

## Force Majeure and Contractual Obligations in the Gulf: What Businesses Need to Know

When extraordinary events disrupt commercial activity in the Gulf, businesses face an urgent question: does the law excuse us from performing our contractual obligations? The answer depends on which legal system governs your contract, what the disruption actually prevents you from doing, and whether you have followed the right procedural steps. This article provides a practical guide.

### I. What Force Majeure Actually Means

Force majeure — literally "superior force" — excuses a party from performing a contractual obligation when an extraordinary external event makes performance impossible. It is not a general escape clause. It does not apply because performance has become more expensive, more difficult, or less commercially attractive.

Three conditions must be satisfied in all four jurisdictions covered here. The party invoking force majeure carries the full burden of proving each one.

Condition	What it means	What does not qualify
<b>Unforeseeable</b>	The event could not reasonably have been anticipated when the contract was signed	Known risks; ongoing situations visible at the time of signing
<b>Unavoidable</b>	The consequences could not be mitigated despite reasonable efforts	Situations where alternatives existed but were not explored
<b>Impossible</b>	Performance is objectively impossible — not merely harder or more costly	Price increases, rerouting costs, or delays without a physical blockage

One further limitation applies universally: force majeure cannot be invoked retroactively to excuse obligations already in breach before the triggering event. A party that was underperforming before a disruption cannot use that disruption to cure an earlier default.

### II. The Law by Jurisdiction

The UAE operates three distinct legal systems. Saudi Arabia operates a fourth. Which one governs your contract determines both the available relief and how it is obtained.

Jurisdiction	FM Source	Hardship Doctrine	Payment Excused?
<b>UAE Mainland</b>	Statute — Art. 273 / new Art. 236	Yes — Art. 249	No
<b>DIFC</b>	Statute — Art. 82 Contract Law	No separate doctrine	No (unless expressly agreed)
<b>ADGM</b>	Contract only — no statute	Frustration available	No
<b>KSA</b>	Statute — Art. 294 CTL	Yes — Art. 97	No

### A. UAE Mainland — Civil Law

The UAE Civil Transactions Law provides statutory force majeure through Article 273, shortly to be replaced by Article 236 of the new Civil Transactions Law (Federal Decree-Law No. 25 of 2025, effective 1 June 2026). The conceptual approach is unchanged. Where total impossibility is established, the contract automatically terminates by operation of law. Where impossibility is partial, the affected portion is extinguished and the remainder continues.

**Article 249 (Hardship):** Where performance remains technically possible but has become excessively onerous due to an extraordinary and unforeseeable event, a court may rebalance the contractual obligations to a reasonable level. This is frequently the more appropriate remedy where disruption has raised costs significantly without creating total impossibility — and it is often underused.

### B. DIFC — Common Law Hybrid

Article 82 of the DIFC Contract Law implies a statutory force majeure term into all DIFC-governed contracts, even where the agreement is silent. Non-performance is excused where the party proves an impediment beyond its control that it could not reasonably have foreseen or overcome. This provision does not excuse payment obligations unless the contract expressly provides otherwise. Affected parties must notify counterparties within a reasonable time; failure to do so may create liability for resulting losses.

### C. ADGM — English Common Law

The ADGM applies English law on an evergreen basis. There is no statutory force majeure in the ADGM: the concept exists only where the parties have included an express clause. Where no clause exists, the only recourse is the common law doctrine of frustration — which requires showing that performance has become impossible, illegal, or something radically different from what was originally agreed. This is a high and rarely satisfied threshold. An ADGM-governed contract that is silent on force majeure leaves the affected party in a materially weaker position.

### D. KSA — Civil Transactions Law (2023)

Article 294 of the Saudi Civil Transactions Law mirrors the UAE approach: where a supervening event renders performance impossible, the affected obligation is extinguished in whole or in part. Article 97 provides the equivalent of the UAE Article 249 hardship doctrine — courts may intervene to rebalance contracts where extraordinary circumstances have made performance excessively onerous.

