

Overview

This Article discusses the key contractual clauses that are of importance where geopolitical conflict affects the performance of commercial contracts under UAE and the DIFC Contract Laws. When conflict arises disruption takes place across supply chains, transport routes, insurance arrangements, payment systems, and counterparty performance.

Under Onshore UAE Law, the starting point is Federal Law No. (5) of 1985 on the Civil Transactions Law of the UAE, as amended. In particular, Article 246 requires contracts to be performed in accordance with their terms and in good faith. Article 249 addresses exceptional circumstances that render performance oppressive. Article 272 deals with judicial cancellation for non-performance after notice. and Article 273 addresses force majeure where performance becomes impossible.

Where the contract is governed by DIFC Contract Law, the relevant framework is the DIFC Contract Law, DIFC Law No. 6 of 2004, as amended. Articles 57 and 58 deal with implied obligations and co-operation, Article 82 addresses force majeure, Article 83 preserves the right to require payment, and Articles 86 and 87 govern termination for fundamental non-performance.

This Article focuses on: force majeure, sanctions and illegality, Material adverse change(MAC) / material adverse effect (MAE) clauses, delivery and delay, and suspension, termination, and dispute resolution. The central issue is how the contract allocates the consequences of geopolitical conflict.

Definitions

- DIFC: Dubai International Financial Centre.
- UAE Civil Transactions Law/Onshore UAE Law: Federal Law No. (5) of 1985 concerning the issuance of the Civil Transactions Law of the United Arab Emirates, as amended.
- DIFC Contract Law: DIFC Law No. 6 of 2004, as amended.



Practical Guidance

Force majeure clauses

When geopolitical conflict disrupts contractual performance, force majeure is usually the first clause to be considered. However, parties should distinguish carefully between impossibility, hardship, delay, and increased cost. Under Onshore UAE Law, Article 273 of the Civil Transactions Law applies where an unforeseen event makes performance impossible. In that case, the corresponding obligation ceases and, in contracts binding on both parties, the contract is automatically cancelled. Article 273 also addresses partial impossibility and temporary impossibility in continuing contracts, in which case the impossible part is extinguished and the obligee may, in certain circumstances, cancel the remainder. By contrast, Article 249 applies where performance remains possible but becomes oppressive because of exceptional circumstances of a public nature which could not have been foreseen. In those circumstances, the court may reduce the oppressive obligation to a reasonable level if justice so requires.

Force majeure is codified in Article 82 of the DIFC Contract Law. Article 82 provides that, except in relation to a mere obligation to pay money, non-performance is excused where it is caused by an impediment beyond the party's control which could not reasonably have been taken into account at the time of contracting, or avoided or overcome. Where the impediment is temporary, the excuse applies only for such period as is reasonable having regard to its effect on performance. A party seeking to rely on Article 82 must also notify the other party of the impediment and its effect on its ability to perform within a reasonable time, failing which it may be liable for damages caused by late notice. The statutory force majeure regime applies whether or not the contract contains an express force majeure clause, although an express clause may still widen or restrict the parties' contractual position.

The DIFC courts have also made clear that force majeure is not a general answer to non-payment. In *DIFC Investments LLC v Mohammed Akbar Mohammed Zia* [2017] DIFC CFI 001, the court emphasised that Article 82 begins with the words “*Except with respect to a mere obligation to pay*” and held that the relevant clause, although prescribing a method of payment, was still in substance a mere obligation to pay by a specified date. The court further held that, even if the bank's actions were capable of amounting to force majeure, the Claimant was entitled to terminate the contract under Articles 86 and 87 of the DIFC Contract Law.



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When reviewing/drafting a force majeure clause, parties should consider the following:

- whether the clause expressly refers to war, hostilities, embargoes, sanctions, transport disruption, port closures, cyber incidents, or government action;
- whether the relevant event must make performance impossible, or whether delay or hindrance is sufficient;
- whether the affected party is required to mitigate the effects of the event;
- whether notice must be given within a specified period;
- whether the clause provides for suspension only, or also for termination after a defined period; and
- whether the clause operates alongside any statutory relief available under the governing law

In practice, parties should not assume that increased expense or commercial difficulty alone will amount to force majeure. Under Onshore UAE Law, the distinction between Article 273 and Article 249 remains important: the former addresses impossibility, while the latter addresses oppressive but still possible performance. Under DIFC Contract Law, the focus is on whether the impediment was beyond the party's control and could not reasonably have been taken into account, avoided, or overcome. The safer course is therefore to draft expressly for conflict-related events rather than rely on general wording alone.

