Construction Contracts

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Overview

Armed conflict and regional hostilities can affect UAE construction projects in ways that go well beyond ordinary delay events. Disruption may arise through sovereign sanctions regimes, export prohibitions, site access restrictions, airspace restrictions, supply chain breakdown, banking constraints, security risks, insurance withdrawal and severe cost escalation. The legal consequences of such disruption are not determined simply by the existence of crisis, but by how the event is characterised under the contract and under the mandatory provisions of UAE law.

Many construction projects in the UAE are governed by contracts are based on amended versions of the FIDIC standard forms, including the 1999, and 2017 editions of Red Book. In such contracts, the starting point for analysis is typically Clause 18 (Exceptional Events), Clause 13.6 (Change in Laws) and Clause 20 (Claims procedure). However, contractual force majeure provisions operate within a mandatory statutory framework under Federal Law No. 5/1985 (UAE Civil Code), namely article 273 of Federal Law No. 5/1985 (supervening impossibility), article 249 of Federal Law No. 5/1985 (exceptional circumstances / hardship) and article 246 of Federal Law No. 5/1985 (good faith) are regarded as the provisions that cannot be excluded by agreement and may alter or override contractual risk allocation where their thresholds are satisfied.

In practice, crisis-related construction disputes in the UAE turn on classification. The decisive questions are whether performance has become objectively impossible within the meaning of article 273; whether the circumstances instead amount to hardship under article 249; whether contractual notice requirements have been properly observed; and whether termination or bond enforcement decisions expose the client to greater risk than continued performance. The analysis must be precise, evidence-based and strategically sequenced.

Contractual Relief Mechanisms in Construction Contracts in the event of Force Majeure Events

Project participants should review their contractual position carefully and identify the mechanisms through which relief may arise. Construction contracts in the UAE vary considerably in their treatment of war-related risks depending on the procurement model and the contractual form adopted. While many projects are based on amended versions of the FIDIC standard forms, different editions and books may apply, including the Red Book, Yellow Book, and EPC/Turnkey (Silver Book) forms.

Accordingly, parties should first identify which contractual framework governs the project and examines the specific provisions dealing with force majeure, exceptional events, risk allocation, and claims procedures. Although the precise clause numbering and terminology may differ between the various FIDIC forms and bespoke contracts, war-related disruption typically engages three principal contractual regimes.

FIDIC 2017 Red Book

Where a construction contract is based on the FIDIC 2017 Red Book, relief for crisis-related events is ordinarily analysed under Clause 18. Clause 18.1 defines an “Exceptional Event” as one that is beyond a Party’s control, could not reasonably have been provided against before entering into the Contract, could not reasonably have been avoided or overcome once it arose, and is not substantially attributable to the other Party. War, hostilities and certain acts of government are expressly included within this definition. The inclusion of war in the list, however, does not automatically entitle a contractor to relief. The critical issue for determination is whether the event actually prevented performance. Court/ Tribunals generally interpret prevention strictly; increased cost, reduced efficiency or commercial inconvenience will not suffice.

Where performance is prevented by an Exceptional Event, the affected Party must give notice under Clause 18.2. The consequences of the Exceptional Event, including potential entitlement to an extension of time and, in certain circumstances, Cost, are addressed in Clause 18.4. In practice, entitlement to time is more common than entitlement to cost, particularly where the Particular Conditions have narrowed recovery.

Contractors may also seek to characterise sanctions measures or regulatory prohibitions as Changes in Law under Clause 13.6, which may provide entitlement to both time and cost adjustments depending on the nature of the legal measure and the drafting of the contract. The distinction between Clause 18 and Clause 13.6 is therefore strategically significant and must be analysed carefully against the specific wording of the contract.