## III. The Three Conditions: What Courts Require

Across all four frameworks, the party invoking force majeure bears the full burden of establishing three cumulative conditions. A failure on any one element defeats the claim.

Element	Standard	Current Context
<b>Unforeseeability</b>	Not a known or anticipated risk at contract date	Contracts signed pre-28 February: arguable. Post-28 February: significantly harder to establish
<b>Unavoidability</b>	Consequences impossible to mitigate despite reasonable efforts	Strait of Hormuz closure, port shutdowns, airspace restrictions: strong for logistics and energy
<b>Impossibility</b>	Performance objectively impossible — not merely more expensive	Price increase alone is insufficient. Physical blockade or government-ordered closure: yes

The distinction between force majeure (Article 273) and hardship (Article 249) is critical. Force majeure applies only to genuine objective impossibility. Where a party can still perform but commercial terms have become severely adverse, the correct route is hardship under Article 249 — not force majeure. Hardship leads to judicial rebalancing; force majeure leads to automatic termination.

#### **IV. Labour Law: Employees Who Cannot Return to Work**

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UAE Federal Decree-Law No. 33 of 2021 (the Labour Law) contains no provision directly addressing situations where employees are unable to attend work due to airspace closures or government-imposed travel restrictions. The matter is assessed through the general principles embedded in the law.

##### **Termination exposure**

Article 44 of the Labour Law permits summary dismissal for absence without valid reason exceeding seven consecutive days. However, where an absence is caused by government-imposed restrictions or airspace closures, that absence constitutes a valid and justified reason. Termination in such circumstances risks a finding of arbitrary dismissal and associated compensation liability.

##### **Salary continuation**

There is no automatic statutory entitlement. Where the employee can perform duties remotely and the employer agrees, salary continues as normal. Where remote performance is not feasible, paid leave, unpaid leave by mutual agreement, or adjusted terms are the appropriate routes. Employees who fail to communicate their situation promptly lose the protection that force majeure principles otherwise afford — notification is essential.

##### **Employer obligations**

As a matter of both legal compliance and good practice, employers should:

- Treat force majeure absences as legitimate and justified, not as misconduct or unauthorized leave
- Explore remote working and leave arrangements before considering any adverse action
- Not issue termination notices for absences directly caused by documented government-imposed restrictions
- Review employment contracts for any existing force majeure or operational disruption provisions

#### **V. Emergency Regulations and Government-Ordered Restrictions**

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The Federal Law Concerning Martial Laws empowers UAE authorities to impose restrictions on travel, movement, and public gatherings during declared states of emergency, and to expand executive authority over regulatory approvals, licences, and economic activity.

From a contractual standpoint, government-ordered restrictions carry particular legal significance. Where a party's non-performance results directly from a specific government order — a port evacuation, an airspace closure by the GCAA, or a facility shutdown — that act constitutes a stronger basis for force majeure than a purely factual commercial obstacle. It represents direct sovereign action creating legal impossibility. Parties should reference the specific order in any force majeure notice.

#### **VI. UAE Government Continuity: A Critical Limiting Factor**

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A factor that distinguishes the current crisis from prior force majeure events — and that will weigh heavily in any UAE-nexus dispute — is the demonstrated continuity of UAE government administration throughout the conflict. Courts and tribunals assessing force majeure claims will be attentive to the operational reality on the ground, and the UAE's record of maintained functionality significantly narrows the circumstances in which force majeure can credibly be invoked.

The UAE's Ambassador to the United States confirmed in an official communication dated 17 March 2026 that despite nearly 2,000 missiles and drones launched against the UAE, the country has maintained the operational continuity of its critical infrastructure, institutions, and economic systems. The Ambassador noted that the UAE's air defence forces intercepted more than 93% of all incoming threats, and that with prudence and foresight built over 30 years, the nation had constructed layered safeguards across its defence, infrastructure, and economic architecture.