Sanctions and illegality clauses

While geopolitical conflict may affect contractual obligations by disrupting logistics, it also affects contractual performance by creating legal and regulatory risk. Sanctions, export controls, or related limitations could adversely affect a counterparty, beneficial owner, insurer, bank, carrier, or payment channel. In such circumstances, performance may become unlawful, restricted, or commercially impracticable even where performance of parties obligations remain possible.

When reviewing/drafting sanctions and illegality clauses in contracts, parties should consider the following:

- whether the clause allows suspension of performance where sanctions risk emerge;
- whether the parties provide warranties as to sanctioned status and ownership or control;
- whether there is an obligation to provide information for compliance purposes;
- whether either party may terminate if performance would expose it to legal or regulatory risk; and
- whether the clause highlights the consequence of delay caused by sanctions screening, licensing requirements, or regulatory intervention.

Under Onshore UAE Law, Article 246 remains relevant because contracts must be performed in accordance with their contents and in a manner consistent with good faith. Under DIFC Contract Law, Articles 57 and 58 are also relevant because implied obligations may arise from the nature and purpose of the contract, good faith and fair dealing, and reasonableness, and the parties are required to co-operate where such co-operation may reasonably be expected for performance.

In practice, sanctions clauses should not be limited to direct designation. They should also address indirect exposure through ownership, control, financing arrangements, payment channels, carriers, and insurers.



Material adverse change(MAC) / material adverse effect (MAE) clauses

MAC and MAE clauses may be relevant where geopolitical conflict causes a serious deterioration in the commercial position of one party or materially affects the value or performance of the transaction. These clauses are contractual in nature, so their effect will depend on the governing law and the wording used. Under Onshore UAE Law, Article 246 remains relevant because contracts must be performed in accordance with their terms and in good faith. Under DIFC Contract Law, Articles 57 and 58 may also be relevant because implied obligations may arise from good faith, fair dealing, and co-operation.

When reviewing a MAC or MAE clause, parties should consider the following:

- whether the clause clearly defines what the relevant adverse change or effect;
- whether conflict-related events such as sanctions, regulatory restrictions, or supply chain disruption are expressly included;
- whether the change must be long-term rather than temporary;
- whether any materiality threshold or financial test applies; and
- whether the clause gives rise to termination, renegotiation, delayed completion, or price adjustment rights.

In practice, a MAC or MAE clause should distinguish between temporary disruption and a sufficiently serious long-term adverse change. The drafting should also make clear whether wider market or industry conditions are excluded, or whether the clause is engaged where the relevant party is disproportionately affected by them.

Delivery, risk, and delay clauses

Where a contract depends on the movement of goods, equipment, or personnel, geopolitical conflict may quickly affect timetables, routing, freight costs, insurance coverage, and operational continuity.

When reviewing delivery, risk, and delay clauses, parties should consider:

- when title and risk pass;
- whether Incoterms are used and used consistently;
- who bears the cost of rerouting, additional freight, security measures, or substitute performance;
- whether alternative ports, routes, or carriers may be used without further consent; and
- whether delay gives rise to extensions of time, liquidated damages, suspension rights, or termination rights.

Under Onshore UAE Law, Article 246 may be relevant because the contract is not limited to what is stated expressly, but also extends to what is relevant to it by virtue of law, custom, and the nature of the transaction. Under DIFC Contract Law, Articles 57 and 58 may again be relevant where implied obligations and co-operation assist in interpreting how operational obligations are to be performed in disrupted conditions.

In practice, it is often useful to distinguish between ordinary commercial delay and conflict-related disruption. The contract should make clear whether the latter is treated as excusable delay, force majeure, a change in law event, or a termination trigger.