Relief under Clause 18 is also conditional upon compliance with the contractual claims procedure under Clause 20. Clause 20.2.1 requires the claiming Party to give notice of claim, or ought reasonably to have become aware, of the relevant event or circumstance. In wartime disputes, disagreement frequently arises as to whether the relevant trigger date is the outbreak of hostilities, the introduction of sanctions, or the point at which performance was actually prevented. Escalating sanctions regimes may also raise the question of whether multiple notices are required where the legal or practical impediment evolves over time. While article 246 of Federal Law No. 5/1985 imposes a duty of good faith that may inform a court / tribunal’s assessment of procedural conduct, practitioners should assume that notice compliance will be closely scrutinised.

Clause 18.5 permits termination where prevention continues for prolonged periods, typically 84 consecutive days or multiple periods totaling 140 days, subject to amendment in the Particular Conditions. Termination in such circumstances may entitle the contractor to payment for work executed and certain demobilisation costs. However, invocation of termination carries substantial risk. If the contractual threshold of prevention is not clearly satisfied, termination may itself constitute a repudiatory breach. Any decision to terminate must therefore be assessed carefully not only under the contract but also under the applicable provisions of the UAE Civil Code.

FIDIC Silver Book

The *Conditions of Contract for EPC/Turnkey Projects, First Edition 1999* (the "FIDIC Silver Book") provides that a regional conflict event may engage several distinct contractual regimes depending on the nature of the disruption affecting the project. Under the Silver Book, such events are typically analysed through three principal frameworks: the force majeure provisions, the contractual allocation of employer's risks relating to loss or damage to the works, and the consequences of prolonged prevention or impossibility of performance.

Under Clause 19 of the FIDIC Silver Book, war-related events are addressed through the force majeure regime. Clause 19.1 defines force majeure as an exceptional event or circumstance that is beyond the control of the parties, could not reasonably have been foreseen at the time of contracting, could not reasonably have been avoided or overcome, and is not substantially attributable to the other party. War, hostilities, rebellion, terrorism and riot are expressly identified as potential force majeure events. Where these conditions are satisfied and performance is prevented, the contractor may be entitled to an extension of time and, in certain circumstances, recovery of additional cost depending on the nature of the event. Entitlement is conditional upon compliance with the contractual notice regime, including the requirement to give notice of force majeure within the period prescribed under Clause 19.2 and to pursue the claim through the claims procedure under Clause 20.

War-related events may also engage the contractual allocation of risk relating to loss or damage to the works. Under the FIDIC Silver Book, Clause 17.3 allocates certain categories of events, including war, hostilities, rebellion, riot and munitions of war, as Employer's Risks. Where such events cause physical loss or damage to the works, plant or materials, Clause 17.4 entitles the contractor to recover the cost of rectification together with an extension of time for completion. This regime operates independently of the force majeure provisions and does not require the contractor to establish the foreseeability element contained in the force majeure definition.

A further category arises where conflict-related events render performance objectively impossible or fundamentally alter the contractual basis of the project. In extreme situations, such as destruction of the project site or government prohibitions making performance unlawful, the contract may permit termination under the prolonged prevention provisions of Clause 19.7. The threshold for invoking this mechanism is high, and premature reliance on impossibility may expose the terminating party to allegations of repudiatory breach. Where termination is justified, recovery is generally limited to payment for work performed and costs incurred up to the date of termination.

Parties should therefore review the specific wording of their contract carefully to determine the scope of available relief.

UAE Legal Framework

Contractual force majeure provisions in construction contracts governed by UAE law operate within the broader and mandatory framework of the UAE Civil Code (Federal Law No. 5 of 1985, as amended). Regardless of how extensively risk is allocated under FIDIC or bespoke drafting, articles 273, 249 and 246 may alter or override the contractual position where their statutory thresholds are met. In construction disputes arising from crisis-related events, these provisions are frequently decisive. These statutory doctrines operate as mandatory rules of UAE law and may be invoked by courts or arbitral tribunals even where the contract contains detailed force majeure provisions or allocates risk differently.