##### **What has remained operational**

Specifically, the following are confirmed as having remained operational or been rapidly restored during the current period:

- Seaports and airports, which were reopened quickly and have maintained global trade connectivity, even if at reduced volumes
- An oil pipeline bypassing the Strait of Hormuz, and sovereign wealth reserves exceeding USD 2 trillion, providing economic buffers

- ADNOC and key energy infrastructure, which implemented precautionary shutdowns at certain facilities but maintained broader operational capability
- UAE government ministries and federal regulatory bodies, which have continued to function and process approvals, licences, and official acts
- The UAE's sovereign credit rating, which S&P Global has maintained at AA/A-1+, signalling international confidence in the continuity of UAE governance and economic management
- Major international business relationships — including with Disney, Wynn, the Guggenheim, the Cleveland Clinic, Microsoft, Oracle, Amazon, and others — all of which have confirmed continued commitment to their UAE projects and investments
- The USD 1.4 trillion investment and economic framework with the United States, which remains on track, with over 45 deals between UAE and US companies announced in the preceding 15 months

### **Legal significance for force majeure claims**

This record of governmental and institutional continuity has direct and material consequences for parties seeking to invoke force majeure in UAE-governed or UAE-nexus contracts.

#### **The impossibility threshold is harder to meet**

Where UAE government ministries, regulatory authorities, and key infrastructure remain operational, it becomes significantly more difficult to establish that performance of a contractual obligation was objectively impossible. A party arguing that it could not obtain a regulatory approval, process a transaction, or perform a commercial act may face the counter-argument that the relevant authority was functioning and the obstacle was not impossibility but operational difficulty or commercial inconvenience.

#### **The unforeseeability argument weakens over time**

The UAE's long-standing investment in layered defence and economic resilience was publicly known and communicated prior to the current conflict. For contracts negotiated or executed after these preparations became publicly apparent — particularly for parties with sophisticated UAE market knowledge — the argument that governmental disruption was unforeseeable is significantly weakened.

#### **Mitigation expectations are heightened**

Where UAE government channels have remained open and alternative routes were available — including the Abu Dhabi Crude Oil Pipeline bypass, continued airport operations at reduced capacity, and functioning regulatory bodies — courts will expect parties to have explored and utilised these alternatives before concluding that performance was impossible. A failure to engage with available government mechanisms will undermine any FM claim.

#### **Sector-specific impact**

The continuity analysis is not uniform across all sectors:

- Energy: ADNOC's precautionary refinery shutdowns are well-documented and provide a legitimate FM basis for specific energy delivery obligations. However, the broader maintenance of UAE energy infrastructure means the impossibility argument is limited to specific disrupted facilities, not the sector as a whole.
- Ports and logistics: The rapid reopening of UAE seaports and airports narrows the window during which port-related FM can credibly be maintained. Parties should ensure their FM notices are precisely time-bounded to match the period of actual closure.
- Regulatory and administrative: Given that UAE ministries and licencing authorities continued to function, FM arguments based on regulatory delay or administrative impossibility will face significant scrutiny.
- Financial services: The maintenance of UAE sovereign credit and the functioning of UAE financial infrastructure reinforces the position that payment obligations — which already survive FM in virtually all frameworks — cannot be excused by reference to the conflict.

### **Practical guidance**

*Parties invoking force majeure in connection with UAE-nexus obligations should assess their claims against the specific documented period of actual disruption to the relevant facility, route, or authority — not the general existence of the conflict. Broad claims referencing "ongoing hostilities" without specificity as to which government function or*

*infrastructure was actually unavailable are likely to fail. Claims should be calibrated, time-bounded, and grounded in operational evidence rather than the general regional security situation.*

