Approach to Raising Your Claim Notice: Managing Construction Projects During the Conflict

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Introduction

Impacts of the United States and Iran conflict are starting to surface, with initial disruptions to supply chains and cost escalations being observed and felt by the construction industry.

During March 2026, a significant impact, while not fully comprehended or felt, related to the closure of the Strait of Hormuz and a rise in some material prices. In a construction project context, this meant supply chain disruptions and delayed material deliveries from international providers and suppliers. Further, oil and gas prices started to rise, however this was still marginal considering the global impact of the event.

However, over a month later, the impacts of the conflict on material supply and price escalations are now defining factors for ongoing and soon-to-commence construction projects.

As commonly practiced, on 31 March 2026, the last day of each month, the Fuel Price Committee in the UAE announced the new diesel and fuel prices; diesel prices were set at Dhs 4.69 per litre. This was a significant increase from Dhs 2.72 per litre for the month of March 2026. Fuel prices saw a similar increase from the previous month's prices. This increase, along with the heightened disruptions to supply chains, prompted action from companies in the construction field.

Developers and contractors alike started reviewing their contracts, assessing mitigation measures, entitlement, exposure and next steps. One key focus of the review is Force Majeure clauses and the remedy or entitlement allowed under the contract.

This Note provides guidance on raising a notice of claim in relation to the impacts of the conflict on construction projects. While every project and contract will have its specific particulars, this Note is intended to offer a structured framework to guide practitioners through the key considerations and steps involved in the preparation of Force Majeure notices.

What Does the Contract Say?

If you work in construction, you have probably dealt with lawyers and contract specialists who, when asked to give advice on a particular issue, would almost certainly respond, “it depends; what does the contract say?”. While not a conclusive answer, it is nonetheless the right one.

The first step in issuing a notice of claim is to review the contract and understand the remedies and entitlement it allows for in relation to the impacts of the conflict. By extension, this will identify the relevant clauses under which the notice should be submitted.

In the UAE, contracts will most likely fall into one of the following three categories:

- Unamended FIDIC (International Federation of Consulting Engineers) Contract Forms – Unlikely; while FIDIC contract forms are widely used in the UAE, they are almost always amended, with varying degrees of modification.

- Amended FIDIC Contract Form – This is the most probable case for contractors engaged under a main contract with a client (developer). Some subcontractors are engaged by main contractors through FIDIC-based contract forms, which are also modified to suit the specifics of the subcontract.

- Bespoke – It is common for subcontractors to enter into bespoke contract forms executed between them and the main contractor; commonly this is a novel form of contract drafted by the main contractor.

In FIDIC-based contracts, the 1999 versions of the Red, Yellow and Silver Books include a Force Majeure clause, Clause 19, with multiple scenarios and circumstances as to what constitutes a Force Majeure event. Events that invoke Force Majeure include “war, hostilities… act of foreign enemies”. For the 2006 version of the Blue Book (form for Dredging and Reclamation Works), war and hostilities, along with Force Majeure events, are listed risks under Subclause 6.1 – Defined Risks. Moreover, the Blue Book includes Subclause 13.4, a dedicated clause for dealing with Force Majeure events.

It is likely that, even if your contract is an amended FIDIC form, these clauses survived the amendments and remain intact. Under the 1999 versions of the Red, Yellow and Silver contract forms, the claim notice will most appropriately be issued under the Force Majeure provisions in Clause 19. For the 2006 version of the Blue Book, Force Majeure events are prescribed under Clause 13.4.

In the more recent versions of the FIDIC forms, like the 2016 version of the Blue Book and 2017 versions of the Red, Yellow and Silver Books, the use of “Force Majeure” is replaced with “Exceptional Events”. The change is introduced to recognise instances where performance is still viable, however with excessive detriment or loss to the obligor. Further detail on the subject is provided in the following sections of this Note.

In the 2016 version of the Blue Book, the claim notice should be raised under Subclause 13.4 – Exceptional Events, with the entitlement supplemented by Subclause 6.1 – Defined Risks. For the 2017 versions of the Red, Yellow and Silver contract forms, the notice should be raised under Clause 18 of the contract, with the reference to the event and title of the clause being Exceptional Events.

Bespoke contracts are much more diverse and less structured than FIDIC contract forms. There could be instances where a definition or clause for Force Majeure events is not present or allowed for; in this case, the best approach would be to raise the claim under the standard claims clause within the contract. In instances where Force Majeure events are not allowed for or included in the contract, entitlement is established under the law; this is discussed in the coming sections of this Note.