Article 273 – Supervening Impossibility in Construction Contracts

Article 273(1) of Federal Law No. 5/1985 provides:

"In contracts binding upon both parties, if a force majeure supervenes which makes performance of the obligation impossible, the corresponding obligation shall cease, and the contract shall be automatically cancelled."

Article 273(2) of Federal Law No. 5/1985 further recognises partial and temporary impossibility, providing for proportional extinction or suspension of obligations and permitting cancellation where temporary impossibility defeats contractual purpose.

(a) Identifying the Relevant Construction Obligation

In construction disputes, the first step is to identify which obligation is said to have become impossible. Article 273 does not operate abstractly; it extinguishes specific obligations that have become objectively impossible.

Typical construction obligations potentially affected by war may include:

- The contractor's obligation to complete the Works by the Time for Completion;
- The obligation to proceed with due expedition and without delay;
- The obligation to procure and incorporate specified plant or materials;
- The obligation to mobilise specialist subcontractors;
- The obligation to access and work on the Site;
- The employer's obligation to grant possession of the Site or make certified payments.

Impossibility will be assessed against these concrete obligations.

(b) External Cause

The invoking party must establish a supervening external cause. War, sovereign sanctions regimes, export prohibitions, banking restrictions and government-mandated site closures may qualify, provided they originate outside the obligor's sphere of risk.

However, article 273 does not relieve a contractor from risks it has contractually assumed. If the contract allocates procurement and supply chain risk to the contractor, the tribunal will scrutinise whether the disruption is truly external or falls within assumed commercial risk. Supplier insolvency, internal cash flow problems or loss of profitability will not ordinarily qualify as force majeure.

UAE jurisprudence generally requires the event relied upon to be external to the obligor, unforeseeable at the time of contracting, and unavoidable despite reasonable efforts to overcome its consequences. The party invoking article 273 must therefore demonstrate that the event fell outside the normal spectrum of commercial risks assumed under the contract.

(c) Objective Impossibility

The threshold under article 273 is high. Performance must be objectively impossible — legally or physically — not merely more onerous or commercially unattractive.

In construction, objective impossibility most commonly arises in two situations:

Legal impossibility – where sanctions prohibit payment to a designated subcontractor, prevent import of specified materials, or render performance unlawful under applicable regulations.

Physical impossibility – where the Site is lawfully closed by government order, borders are sealed preventing access, or the Works are physically destroyed by hostilities.

By contrast, even extreme escalation in steel, cement, fuel or specialist equipment pricing will not ordinarily constitute impossibility if the Works can still legally and physically proceed. Such circumstances may engage hardship under article 249, but not extinction under article 273.

The burden of proving the existence of force majeure and its causal impact on performance rests on the party invoking article 273. In construction disputes, tribunals will typically require contemporaneous evidence demonstrating that the alleged event directly prevented performance, including government directives, sanctions regulations, correspondence with suppliers, programme analysis and project records.

(d) Causation and Critical Path Impact

Under UAE law, a causal link must exist between the force majeure event and the failure to perform the contractual obligation. In construction disputes, this causation analysis is typically undertaken by reference to the project programme. The contractor must demonstrate that the war-related event directly prevented performance of obligations lying on the critical path.

It is insufficient to show that disruption occurred somewhere in the supply chain. The tribunal will examine:

- Whether the affected activity was critical to completion;
- Whether float was available;
- Whether alternative sequencing could have avoided delay;
- Whether substitute materials or subcontractors were reasonably available.

If the contractor was already in culpable delay prior to the war-related event, it may be difficult to establish that impossibility — rather than pre-existing default — caused non-completion. Article 273 cannot be invoked where impossibility is attributable to the obligor's fault.

(e) Partial and Temporary Impossibility

Article 273(2) recognises partial and temporary impossibility. In construction contracts, temporary prevention — such as short-term site closure or temporary sanctions-related shipping delay — will typically suspend obligations rather than extinguish them.

