UAE March 2026 Crisis Client Alert

Frustration, Force Majeure, and Hardship in the UAE

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UAE March 2026 Crisis: Force Majeure, Hardship and Frustration of Contract in the UAE

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The 2026 U.S.-Israel-Iran conflict came as a shock to the Middle East and the wider world. On 28 February 2026, many UAE residents were going about their usual routines: grocery shopping, the gym, padel (of course), brunches, or, like the author of this alert, sitting on a call with a client while the kids were enjoying a birthday party at Ski Dubai. Very few expected what the following week would bring: anxiety, closed airspace, repeatedly delayed flights, and the terrifying midnight mobile phone alerts commanding to "*seek immediate shelter in the closest secure building, and to steer away from windows, doors and open areas*."

Yet after the initial shock, the need to deal with reality inevitably sets in. When it comes to legal matters, the first question that arises is how the current unsettling events may affect existing contractual relationships. A seemingly obvious impulse to invoke force majeure may lead to questionable decisions.

In this alert, we outline the legal framework governing force majeure, hardship and frustration of contract in the UAE.

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SUMMARY

The UAE is home to three distinct legal regimes, each with its own rules on what happens when a contract becomes impossible or impracticable to perform. This matters because the answer to "can I get out of my contract?" or "what can I do if my counterparty stops performing?" depends entirely on which set of rules governs the contract in question.

Under UAE federal law, force majeure requires genuine impossibility of performance (not merely increased cost or inconvenience), and the courts have been strict about this. But the law also offers a separate tool for situations where performance is still possible but has become ruinously expensive: the hardship doctrine under Article 249, which empowers courts to adjust obligations to a fair level. Crucially, this is a mandatory rule that cannot be contracted out.

In the DIFC, force majeure is a statutory implied term: Article 82 of the DIFC Contract Law excuses non-performance caused by an impediment beyond a party's control, provided it was unforeseeable and unavoidable. However, it does not excuse the obligation to pay money, and temporary impediments suspend rather than extinguish obligations. There is no statutory hardship doctrine in the DIFC — if performance is possible but expensive, there is no judicial safety net.

In the ADGM, English common law applies directly. Force majeure has no independent legal meaning; it is only as good as the clause in the contract. Without a clause, the only fallback is the doctrine of frustration — a high-threshold, all-or-nothing mechanism that discharges the contract entirely. There is no hardship doctrine in English law.

A recurring theme across all three regimes is that invoking force majeure is not a self-help remedy. It requires specificity (naming the precise impediment, not just "the war"), causation (proving the link between that impediment and the specific obligation), timeliness (notifying the counterparty promptly), and good faith (taking reasonable steps to mitigate). The alert also draws attention to a question that many force majeure clauses fail to address: what counts as "war" in the first place.

1. From Paradine to Guaranteed Returns

Many force majeure clauses list "war" as a trigger event. The word seems self-evident, but it is not. Under international law, "war" is a defined concept. Common Article 2 of the Geneva Conventions of 1949 applies to "all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties."[1] In practice, however, States rarely declare war. The United States has not formally declared war since 1942. The operations in Iraq (2003), Libya (2011), and Syria (2014 onwards) were all conducted without a declaration of war. Israel's military operations have historically been characterised as acts of self-defence rather than wars. The Russia-Ukraine conflict is a special military operation or a crisis.

The current U.S.-Israel-Iran operations have been described variously as "strikes," "military operations," "retaliatory actions," and "kinetic operations." None of the States involved has formally declared war. The question, then, is whether a force majeure clause that lists only "war" (without broader language such as "armed conflict," "military action," "hostilities," or "government-imposed restrictions") actually captures the current events.

English case law takes a pragmatic approach. Whether a "war" exists is a question of fact determined by common sense, not by reference to formal declarations or international law classifications. The Falklands conflict and the Gulf operations were treated as wars for commercial law purposes regardless of their formal legal characterisation. In the UAE federal law, courts have similarly looked at the substance of the disruption rather than its label.

But even where the events do amount to "war" for the purposes of a force majeure clause, that is only the beginning of the analysis. A Dubai Court of Appeal judgment (Case No. 406/2023) offers a sharp reminder of the limits. In that case, an informal digital currency broker invoked force majeure, arguing that the extreme market volatility caused by the Russia-Ukraine war rendered performance impossible. The court refused the defence. The reason was simple: the broker had explicitly guaranteed the return of the investor's principal "at any time" and described the investment as "100% guaranteed." By making those representations, the broker had contractually assumed the risk of market volatility, including volatility caused by armed conflict. The existence of a war did not override the broker's own promises.

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[1] Geneva Conventions (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31, 85, 135, 287, common art 2.