## VII. Sector-by-Sector Exposure

Sector	FM Strength	Key Consideration
<b>Energy &amp; Commodities</b>	Very strong (specific disrupted facilities)	Documented production halts establish clear impossibility for affected assets; broader UAE energy infrastructure largely operational
<b>Shipping &amp; Logistics</b>	Strong (time-bounded)	Route closures and port restrictions: FM valid during documented closure period only; rapid UAE port reopening narrows window
<b>Construction &amp; Real Estate</b>	Strong (materials); moderate (finance)	FIDIC contracts have own FM provisions; supply chain disruption well-documented; financial disruption harder to establish
<b>Aviation &amp; Hospitality</b>	Strong	GCAA closure = direct sovereign act; FM valid for documented airspace restriction period
<b>Financial Services</b>	Weak for payment	Payment obligations survive FM in all frameworks; UAE financial system remained operational; ISDA provisions set very high threshold
<b>M&amp;A / Private Equity</b>	Fact-specific	MAC/MAE clause governs; geopolitical risk typically excluded from standard definitions; direct asset damage = stronger case
<b>Regulatory / Administrative</b>	Weak	UAE ministries and licencing authorities continued to function; administrative impossibility arguments will face significant scrutiny

### Energy and Commodities

This sector carries the most acute force majeure exposure for specific disrupted assets. State energy entities including QatarEnergy, Kuwait Petroleum Corporation, and Bahrain's Bapco declared force majeure on export and delivery contracts. ADNOC and Saudi Aramco implemented precautionary refinery shutdowns at identified facilities. Physical impossibility is demonstrable for those specific assets through documented production halts and export route restrictions. However, the broader maintenance of UAE energy infrastructure — including the Abu Dhabi Crude Oil Pipeline bypass — means FM claims must be facility-specific and time-bounded rather than sector-wide.

### Shipping and Logistics

Charter parties, freight contracts, cargo insurance, and logistics service agreements are directly affected by the reduction in Strait of Hormuz traffic and restrictions at Fujairah and Jebel Ali. BIMCO and GENCON standard clauses require specific review. The rapid reopening of UAE seaports — confirmed in official communications — limits the temporal scope of port-related FM claims. War risk insurance premiums have increased materially, and policy exclusions for 'war' versus 'terrorism' are in active dispute.

### Construction and Real Estate

FIDIC contracts contain their own force majeure provisions, which are typically broader than the Civil Code equivalents. Developers with off-plan delivery obligations may have grounds to issue FM notices where supply chain disruptions or personnel mobility restrictions have materially affected their ability to perform on schedule. The position is strongest where the disruption affects physical inputs — materials, specialist equipment, contractor personnel — and weaker where the disruption is financial in nature.

## Aviation and Hospitality

GCAA-ordered airspace restrictions constitute a government act directly causing impossibility for aviation-related contracts during the restriction period. Hotel management agreements, conference and event contracts, and tour operator arrangements are all triggered for the documented closure period. Given the official record of airport reopening, FM claims must be tied to the specific dates of restricted operations.

## Financial Services and Capital Markets

Payment obligations are not excused by force majeure under any of the four frameworks unless the contract expressly provides otherwise. The maintenance of UAE's financial infrastructure and sovereign credit rating reinforces this position. Loan agreements, bond indentures, and ISDA-governed derivatives apply exceptionally high FM thresholds. These instruments should be reviewed individually; a general reference to the conflict is insufficient.

## M&A and Private Equity

Material Adverse Effect (MAE) clauses in share purchase agreements will be intensively analysed. Geopolitical risk is typically carved out of MAE definitions, meaning the conflict may not trigger a MAC walk-away right. Where the target's business has suffered direct and documented damage — physical asset damage, regulatory suspension, loss of key customers — the position is stronger and requires specific legal analysis.

## VIII. Procedural Requirements

Procedural compliance is as important as the substantive legal analysis. A party that satisfies the legal threshold for force majeure but fails to follow the correct procedure may lose the right to rely on it entirely.