During suspension:

- The contractor's obligation to proceed may be paused;
- Delay liquidated damages should not accrue for the period of objective prevention;
- Performance must resume once the impediment ceases.

If temporary impossibility persists to the extent that the contractual purpose — delivery of the completed facility — is defeated, cancellation may be justified. However, termination based on article 273(2) requires careful factual assessment and carries substantial risk if misjudged.

(f) Legal Consequences in Construction Disputes

Where article 273 applies:

- The relevant obligation is extinguished automatically by operation of law;
- Liability for delay liquidated damages during the period of objective impossibility should cease;
- Accrued rights, including payment for certified works executed prior to impossibility, remain enforceable.

Article 273 does not automatically entitle the contractor to additional cost recovery. Cost consequences must be assessed under the contract or, where appropriate, under article 249. Accordingly, article 273 primarily operates as a defense to liability for non-performance rather than as an automatic basis for financial recovery.

Article 249 – Exceptional Circumstances (Hardship) in Construction

The distinction between article 273 and article 249 is fundamental under UAE law. Article 273 applies where performance has become objectively impossible, resulting in the extinction of the obligation and potential termination of the contract. Article 249, by contrast, applies where performance remains possible but has become excessively onerous due to exceptional circumstances of a public nature. Where performance remains legally and physically possible but has become excessively onerous, article 249 may apply.

Article 249 of Federal Law No. 5/1985 provides:

"If exceptional circumstances of a public nature which could not have been foreseen occur, and the occurrence of such circumstances results in making the performance of the contractual obligation, though not impossible, oppressive to the debtor so as to threaten him with grave loss, the judge may... reduce the oppressive obligation to a reasonable level."

The elements are cumulative and strictly applied.

(a) Exceptional Public Event

War and widespread sanctions may qualify as exceptional circumstances of a public nature, particularly where they affect the construction sector broadly. The event must transcend the contractor's internal business difficulties and impact the market or industry at large. Events affecting only the internal financial position of the contractor will not satisfy this requirement.

(b) Unforeseeability at Contract Formation

Foreseeability is assessed at the time of contract execution. In construction projects entered into during known periods of geopolitical instability, arguments of unforeseeability may face resistance. The tribunal will consider whether the risk of escalation, sanctions expansion or regional instability was reasonably foreseeable at that time.

(c) Grave Loss in Construction Context

The grave loss threshold is demanding. The contractor must demonstrate that performance of the remaining works would cause serious and abnormal financial harm, not merely reduce profit margin.

In practice, this requires:

- Detailed financial modelling;
- Comparison between original tender assumptions and actual cost impact;
- Evidence that escalation exceeds normal commercial risk;
- Analysis of contingency allowances and risk pricing.

For example, dramatic escalation in structural steel or MEP component costs caused by sanctions-related supply disruption may potentially qualify — but only if the magnitude of loss threatens the economic viability of performance.

Article 249 is not a mechanism to escape an unprofitable fixed-price contract. The clearer the contractual allocation of price risk, the heavier the evidentiary burden. UAE courts generally require proof that the resulting loss exceeds normal commercial risk and reaches an abnormal level capable of threatening the economic equilibrium of the contract.

(d) Judicial Rebalancing

If article 249 is satisfied, the tribunal does not extinguish the contract. Instead, it may rebalance the obligation to a reasonable level, typically by adjusting price or redistributing burden. The remedy is discretionary and guided by proportionality. The protection afforded by article 249 is generally regarded as a rule of public order under UAE law. Parties cannot contractually exclude the court's authority to rebalance obligations where the statutory conditions for hardship are satisfied. At the same time, hardship cannot arise from the obligor's own conduct. Where the increased burden results from the debtor's fault or from risks expressly assumed under the contract, article 249 will not apply.