Notice Selection: Decision Layers

Contract Form	Version Date	Amendment/ Omission	Notice Clause	Entitlement
Red/Yellow/ Silver	1999/2017	Standard/ Unamended	Clause 19 - Force Majeure	**Under the Contract**
Blue Book	2006/2016	Amended	Clause 18 - Exceptional Events	
Bespoke		Omitted	Clause 13.4 - Force Majeure/ Exceptional Events	**Under the Law**
			General Claims/Entitlement Clauses	

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Force Majeure or Exceptional Event

A key point to assess in a contract is whether it refers to Force Majeure or to Exceptional Events as these can be interpreted differently depending on the jurisdiction.

In the initial FIDIC versions, up to the 2016 version of the Blue Book and 2017 versions for other forms, the descriptor for severe events outside the control of the parties was “Force Majeure”. The term originates from French civil law, which translates to “superior force”, referring to events that make contract performance unachievable. In UAE law, Force Majeure is defined under Article 273 of the Civil Transactions Law as an event that makes it “impossible” for a party to perform its obligations under the contract (civil codes of other Gulf Cooperation Council countries include similar articles). Article 249 of the UAE Civil Code, on the other hand, refers to exceptional events which could not be predicted at the time of entering into a contract, where delivery is not impossible but entails “grave loss” to the obligor. The “judge” (court) is empowered to alleviate, as it deems fit to achieve “justice”, the obligations under the contract.

Similarly, under the KSA Civil Transactions Law of 2023, the difference between impossibility and hardship is also recognized. Article 125 relieves a party from delivering its obligation due to Force Majeure; Articles 110 and 294 also reinforce this in cases where performance becomes impossible. Like its UAE counterpart, the Saudi Civil Transactions Law allows, under Article 97, for “extraordinary events” where performance entails substantial loss or damage. The law prescribes that the parties are allowed to “negotiate” and also grants the court authority to amend the obligations if no agreement is reached.

In contrast, Force Majeure under the FIDIC suite of contracts is not limited to an “impossibility” of performance, but also includes events where performance becomes exceptionally arduous or entails substantial loss, rather than being strictly impossible. Contrary to the interpretations under UAE law (and other jurisdictions), for FIDIC contracts, Force Majeure and Exceptional Event can be used interchangeably to cover both events that prevent performance completely or entail substantial loss to a party.

In the newer versions of the FIDIC forms (2016/2017), the use of “Force Majeure” was replaced with “Exceptional Events”, in part to avoid legal implications arising from the use of the terminology, relating to local court interpretations of what constitutes Force Majeure.

Contract / Jurisdiction	Force Majeure	Exceptional Event
FIDIC 1999	A Force Majeure event encompasses impossibility and/or excessive hardship.	Used to define what is a Force Majeure event.
FIDIC 2016/2017	Terminology not used.	An Exceptional Event encompasses impossibility and/or excessive hardship.
UAE Law	Considers Force Majeure to mean impossibility of performance.	An event that is not predictable, “oppressive”, and will entail substantial loss to the obligor.
KSA Law	Relieves a party from delivering its obligation but does not condition “impossibility.”	Referred to as “extraordinary events;” allows parties to negotiate or court to amend the obligations.

Notice Considerations

There are two important points to be aware of when considering a Force Majeure (or Exceptional Events) notice as compliance, or lack thereof, with these requirements can mean the difference between a successful claim and losing a claim.

Firstly, Force Majeure clauses dictate a clear time period for raising a notice, set at 14 days after becoming aware of the event. While enforcement and interpretation of time bars have mostly been favourable for parties raising the claim in the UAE, especially considering the extended claim liability and limitation period under UAE law, along with good faith principles, there are instances of strict enforcement of these time bars emerging. An infamous example is the Dubai International Financial Centre (DIFC) case Panther Real Estate Development LLC v Modern Executive Systems Contracting LLC. The DIFC Court of First Instance, and later the Court of Appeal, ruled that failure to give notice within the specified time period bars entitlement, leading to substantial losses to the contractor.

Secondly, the notice will need to state the obligations that the contractor will be prevented from achieving, for example, time for completion, works price or both. Under Subclause 19.2 of the FIDIC forms, it is stipulated that the notice raised includes the “obligations, the performance of which is or will be prevented.”

Remedies and Entitlement

Depending on whether the delivery of the obligations entails substantial loss or impact, or impossibility, Force Majeure and Exceptional Events clauses entitle the contractor to a time extension, additional payment and/or termination.

