Force Majeure and Hardship in Commercial Contracts: Managing Risk in Times of Uncertainty

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Introduction

Commercial contracts are designed to allocate risks between the parties and establish a clear framework for performance. In practice, however, circumstances may arise after a contract has been signed that materially interfere with the assumptions on which the parties originally agreed.

Geopolitical instability, armed conflicts, government restrictions, sanctions, disruption of international trade routes, supply-chain interruptions, substantial increases in energy and transportation costs, shortages of essential materials, and other extraordinary developments can all affect the ability of businesses to perform their contractual obligations.

When such circumstances arise, one of the first questions businesses ask is whether they can rely on **force majeure** or **hardship**.

The answer is rarely determined simply by the seriousness of the event. A force majeure claim generally requires an event that prevents or makes performance impossible, while hardship concerns circumstances where performance remains possible but becomes exceptionally burdensome and threatens the contractual balance.

The distinction is particularly important because the legal consequences are different. Depending on the governing law and the wording of the contract, force majeure may lead to suspension, exemption from liability, extension of time, or ultimately termination where performance becomes permanently impossible. Hardship, by contrast, is generally concerned with restoring contractual equilibrium rather than simply excusing performance.

For businesses operating across Egypt and the GCC, these issues require careful consideration at both the **contract-drafting stage and the contract-management stage**.

1. Force Majeure: When an External Event Prevents Performance

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Force majeure is concerned with circumstances that are beyond the affected party's control and that prevent the performance of a contractual obligation.

The most important question is therefore not whether an event is extraordinary, but **what effect that event has on the particular contractual obligation**.

A war, government measure, transportation disruption, sanctions regime, natural disaster, or other external event may potentially qualify as force majeure. However, the event itself does not automatically release a party from liability. There must generally be a sufficient connection between the event and the inability to perform.

For example, if a government prohibition makes the importation of a product legally impossible, the affected supplier may have a stronger force majeure argument. By contrast, if the product remains available but its price has increased substantially, performance may still be possible and the issue may instead concern hardship or contractual price-adjustment mechanisms.

The contract should always be reviewed first

A properly drafted force majeure clause can significantly influence the parties' rights.

Commercial contracts may specify:

- which events constitute force majeure;
- whether the list of events is exhaustive or illustrative;
- whether governmental measures, war, sanctions, transportation disruption or supply-chain failures are covered;
- the degree of impact required before relief becomes available;
- notification periods;
- mitigation obligations;
- suspension and extension-of-time rights;

- allocation of additional costs;
- and the circumstances in which either party may terminate.

This is particularly important in international and long-term contracts. A generic reference to "force majeure" may leave substantial questions unanswered, whereas a carefully drafted provision can establish a clear mechanism for dealing with disruption.

Under Egyptian law, the statutory framework may also become relevant even where the contract does not contain a detailed force majeure clause. Nevertheless, a contractual provision can provide considerably greater certainty by defining the events, procedures and consequences agreed between the parties. Recent commercial-contract guidance continues to recommend detailed contractual force majeure provisions for precisely this reason.

The practical assessment should therefore consider both the **applicable law and the negotiated allocation of risk**.

2. Hardship: When Performance Becomes Excessively Burdensome

Hardship arises in a different situation.

Here, the extraordinary event does not necessarily make performance impossible. Instead, circumstances occurring after the contract was concluded may make performance excessively onerous and fundamentally disturb the economic balance originally contemplated by the parties.

This distinction can be particularly significant in long-term contracts, construction projects, supply agreements, energy arrangements, financing structures and other transactions where performance extends over a substantial period.

Consider a long-term supply contract under which a supplier remains technically capable of delivering the agreed products, but an exceptional and unforeseeable market disruption causes the cost of raw materials, transportation and insurance to increase dramatically.

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The supplier may still be capable of performing.

The problem is that performance has become extraordinarily burdensome.

That is fundamentally different from a situation in which a legal prohibition or physical event makes delivery impossible.

Force majeure and hardship should not be treated as the same remedy

The distinction can be summarized as follows:

Force majeure:

The event prevents performance or makes it objectively impossible.

Hardship:
Performance remains possible, but exceptional circumstances make it excessively onerous and threaten the contractual equilibrium.

Under Egyptian law, Article 147(2) of the Civil Code embodies the doctrine of exceptional or unforeseen circumstances. Where exceptional and unforeseeable events of a general character make contractual performance excessively onerous without rendering it impossible, the judge may, after considering the circumstances and the interests of both parties, reduce the excessive obligation to reasonable limits. The provision also prevents the parties from contractually excluding this statutory protection.

Similar distinctions exist in several GCC jurisdictions.

Qatar's Civil Code, for example, addresses exceptional circumstances under Article 171 and provides for judicial intervention where unforeseeable exceptional events make performance excessively onerous, while Articles 187 and 188 address situations in which force majeure renders performance impossible.

Saudi Arabia's Civil Transactions Law adopts a comparable structure. Article 97 addresses exceptional circumstances and allows the affected party to invite the other party to negotiate, while making clear that the request for negotiation does

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not itself entitle the debtor to stop performing. Article 110 addresses impossibility in bilateral contracts and its consequences.

The UAE framework also distinguishes between external causes and force majeure and the consequences of impossibility. The UAE's 2025 Civil Transactions Law should now be considered when advising on contracts governed by UAE law rather than relying automatically on provisions from the former 1985 legislation.

Accordingly, the governing-law clause should never be treated as a secondary drafting provision. It can determine the available remedies and the extent of judicial intervention.

3. From Legal Entitlement to Contractual Strategy

Identifying a potential force majeure or hardship event is only the beginning.