Article 246 – Good Faith in Construction Performance

Article 246(1) of Federal Law No. 5/1985 provides:

"The contract must be performed in accordance with its contents and in a manner consistent with the requirements of good faith."

In construction disputes arising from war-related events, good faith informs:

- The contractor's duty to mitigate disruption by exploring alternative suppliers or sequencing;
- The employer's reliance on strict time-bars where prevention is ongoing;
- Decisions to terminate during temporary disruption;
- Calls on performance bonds during periods of genuine impossibility.

Good faith does not override clear contractual allocation lightly, but it operates as a behavioural standard shaping tribunal assessment of conduct in crisis conditions. In practice, courts frequently assess whether the party invoking force majeure or hardship acted diligently and in good faith to mitigate the consequences of the event, including exploring alternative suppliers, resequencing works or engaging constructively with the counterparty to address disruption.

In construction disputes arising from geopolitical crises or regional instability, these three provisions frequently operate together. Article 273 governs situations of objective impossibility, Article 249 addresses exceptional hardship where

performance remains possible but oppressive, and article 246 frames the parties' conduct through the overarching obligation of good faith. Tribunals applying UAE law will therefore analyse contractual force majeure clauses alongside these mandatory statutory doctrines

Duty to Mitigate Loss under UAE Law

In construction disputes governed by UAE law, the principle that a party must take reasonable steps to mitigate the consequences of contractual breach or disruptive events forms an important element of the legal framework governing damages and contractual performance.

Although the UAE Civil Code does not contain a single express provision expressly providing as a "duty to mitigate", the principle arises from the collective interpretation of several provisions of the UAE Civil Code, in particular, article 246, 282, and 386 of Federal Law No. 5/1985.

As specified above in article 246, a contract must be performed in accordance with their contents and in a manner consistent with the requirements of good faith. The obligation of good faith requires contracting parties to act reasonably and responsibly in responding to disruptive events affecting contractual performance. In construction projects, this principle generally requires the affected party to take reasonable steps to limit the consequences of delay or disruption.

Similarly, article 386 of Federal Law No. 5/1985 provides that compensation shall be assessed by reference to the damage actually suffered by the creditor. If an obligor cannot perform an obligation, they must pay compensation for non-performance unless the impossibility was caused by an external event beyond their control. The same rule applies if the obligor fails or delays in performing the obligation. In practice, UAE courts and arbitral tribunals interpret this provision as limiting recoverable damages to those losses that could not reasonably have been avoided.

In the context of construction contracts affected by war-related disruption, mitigation may therefore require the affected party to undertake reasonable measures such as:

- exploring alternative procurement sources where original supply chains have been disrupted;
- resequencing construction activities to reduce delay to critical works;
- identifying technically acceptable substitute materials where permitted by the contract;
- implementing alternative logistical or transportation arrangements where access routes are restricted.

The standard applied by courts and arbitral tribunals is one of commercial reasonableness, rather than strict necessity. A contractor is not required to incur disproportionate cost or undertake measures that fundamentally alter the contractual scope of work. However, failure to adopt reasonable mitigation measures may reduce or defeat claims for delay relief or compensation.

In construction arbitration under UAE law, tribunals frequently examine whether the claiming party acted diligently to minimise the effects of disruption. Evidence such as procurement correspondence, programme revisions, supplier negotiations and project management records may therefore play a decisive role in establishing compliance with the duty of mitigation.

This principle also interacts with the statutory doctrines of impossibility under article 273 and hardship under article 249. Where reasonable mitigation measures were available but not pursued, a tribunal may conclude that performance was not objectively impossible or that the alleged hardship could have been alleviated. Accordingly, mitigation forms an integral part of the legal assessment of disruption.

Delay Analysis in War-Related Construction Disputes

In construction disputes arising from war-related events, legal classification must ultimately be translated into its consequences for time and financial liability. Tribunals typically focus on three interrelated questions: whether the contractor is entitled to an extension of time (EOT), whether liquidated damages (LDs) remain payable, and whether the event affected activities on the project's critical path.