While remedies like time extension and additional costs are allowed, these will come with an added layer of causation proof; in other words, the onus of furnishing clear and proper records is emphasised. It will not be sufficient simply to claim that certain materials or commodities have increased in price; a clear link between the conflict and the cost escalation must be presented. When ruling on Force Majeure-related cases during COVID-19, onshore courts emphasised the requirement for a clear and direct link between the event and impact on performance. The occurrence of the event, without presenting a clear causal link, did not automatically establish entitlement.

As for entitlement, and whether the current events constitute Force Majeure, there does not need to be an “announcement” by an authority or government of a “Force Majeure state”. Under the contract, a Force Majeure event is what the parties agree constitutes a Force Majeure event. It is safe to say that for the majority of contracts, whether FIDIC-based or bespoke, hostilities and similar events should be identified as Force Majeure or Exceptional Events.

Interpretation Under UAE Law and Recourse

When considering how Force Majeure claims might be interpreted under UAE law, it is important to refer back to the distinction, as discussed in previous sections, between impossibility and hardship. A number of recent onshore case precedents on Force Majeure can be drawn upon to predict how courts might approach the current events. In the not-so-distant past, COVID-19 raised a flood of Force Majeure claims, some of which were ultimately determined by the courts.

In Case No. 479 of 2021, the Dubai Court of Cassation held that COVID-19 would qualify as Force Majeure only if performance is impossible, either temporarily, partially or fully. Similarly, the Abu Dhabi Court of Cassation in Case No. 512 of 2021 had also set the same requirement to consider COVID-19 a Force Majeure event. These precedents serve as a good guide for drafting claim notices in relation to the current events, and the nuances that the courts consider when ruling on Force Majeure claims.

In cases where performance or delivery is unachievable, for instance where access to the work site has been completely prevented due to the conflict, it is safe to assume that courts will consider this a Force Majeure event and relinquish the obligation of the party.

However, in events where delivery is still possible, but damaging to the party, the courts might consider the event under Article 249 – Exceptional Circumstance, where the law allows the judge or tribunal to "reduce" the obligation to comply with "justice requirements".

It is likely that parties would prefer to agree the mechanism of compensation, rather than leave the final decision, assessment or compensation to the courts. As such, a potentially wise approach by clients and contractors is to start exploring mechanisms on price escalations and time extensions, first and foremost to ensure delivery of the works is not impacted or paused and to avoid litigation.

Further, based on the above court precedents, a prudent approach when raising the notice is to draft the wording in a manner that achieves the conditions set by the courts to pass the Force Majeure test.

While the distinction is somewhat complex to navigate, the recognition and recourse for events that cause impossibility and/or hardship under UAE law is a lifeline for parties engaged in amended or bespoke contracts that do not mention or allow recourse for Force Majeure or Exceptional Events.

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Considerations

It is still early to predict when or how the impacts of the conflict will end and how they will be treated and remedied by contracting parties in the construction domain, and other industries alike. However, it is apparent that a meticulous approach is needed to manage, document and safeguard entitlement against the conflict's impacts.

While each project will have its own specifics, the following considerations provide a starting point on managing and raising a claim in response to current events:

- Be aware of your contract and understand the obligations, entitlement and remedies allowed under it. Whether or not your contract is based on FIDIC forms, contracts in the region are commonly heavily amended, and sometimes omit clauses that allow for essential entitlements and remedies. This is especially true for subcontracts.

- Compliance with notice provisions under the contract is essential to avoid a weak standing or, in extreme cases, a potential loss of entitlement. Parties should not assume that non-compliance will be excused and must adhere closely to the notice requirements set within the contract.

- Keep a detailed record of the event and its impacts. This will range from daily site records, revised supplier quotations, delay notices from subcontractors and suppliers and invoices.

- Developers and contractors should consider an early, amicable amendment to the contract that helps the work progress. Delay in addressing the event could mean that contractors and their downstream supply chain of subcontractors and suppliers will stop or slow down work to avoid committing to costs that might not be recoverable.

- Be aware of and document disruption impacts to the works. Commonly, disruption is overlooked, as the focus turns to budgets and schedule. Disruption, however, might entail substantial losses, through site access issues, labour lost productivities and delayed or cancelled deliveries leading to idle time on site. If not monitored and documented properly, entitlement to reimbursement of costs for losses related to productivity and idle time would almost certainly be lost.

While this Note intends to shed some light on the entitlement and remedies allowed for under construction contracts in relation to the current events, the reader needs to consider matters from a broader commercial perspective. The current conditions place considerable strain across the entire supply chain, particularly in relation to margins and cashflow. A sound contractual standing, while essential, is only one component of a pragmatic and commercially balanced agreement for a way forward.

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