In Paradine,[2] a tenant dispossessed by an army still owed rent. In Case 406/2023, a broker who promised guaranteed returns still owed the money back, even when a war crashed the market. The arc from Paradine to Case 406/2023 is longer than it might appear. Both cases stand for the same uncomfortable principle: the law holds people to their bargains. Force majeure is not a magic wand. It does not erase the obligations you chose to assume. It only relieves those obligations that have genuinely become impossible through no fault of your own. And even then, only if you can prove it.

For parties reviewing their contracts now, the practical takeaway is this: check not only whether "war" is listed in the force majeure clause, but whether the clause also covers "armed conflict," "military operations," "hostilities," "government restrictions," and "sanctions." If it lists only "war," consider whether a catch-all provision ("any event beyond the parties' reasonable control") fills the gap. And if you are the party who made the promise, ask yourself honestly: did you assume the risk of this happening when you gave that guarantee?

[2] Paradine v Jane (1647) Aleyn 26; 82 ER 897.

2. THE UAE – One Country, Three Legal Systems

The United Arab Emirates is a Federation with a unique legal system. It is a predominantly civil law country with significant influence from Shariah Law. However, there are two common law enclaves: Dubai International Financial Centre (the "**DIFC**") and the Abu Dhabi Global Market (the "**ADGM**"). The DIFC is a common law jurisdiction with its own statutory and case law. Despite being commonly referred to as an English law-free zone, DIFC is not. The laws in DIFC often echo English statutes and judgments, but to apply English law or a precedent, the court would need to apply a complex multi-step test. And as we will see later, some of the regulations in the DIFC are civil in their nature. Now, ADGM is an English law jurisdiction by virtue of a special law that incorporates circa 40 English statutes into ADGM's legal system, and the application of English law and precedent is simpler than in DIFC. One important aspect must be mentioned here: both DIFC and ADGM are exempt from the application of the UAE federal civil and commercial laws.

2.1 Force Majeure

The contractual relationships in the UAE are governed by the Civil Code.[3] Article 273(1) of the Code provides that, in bilateral contracts, if a force majeure event renders performance of the obligation impossible, the corresponding obligation is extinguished and the contract is automatically rescinded. Article 273(2) extends this to partial impossibility (where consideration for the impossible part is extinguished) and to temporary impossibility in continuous contracts. In both partial and temporary cases, the creditor retains the right to rescind the contract.

The UAE courts have established the three cumulative requirements:

1. **Unforeseeability**. The event must not have been foreseeable at the time of contract formation. An event that the parties could have anticipated when entering into the contract cannot constitute force majeure.
2. **Unavoidability**. The event and its consequences must be impossible to avoid or overcome through reasonable measures.
3. **Impossibility of Performance (not mere difficulty)**: UAE courts consistently distinguish between impossibility (Article 273) and onerousness or hardship (Article 249). Increased cost, delayed or cancelled flight, logistical difficulty, or

[3] Federal Law No. 5/1985 On the Civil Transactions Law of the United Arab Emirates State, Civil Code.

commercial inconvenience – none of these constitutes a force majeure under the UAE Civil Code.

2.2 Hardship

Where performance is not impossible but has become excessively onerous due to exceptional events of a public nature that were unforeseeable, Article 249 of the UAE Civil Code empowers the court or arbitral tribunal to reduce the obligation to a reasonable level. That rule is mandatory and cannot be contracted out; courts have consistently applied it over the years. The distinction with force majeure (as defined in Article 273) is that the circumstances do not render the performance of an obligation impossible, but make it excessively onerous in such a way as to threaten the debtor with exorbitant loss.

2.3 Other provisions to consider

Apart from the general *force majeure* and *hardship* provisions, rules on good faith and extraneous causes shall be considered. Under Article 246, the parties to a civil transaction are expected to act in good faith. That doesn't oblige parties to mitigate; however, should the case reach the court, the judge will expect the parties to refrain from compounding their losses. One cannot claim force majeure if they had participated in or contributed to the damage or default. This echoes a standard force majeure compliance best practice – a timely notice by the affected party of relevant impediments. Article 287 sets out the rules for damages and liability defence: if the breach or damage is a result of causes beyond one's control, such as an Act of God, a sudden foreign cause, force majeure, the fault of others or of the affected party.

2.4 The New Civil Code

On 1 October 2025, a Federal Decree-Law No. 25/2025 introduced the new Civil Transactions Law (the "**New Civil Code**"), which will come into force on 1 June 2026. Article 4(1) provides that it shall not apply to facts and transactions preceding it, unless otherwise stipulated by the law.

The force majeure provisions have largely remained the same. For reciprocal obligations, however, Article 236(1) sets the new rule – if a force majeure event makes the performance of an obligation impossible, the obligations shall lapse, and the contract shall be dissolved ipso jure. For partial non-performance caused by force majeure events, the parties may insist on the lapse of respective (corresponding) obligations or their parts, or the rescission of the contract (Article 236(2)). Lastly, when the impossibility to perform obligations is temporary in continuous (successive) contracts, each party to such a contract can claim the lapsing of the corresponding part of their obligations, seek modification of the contract, or petition the court for its rescission.