A successful contractual response requires the affected party to demonstrate **causation, timely notification, mitigation and proper documentation**.

First, the party should establish precisely what happened and when it happened. It should then identify the contractual obligation that has been affected and demonstrate how the event caused the delay, interruption or increased burden.

This is particularly important where several factors have contributed to the failure to perform. A party cannot necessarily attribute its entire contractual default to an extraordinary external event merely because that event occurred during the same period.

Notice and documentation

Many commercial contracts impose specific notification requirements.

The affected party may be required to provide notice within a defined period and to identify the nature of the event, the affected obligations and the expected consequences.

Failure to comply with these requirements can create a separate contractual problem and may jeopardize otherwise available remedies.

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Businesses should therefore issue protective notices promptly where there is a reasonable basis for doing so, while avoiding unsupported or overly broad assertions.

The notice should ideally be supported by contemporaneous evidence, such as:

- governmental decisions or restrictions;
- supplier correspondence;
- shipping records;
- insurance communications;
- transportation documentation;
- project records;
- cost reports;
- purchase orders;
- expert assessments; and
- correspondence demonstrating attempts to mitigate the impact.

Mitigation remains critical

Force majeure is not a substitute for responsible contract management.

The affected party should consider whether alternative means of performance are reasonably available. Depending on the circumstances, this may include alternative suppliers, different transportation routes, revised delivery schedules, substitute materials or temporary operational arrangements.

The objective is not to eliminate every additional cost at any price. Rather, the affected party should be able to demonstrate that it acted reasonably and took appropriate steps to reduce the consequences of the extraordinary event.

This is also consistent with the broader principle of good-faith contractual performance under Egyptian law. Article 148 of the Egyptian Civil Code requires

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contracts to be performed according to their contents and in accordance with the requirements of good faith.

What remedy should be pursued?

The appropriate remedy depends on the legal classification of the event and the contract.

Potential outcomes may include:

- exemption from liability for the relevant non-performance;
- additional time for performance;
- temporary suspension;
- adjustment of contractual obligations;
- renegotiation;
- allocation of additional costs;
- or termination where the legal and contractual requirements are satisfied.

A party should therefore avoid treating "force majeure" as a conclusion in itself. The more important question is:

What contractual relief is actually available in the circumstances?

4. Drafting Better Protection for Future Contracts

Many disputes concerning force majeure and hardship can be reduced through better drafting before the contract is signed.

A well-designed clause should not merely contain a long list of extraordinary events. It should establish a **risk-management mechanism**.

Parties should consider addressing:

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Triggering events

The clause should identify the categories of events capable of activating the mechanism while avoiding unnecessary ambiguity.

Foreseeability and risk allocation

The parties should determine which risks are assumed by each party and whether certain foreseeable risks are expressly excluded.

Degree of impact

The contract should distinguish between events that merely increase cost and those that actually prevent performance.

Notice

The timing, method and content of notices should be clearly established.

Mitigation

The clause should identify the reasonable steps expected from the affected party.

Consequences

The contract should specify whether the consequence is suspension, extension of time, exemption from damages, cost adjustment or another agreed remedy.

Long-stop mechanism

Where an event continues for an extended period, the parties should consider whether either party should have a right to terminate.

Hardship mechanism

Long-term contracts may benefit from a separate hardship provision establishing when renegotiation may be triggered, how negotiations will be conducted and what happens if the parties cannot reach an agreement.

Evidence and verification

The parties may also establish procedures for demonstrating the impact of the event, particularly in major construction, infrastructure and supply contracts.

This approach is particularly valuable for businesses operating across multiple jurisdictions. A clause designed for an Egyptian-law contract should not automatically be copied into a Saudi, UAE or Qatari agreement without considering the relevant statutory framework.

A practical approach for businesses facing disruption today

Where an existing contract is already being affected, management should avoid immediately assuming that the solution is to suspend performance.

A more effective process is to:

1. Review the governing law and contractual risk allocation.
2. Identify the precise event and the date on which it occurred.
3. Determine whether performance is impossible or merely more onerous.
4. Assess whether the event falls within the contractual force majeure or hardship mechanism.
5. Check all notice and procedural requirements.
6. Establish the causal connection between the event and the contractual impact.
7. Document all mitigation measures.
8. Review relevant insurance coverage.
9. Engage with the counterparty at an early stage.
10. Obtain legal advice before suspending performance, withholding payment, claiming additional costs or terminating the contract.

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Early intervention is particularly important in construction, infrastructure, logistics, manufacturing and other sectors where a relatively short disruption can generate substantial downstream consequences.

Conclusion

Force majeure and hardship are not general escape routes from contractual obligations.

They are legal mechanisms designed to address exceptional situations in which circumstances outside the ordinary contractual assumptions interfere with performance.

The central distinction remains critical: **force majeure is primarily concerned with prevention or impossibility of performance, while hardship addresses exceptional circumstances that leave performance possible but excessively burdensome.**

For businesses, however, the most important issue is not simply identifying which doctrine may apply. The real challenge is translating that legal classification into an effective contractual strategy.

That requires reviewing the contract, understanding the governing law, establishing causation, complying with notice requirements, mitigating losses, preserving evidence and selecting the appropriate remedy.

For cross-border transactions involving Egypt and the GCC, the analysis becomes even more important because the legal consequences of impossibility and exceptional circumstances vary between jurisdictions.

In an increasingly uncertain commercial environment, force majeure and hardship provisions should therefore be viewed as essential elements of **contractual risk allocation and business continuity planning**. The strongest protection is not created when a dispute begins; it is created when the contract is drafted, risks are allocated clearly, and extraordinary events are addressed through a structured contractual mechanism.

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