Under standard FIDIC forms and similar construction contracts, war-related events may qualify as contractual force majeure or exceptional events, potentially entitling the contractor to time relief. At the same time, UAE law recognises statutory doctrines such as impossibility under article 273 and hardship under article 249 of the Civil Code. In practice, disputes often require analysis under both the contractual framework and the mandatory statutory regime.

The starting point in delay analysis is causation. The contractor bears the burden of demonstrating that the war-related event directly affected activities lying on the critical path and that completion would otherwise have been achieved by the contractual completion date. Tribunals therefore rely heavily on programme evidence, including baseline schedules, contemporaneous programme updates and expert delay analysis. Disruption occurring outside the critical path will not normally justify time relief or relieve liability for delay.

Where a war-related event qualifies as a contractual force majeure or exceptional event, the contractor may be entitled to an extension of time, thereby suspending exposure to liquidated damages for the relevant period. However, entitlement depends on proof that the event independently delayed completion. If the contractor was already in culpable delay prior to the disruption, or where concurrent delay exists, tribunals may limit or reject entitlement to time relief.

Where the contractor instead relies on article 273 of Federal Law No. 5/1985, the analysis moves beyond excusable delay to objective impossibility. The contractor must establish that completion of the relevant obligation became legally or physically impossible due to the war-related event, for example where sanctions prohibit payment or import of essential materials, or where governmental measures lawfully prevent access to the site. Even in such circumstances, the contractor must demonstrate

that the impossibility affected the critical path of the works. If the impossibility impacts only non-critical activities, liability for delay may still arise.

Temporary disruption must be distinguished from permanent prevention. Under both contractual force majeure mechanisms and article 273(2) of Federal Law No. 5/1985, temporary impossibility generally results in suspension of obligations rather than termination. The key issue becomes whether the duration of the disruption prevents completion within the contractual timeframe or defeats the overall purpose of the contract.

Where performance remains legally and physically possible but has become significantly more expensive due to war-related events, the analysis may shift to hardship under article 249. In such cases the central issue is whether the financial burden associated with completing the works threatens grave and abnormal loss. Demonstrating hardship typically requires detailed financial evidence, including comparison between tender assumptions and actual cost escalation. The clearer the contractual allocation of price risk, the heavier the evidentiary burden on the contractor.

Across all categories, causation remains decisive. General references to geopolitical instability or supply disruption are insufficient. The contractor must establish a direct causal link between the specific measures relied upon, such as sanctions restrictions, export prohibitions or site closures, and the delay or financial burden claimed.

Ultimately, wartime construction disputes are resolved through disciplined legal classification: whether the event constitutes excusable delay under the contract, impossibility under article 273, or exceptional hardship under article 249. Each category produces distinct consequences for time entitlement, liability for liquidated damages and the parties' continuing obligations.

Interaction Between FIDIC and UAE Law

Construction disputes governed by UAE law frequently involve the interaction between contractual mechanisms found in standard forms such as FIDIC and the doctrines of the UAE Civil Code. The contract establishes the procedural framework agreed by the parties, while statutory provisions define legal limits that cannot be excluded. Understanding this hierarchy is essential when assessing the legal consequences of war-related disruption.

A common issue arises where the contractual definition of force majeure or exceptional events is narrower than the statutory doctrine of impossibility. An event may fail to qualify for relief under the contractual framework yet still satisfy the requirements of article 273 of Federal Law No. 5/1985, which extinguishes obligations rendered objectively impossible. Conversely, an event may justify contractual time relief without reaching the higher statutory threshold required for impossibility.

Another area of potential tension concerns contractual notice requirements. Standard construction contracts often impose strict procedural steps for claiming time or cost relief. Failure to comply with these requirements may defeat contractual claims. However, the statutory doctrine of impossibility operates by operation of law where its conditions are satisfied. While procedural non-compliance may affect entitlement to contractual remedies, tribunals may still be required to consider whether performance became legally or physically impossible under article 273.