### Immediate checklist

- **Issue notice now.** Most force majeure clauses require notification within 5 to 14 days of the triggering event. Parties who have not yet issued notice should do so without delay, even before completing a full legal analysis.
- **Be specific.** Identify the contractual clause, the precise triggering event, the specific facility or route affected, and the time period of disruption. General references to 'regional events' are insufficient — and particularly so given UAE government continuity.
- **Document the causation chain.** Preserve government authority notices (GCAA, port authority, MoD), official closure orders, insurance war-risk notifications, and AIS data. Tie the specific disruption to the specific contractual obligation.
- **Evidence mitigation steps.** Demonstrate that available alternatives — including UAE government-confirmed operational channels — were explored and found unavailable or insufficient. Courts will apply heightened scrutiny given the maintained functionality of UAE infrastructure.
- **Do not terminate prematurely.** Invoking force majeure without proper legal basis can itself constitute a repudiatory breach. Once issued in error, a force majeure notice is typically irreversible.
- **Consider hardship as a parallel route.** Where force majeure cannot be established, Article 249 (UAE) or Article 97 (KSA) may allow a court to rebalance the contract. This remedy is often better suited to commercial realities than a full FM claim.

## IX. Remedies Available

Relief	Trigger	Outcome
<b>Contract termination (Art. 273 / Art. 236)</b>	Total impossibility	Automatic; mutual restitution of prior performance
<b>Partial extinction</b>	Partial impossibility	Affected portion extinguished; remainder of contract survives
<b>Court rebalancing (Art. 249 / KSA Art. 97)</b>	Onerous but not impossible	Judicial modification; obligation reduced to a reasonable level

Relief	Trigger	Outcome
<b>Suspension</b>	Temporary impossibility	Pause; renegotiation; court rescission if continuation is unjust
<b>Defense against damages (Art. 287)</b>	Extraneous cause	Liability for damages excluded where FM is established
<b>BIT investment claims</b>	State-actor damage to investment	Claims for full protection, fair treatment, or indirect expropriation
<b>Labour protection</b>	FM-caused employee absence	Protection from summary dismissal; salary by negotiation

### The hardship route: a strategic asset

Article 249 of the UAE Civil Code (and its KSA equivalent, Article 97 CTL) is frequently underused. Where force majeure cannot be established because performance remains technically possible, Article 249 allows a court to rebalance the contract where an extraordinary event has made performance disproportionately onerous. Courts have discretion to reduce obligations, adjust payment terms, or in extreme cases rescind the contract. This is as much a negotiation tool as a litigation remedy — parties confronting a genuine hardship argument have strong incentive to renegotiate commercially rather than face judicial rebalancing.

## X. Drafting New Contracts in the Current Environment

For parties negotiating new commercial agreements, the current environment creates specific drafting obligations. Because regional disruption is now a known and public event, standard boilerplate force majeure clauses referencing 'war or hostilities' will face foreseeability challenges. A counterparty will reasonably argue that a party signing with knowledge of the disruption accepted its continuation as a known commercial risk.

At the same time, the UAE government continuity record creates an additional drafting consideration: parties should specify not only the triggering events but also the operational threshold — distinguishing between situations where government services and infrastructure are unavailable, and situations where they continue to function at reduced capacity.

Sound drafting should:

- Enumerate triggering events specifically: armed conflict, government-imposed restrictions, infrastructure damage, airspace or port closures, insurance unavailability
- Define the operational threshold: consider whether relief is triggered only by complete unavailability of government services or also by reduced capacity
- Lower the performance threshold from impossibility to material interference or hindrance for logistics-dependent obligations
- Include notification mechanics, suspension periods, renegotiation obligations, and long-stop termination provisions
- For ADGM-governed contracts, always include an express force majeure clause — absence leaves parties reliant on the high frustration threshold.

### In Summary:

**The best positioned businesses during periods of contractual disruption are those that acted early, documented their position in real time, chose the right legal doctrine for their specific facts — and understood that the UAE's continued operational resilience sets a higher bar for force majeure claims than any prior Gulf crisis.**