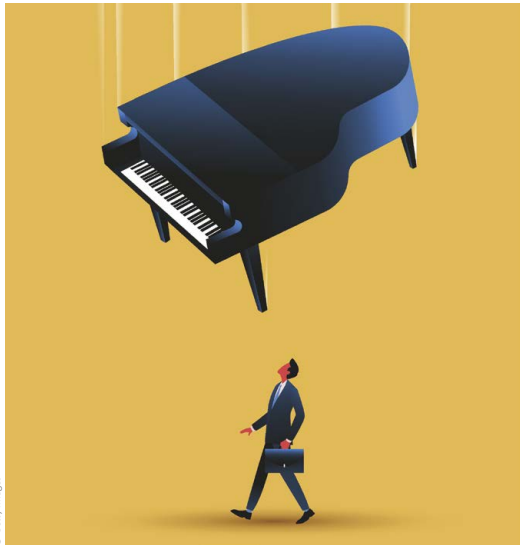


Force Majeure



When a force majeure event such as war or COVID occurs suddenly it is everywhere, on the news, across social media, and even in legal commentary. Everyone may be talking about it, but the real issue is not how widely the event is being discussed or how serious it appears, but whether it will actually affect your contract, business, or legal obligations. For an event to qualify as force majeure, it must generally have been unforeseeable at the time of contracting, unavoidable by reasonable means, and, most importantly - it must have rendered performance impossible.

TYPES OF IMPOSSIBILITY

Under UAE law, force majeure is measured by what it does to the obligation itself. The real test is impossibility. Article 273(1) of Federal Law No. 5/1985 (equivalent to Article 236 of Federal Decree-Law No. 25/2025) provides that, in bilateral contracts, if force majeure supervenes and makes the obligation's performance impossible, the corresponding reciprocal obligation is extinguished, and the contract is terminated automatically by operation of law.

The law is not asking if performance became harder, more expensive, or commercially unattractive; it asks if it became impossible. That is why the distinction between the three forms of impossibility - total, partial, and temporary impossibility, is so important. If there is total impossibility the reciprocal obligation falls away in full. If it is partial, only the counter-obligation corresponding falls away to the same extent, and if it is temporary, particularly in continuing contracts such as supply agreements, the contract may not be terminated at all. Instead the legal effect may be confined to the period in which performance was impossible, rather than the contract as a whole.

IN PRACTICE

In cases of partial or temporary impossibility, the creditor may rescind the contract, if the debtor is notified, which means the legal outcome is not always automatic; and may depend on the nature of the contract, the extent and duration of the disruption, and the position taken by the affected party. Therefore, what initially appears a single force majeure event may produce very different consequences, depending on whether the impossibility was total, partial, or only temporary. This is where a dilemma's mischaracterisation can begin, if an event is hastily labelled as force majeure but is legally something else, either because legal elements of force majeure are not satisfied, or the event has produced a different legal effect, such as the extinction of the subject matter of the contract or the failure of the contractual cause. In many disputes, the difficulty lies not in the event itself, but in how it is legally characterised. In lease agreements, often it is actually partial or temporary impossibility

rather than total impossibility that has occurred. If a leased property is only partially affected, is only unusable for a period, or a lessee is temporarily unable to use it, the analysis may turn on the extent and duration of the interference. However, if the property has been completely destroyed, the issue may move beyond force majeure as the subject matter of the lease itself no longer exists and the lease would be extinguished by the total destruction of the leased property, regardless of whether the cause was classified as force majeure. However, in other sectors where performance is highly time-sensitive and commercially exposed, particularly in supply and distribution, transport interruptions, customs measures, sourcing problems, or route closures may place significant pressure on performance. In many of these situations, the immediate difficulty is that the consequences of the event may remain uncertain, e.g. whether they will result in delay, disruption, or actual non-performance. Therefore, the legal analysis must focus not only on whether the event ultimately prevented the obligation's performance but also on when the impact arose, how long it lasted, and whether time itself was an essential element of performance. Force majeure is often invoked most easily at the very moment it should be examined most carefully. In times of crisis, the real question is not if the event was serious, public, or disruptive. It is narrower, and far more important - what did the event do to the obligation itself? Even if the contract called it force majeure, it is still necessary to consider if the facts only proved inconvenience, delay, or loss.

Mostafa Dawoud of Habib Al Mulla and Partners co-authored this article.



Contributor
Mohamed El Khatib
Habib Al Mulla and Partners