Similarly, the presence of a contractual force majeure regime does not necessarily exclude judicial rebalancing under article 249. UAE law recognises hardship as a mandatory doctrine where exceptional public circumstances render contractual performance excessively onerous. Even where a contract appears to allocate price escalation risk to the contractor, article 249 may still apply in principle, although the clearer the contractual allocation of risk, the heavier the evidentiary burden for establishing hardship.

From an arbitration perspective, tribunals generally adopt a two-stage analysis. They first examine the contract, as this reflects the parties' agreed allocation of risk. They then consider whether mandatory provisions of UAE law modify or override the contractual outcome. Where UAE law governs the dispute, failure to address articles 273 and 249 may expose an award to challenge on public policy grounds.

For this reason, practitioners should analyse war-related construction disputes through both contractual and statutory lenses, recognising that contractual mechanisms operate within, and may ultimately be constrained by , the mandatory framework of the Civil Code.

Practical Dispute Strategy and Risk Exposure

War-related construction disputes are rarely resolved through doctrinal argument alone. Successful claims depend primarily on technical evidence, programme analysis and financial substantiation.

The first strategic decision concerns legal classification. Where performance has genuinely been prevented by legal prohibition or physical impossibility — for example through sanctions restrictions, banking prohibitions or site closure orders — arguments based on article 273 should be addressed directly. Where the dispute instead centres on extreme cost escalation or supply chain disruption, the focus should shift to hardship under article 249. Attempting to characterise price volatility as impossibility is unlikely to succeed.

Under standard construction contracts, many disputes initially arise during the project administration process. Claims for time or cost relief are often first assessed at the project level before escalating to arbitration. Poorly prepared claims — unsupported by delay analysis or financial evidence — may significantly weaken the contractor's position in later proceedings.

Delay experts therefore play a central role in disputes involving wartime disruption. Their analysis must address the baseline programme, contemporaneous updates, critical path logic, float allocation and potential concurrency. Where sanctions or supply disruption delay procurement of critical materials or specialist subcontract works, the expert must demonstrate that the affected activities lay on the critical path and that reasonable mitigation or resequencing would not have avoided delay.

Quantum experts are equally important where cost relief or hardship is claimed. Article 249 requires evidence of grave loss, which cannot be established through narrative assertions alone. Detailed financial modelling is typically required to demonstrate abnormal cost escalation, the absence of adequate contingency allowances and the disproportionate burden relative to the contract price.

Evidentiary preparation is critical across all theories of relief. For impossibility claims, practitioners should gather relevant regulatory instruments, sanctions notices, correspondence with banks and suppliers and contemporaneous records demonstrating that alternative solutions were explored. For hardship claims, financial records, procurement data and market evidence are essential.

Decisions regarding suspension or termination require particular caution. Temporary suspension may preserve rights while maintaining contractual equilibrium during periods of disruption. Termination, by contrast, carries significant risk. If a tribunal later concludes that the threshold for impossibility or prolonged prevention was not met, the terminating party may face exposure for wrongful termination and consequential damages.

Liquidated damages exposure must also be assessed carefully. Where delay results from a qualifying contractual force majeure event or from objective impossibility under article 273, liability for delay damages should not arise for the relevant period. However, concurrent delay, inadequate mitigation or defective claim presentation may complicate this position.

Judicial Discretion in Adjusting Contractual Compensation

An additional element of the UAE legal framework relevant to construction disputes concerns the treatment of contractual penalty clauses and liquidated damages.

Article 390 of Federal Law No. 5/1985 governs the validity and enforceability of agreed compensation provisions. Construction contracts frequently include such provisions in the form of delay liquidated damages, whereby the contractor agrees to pay a specified daily or weekly amount in the event that completion of the works is delayed.