Hardship regulations have also been modified, and reflect the UAE courts' approach formed over the last decade. The general hardship rule is set up in Article 224, which repeats the rule of the currently in-force Civil Code's Article 249 with one significant addition – the court may order the rescission of a contract if it concludes it to be the only sensible solution. Additionally, Article 311(2) gives the courts the authority to grant the debtors affected by hardship circumstances grace periods or instalments to perform their obligations, provided that such a decision causes no serious harm to the creditor. Finally, Article 829 provides specific regulations for work contracts affected by hardship circumstances: the courts are expressly empowered to restore contractual equilibrium when exceptional circumstances beyond the parties' control create a significant imbalance. The courts may extend the performance period, increase or decrease remuneration or order the rescission of the contract.

3. DIFC

Unlike UAE Federal law and unlike English common law, the DIFC has a statutory force majeure provision that is implied into all DIFC-governed contracts by default. Article 82 of the DIFC Contract Law[4] is modelled on Article 79 of the CISG[5] and Article 7.1.7 of the UNIDROIT Principles.[6] It is closer to the French concept of force majeure than to English frustration of contract.

The elements of this force majeure are:

- Non-performance due to an impediment,
- Such an impediment is beyond the party's control, and
- The party could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.

The differences between how a force majeure is regulated in DIFC and its UAE federal counterpart are:

- An obligation to pay money is not covered with force majeure exclusion, and
- The parties are not expected to foresee the impediment and its consequences.

The latter is important – there aren't too many events that can't be seen as taking place. Before the current crisis began, it was the subject of many discussions, and there is no shortage of expert opinions online. Hence, should one try to invoke the force majeure regulation under the federal UAE rules, they may face a solid counter-argument on the foreseeability of the impediment.

Force majeure under DIFC rules has a suspensory element to it – under Article 82(2) of DIFC Contract Law, for a temporary impediment, an excuse will have effect for a reasonable period, taking the affected obligation into account.

In order to be exempt from damages, the affected party must notify the other party within a reasonable time. A failure to do so will deprive the failed party of a force majeure defence against damages. And lastly, even when one party's non-performance is excused

[4] DIFC Contract Law DIFC Law No. 6 of 2004 (as amended).

[5] UN Convention on Contracts for the International Sale of Goods (adopted 11 April 1980, entered into force 1 January 1988) 1489 UNTS 3 (CISG).

[6] UNIDROIT, UNIDROIT Principles of International Commercial Contracts 2016 (4th edn, UNIDROIT 2016).

under force majeure, the other party can still terminate the agreement, withhold performance or request interest on money due.

4. ADGM

The common law of England (including the principles and rules of equity), as it stands from time to time, applies and has legal force in the ADGM, under Article 1(1) of the Application of English Law Regulations 2015. The ADGM Court of Appeal confirmed that English law has direct precedential value in the ADGM courts in AC Network Holding Ltd & Ors v Polymath Ekar SPV & Ors.[7]

Force majeure in ADGM has no recognised independent legal meaning. Hence, a party can invoke force majeure if the contract contains a relevant clause, and the relief depends on that clause. In practical terms, that means if a contract has no force majeure provisions, the only available relief is likely the common doctrine of frustration. And if the contract defines what impediments constitute force majeure, the affected party bears the burden of proving that the specific event falls within the clause's scope and that there is a causal connection between the event and the failure to perform.

Frustration. English law starts from the principle that contractual obligations are absolute. Under the rule in *Paradine v Jane* (1647), a party that has promised to perform must do so or pay damages, regardless of whether supervening events have made performance harder, costlier, or even impossible.[8] This remains the default position: the common law does not, as a general matter, relieve parties of bargains that have turned out badly.

The doctrine of frustration, first recognised in *Taylor v Caldwell* (1863), provides an exception to this rule.[9] Where a supervening event—one occurring after contract formation, without the fault of either party—destroys the foundation on which the contract was made, the contract is discharged by operation of law. Neither party chooses this outcome; it follows automatically from the nature of the event.

The test applied today was formulated by Lord Radcliffe in *Davis Contractors Ltd v Fareham Urban District Council* (1956): frustration occurs where the law recognises that, without default of either party, a contractual obligation has become incapable of being performed because the circumstances in which performance is called for would render it a thing radically different from that which was undertaken by the contract.[10] In this case, the emphasis fell on defining "*the radically different*." Even a nearly threefold extension of the

[7] *AC Network Holding Ltd & Ors v Polymath Ekar SPV & Ors*, ADGMCA-2023-01.
[8] *Paradine v Jane* (1647) Aleyn 26.
[9] *Taylor v Caldwell* (1863) 3 B&S 826.
[10] Davis Contractors Ltd v Fareham Urban District Council [1956] AC 696, per Lord Radcliffe at 729.

time for performance does not change the nature of the obligation. The work may become more burdensome, but it's still the same work. And just as increased costs, delays, and commercial hardships, it does not cross the line leading to frustration of the contract.