Suspension, termination, and dispute resolution clauses

Where performance becomes uncertain, delayed, or legally risky, the contract should contain a clear agreement for suspension, termination, and dispute escalation. A poorly drafted contract may leave the parties in prolonged uncertainty and increase the likelihood of contentious proceedings.

When reviewing these clauses, parties should consider:

- whether suspension rights are available pending resolution of the disruption;
- whether there is a long-stop date after which either party may terminate;
- what happens to deposits, accrued fees, work in progress, or goods already in transit;
- whether termination is immediate or notice-based; and
- whether disputes are to be resolved by litigation, arbitration, expert determination, or another agreed mechanism.

Under Onshore UAE Law, Article 272 provides that in contracts binding on both parties, if one party does not do what it is obliged to do, the other party may, after notice, require performance or cancellation. Under DIFC Contract Law, Article 86 provides that a party may terminate where the failure of the other party to perform amounts to a fundamental non-performance, and Article 87 provides that the right to terminate is exercised by notice.

The relationship between force majeure, sanctions, and termination should also be checked carefully. Some contracts provide only for suspension during force majeure. Others provide for termination after a specified period. Others treat sanctions or illegality as separate termination events. The drafting should identify clearly which route applies.



Drafting considerations

When preparing or revising contracts in a geopolitically unstable environment, parties should consider the following:

- ensuring force majeure clauses expressly cover conflict-related events;
- distinguishing between impossibility, hardship, delay, and increased cost;
- including clear sanctions and illegality wording;
- building flexibility into payment and delivery provisions;
- requiring prompt notice and supporting evidence of disruption;
- aligning suspension and termination rights with dispute resolution provisions; and
- reviewing whether the governing law and forum remain appropriate for the transaction.

Practical point

For businesses operating in or through the UAE, the practical question is not whether geopolitical risk exists, but whether their contracts are drafted to respond to it. Force majeure, sanctions, payment mechanics, delivery obligations, and termination rights should all be reviewed carefully to ensure that the consequences of disruption are clearly allocated. The clearer the contractual framework, the better placed parties will be to preserve performance, manage risk, and avoid unnecessary disputes when geopolitical events affect the transaction.

Related Content

Legislation

- Federal Law No. (5) of 1985 concerning the issuance of the Civil Transactions Law of the United Arab Emirates, as amended.
- DIFC Law No. 6 of 2004, Contract Law, as amended.
- DIFC Investments LLC v Mohammed Akbar Mohammed Zia [2017] DIFC CFI 001

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Sarah Malik is an award-winning lawyer who achieved 'Litigator of the Year' at the first GCC Women in Law Awards 2022 and received an honourable mention as 'Law Firm Leader of the Year' at the same awards. SOL was set up in 2018 and has become an internationally recognised brand of repute in all aspects of dispute resolution.

In 2022, SOL was listed as a 'Firm to Watch in Dispute Resolution: Arbitration and International Litigation' by Legal 500 EMEA. In 2023, Sarah was recognised in the Arbitration Powerlist in Private Practice in the Middle East by Legal 500 EMEA.

Sarah is a published author of two legal texts. She is also appointed as Adjunct Faculty in Law teaching LLM and LLB students in Dubai, LLB students in Riyadh and Fashion Law students in Milan. Sarah acts as Counsel in multi-jurisdictional disputes, and is a sought after international public speaker on thought leadership. Sarah holds various international advisory and Board positions.

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Ahmed Hamo joined SOL International Ltd in November 2025 and is currently a Trainee, where he has gained experience in both court litigation and international arbitration.

He has been involved in a hospitality sector trial before the DIFC Courts and has assisted in a maritime arbitration seated in Hong Kong under the HKIAC Rules. His role includes legal research, drafting submissions and pleadings, and supporting the preparation of case strategy in complex cross-border disputes.

In addition to contentious work, Ahmed assists on commercial matters, including drafting legal documents such as Shareholder Agreements, Consultancy Agreements, Commercial Contracts, and legal notices, as well as working on employment law matters.

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