Article 390 establishes a two-stage legal framework.

First, article 390(1) of Federal Law No. 5/1985 recognises the parties' freedom to determine in advance the amount of compensation payable upon breach of contract. Such clauses are generally valid under UAE law and represent a contractual allocation of risk agreed between the parties.

However, article 390(2) of Federal Law No. 5/1985 confers discretionary authority upon the court or arbitral tribunal to review and adjust the agreed compensation where it is demonstrated that the contractual amount does not correspond to the actual damage suffered. The provision allows the judge to either reduce or increase the agreed compensation so that it reflects the real loss incurred. Any agreement purporting to exclude or restrict this judicial power is considered void.

In construction disputes, this principle is most commonly applied to delay liquidated damages provisions. Although construction contracts typically prescribe a fixed rate for delay, UAE courts and arbitral tribunals retain the authority to reassess that amount where evidence shows that the contractual figure is substantially disproportionate to the actual damage suffered by the employer.

The tribunal may therefore examine evidence relating to the employer's real loss arising from the delay, which may include:

- additional financing or funding costs;
- loss of operational revenue from the delayed facility;
- prolongation costs associated with project management or supervision;
- other demonstrable financial consequences of delayed completion.

In assessing such claims, courts and arbitral tribunals may also consider whether the affected party has taken reasonable steps to mitigate or minimise the loss resulting from the delay or due to unforeseen/force majeure events, reflecting the general principles of UAE law that emphasise good faith in the performance of obligations and limit compensation to the actual damage suffered.

Accordingly, tribunals may examine the remedial measures taken by the affected party, such as efforts to reduce project disruption, manage operational impacts, or implement alternative arrangements to limit financial losses. Failure to take reasonable mitigation measures may influence the court's assessment of the actual damage suffered and the appropriate level of compensation.

At the same time, UAE courts generally regard agreed damages clauses as reflecting the parties' commercial intention and risk allocation. Accordingly, adjustment under article 390 typically requires persuasive evidence that the contractual amount is manifestly excessive or clearly insufficient in comparison with the actual loss suffered.

For practitioners involved in construction disputes, the practical implication is that delay damages under UAE law are not purely automatic contractual remedies. Instead, they remain subject to judicial review and adjustment based on the evidence of actual damage presented before the court or tribunal.

Drafting Considerations for Future UAE Contracts

War-related disputes highlight the importance of careful contractual drafting, particularly in projects exposed to geopolitical or supply chain risks. While mandatory provisions of Federal Law No. 5/1985 cannot be excluded, well-structured contracts can reduce uncertainty and potential dispute.

Contracts may benefit from clearer allocation of war-related risk, including provisions addressing sanctions compliance, payment restrictions and supply chain disruption. Where appropriate, escalation or indexation mechanisms may help manage extreme price volatility and reduce reliance on statutory hardship arguments.

Notice procedures should be drafted with sufficient clarity to ensure that parties are aware of the steps required to preserve contractual entitlement while still allowing practical flexibility during crisis situations.

Parties may also consider contractual mechanisms addressing suspension, termination and risk allocation where prolonged disruption prevents timely completion of the works. Although such provisions cannot exclude the operation of articles 273 and 249, they may significantly influence the evidentiary framework in any future dispute.

Ultimately, effective drafting cannot eliminate the application of mandatory statutory doctrines, but it can clarify risk allocation and reduce litigation uncertainty in projects exposed to geopolitical instability.

Related Content

Legislation

- Federal Law No. 5/1985On the Civil Transactions Law of the United Arab Emirates State

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Alongside her commercial practice, Merline advises on criminal and quasi-criminal matters, including cybercrime, corporate fraud, breach of trust, extradition, and medical negligence. This multidisciplinary background enables her to bridge civil and criminal perspectives and to deliver strategic, results-driven advice across all stages of dispute resolution, from risk assessment and pre-action strategy to enforcement of awards and judgments.