Three principal grounds for frustration of contract are generally recognised. First, the impossibility: where the subject matter of the contract has been destroyed, or a person essential to performance has died or become incapacitated, the contract is discharged. This was the basis of *Taylor v Caldwell*, where a music hall burned down before the contracted performances could take place. In a commercial context, impossibility extends to situations where a specific asset, facility, or route on which performance depends has ceased to exist or become physically inaccessible.

Second, the illegality: when a change in the law or a government order renders performance unlawful, the contract is frustrated. In *Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd* (1943), the German occupation of Poland rendered cross-border trade between a British supplier and a Polish buyer illegal; the contract was discharged.[11]

And third, the radical change of obligation. Even where performance is not physically impossible or illegal, a contract may be frustrated if the supervening event has so fundamentally altered the nature of the outstanding obligation that what remains is, in substance, a different bargain. The boundaries of this ground were drawn by the coronation cases of 1903: in *Krell v Henry*, the hire of a flat for the sole purpose of viewing a coronation procession that was then cancelled was held frustrated.[12]

There are two constraints to consider. First, frustration does not apply merely because performance has become more expensive. In *Tsakiroglou & Co Ltd v Noblee Thorl GmbH* (1962), the closure of the Suez Canal forced a shipment of goods to be rerouted around Africa at roughly double the cost.[13] The House of Lords held that the contract was not frustrated: the obligation to deliver remained the same, merely more costly to fulfil.

Second, frustration is unavailable where the contract itself allocates the risk of the supervening event. If the parties have addressed the possibility of disruption through a force majeure clause, an extension-of-time mechanism, or other express provision, the court will hold them to their bargain. In *Canary Wharf (BP4) T1 Ltd v European Medicines*

[11] Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd [1943] AC 32.
[12] Krell v Henry [1903] 2 KB 740.
[13] *Tsakiroglou & Co Ltd v Noblee Thorl GmbH* [1962] AC 93.

Agency (2019), the court declined to find that Brexit frustrated a 25-year lease, in part because the lease's alienation provisions demonstrated that the parties had contemplated the possibility that the tenant might need to leave.[14] The same reasoning applies where a party has assumed a particular risk by choosing not to insist on protective provisions during negotiation.

A frustrated contract is discharged automatically at the moment of the frustrating event. This is not a suspension or adjustment, as it may be the case with force majeure; it is a permanent termination by operation of law. Neither party has an election in the matter.

[14] *Canary Wharf (BP4) T1 Ltd v European Medicines Agency* [2019] EWHC 335 (Ch).

5. PRACTICAL CONSIDERATIONS

The doctrinal framework described above is only as useful as its application. In practice, the first question is not "what does the law say?" but "which side of the breach am I on?" The steps to take and the risks to manage differ fundamentally depending on whether you are the party unable to perform or the party left waiting for performance.

5.1 UAE Federal Law

If you cannot perform: Notify your counterparty immediately and in writing. Identify the specific impediment: not "the conflict" but the closure of a named port, a specific airspace restriction, or a particular government order. Explain which obligation is affected and why performance is impossible, not merely more expensive. Document your mitigation efforts: what alternatives you explored, why they were not viable, and what steps you are taking to resume performance. If the impediment makes performance onerous rather than impossible, consider whether Article 249 (hardship) is the more honest route — it allows judicial adjustment without requiring you to overstate the impossibility of your position. Check whether you were already in default before the crisis began: under UAE case law, force majeure must be the sole cause of non-performance.

If your counterparty has stopped performing: Do not accept a vague force majeure notice at face value. Request specifics: what impediment, which obligation, and what mitigation steps have been taken. Assess whether performance is truly impossible or merely inconvenient for the counterparty (the distinction between Article 273 and Article 249 matters). If the contract has become partially impossible, consider whether you wish to continue with the remaining obligations or rescind entirely (both options are available under Article 273(2)). Under Article 246, you are also expected to act in good faith; refusing all accommodation when reasonable alternatives exist may weaken your position in any subsequent litigation.

5.2 DIFC

If you cannot perform: Article 82 is your starting point, but remember two things. First, payment obligations are excluded. You cannot rely on force majeure to withhold rent, loan repayments, or instalments of the purchase price. Second, you must give notice within a reasonable time, and the notice must be specific about the impediment and its effect on your ability to perform (Article 82(3)). The DIFC Courts have been demanding on notice quality: in the Daman construction cases, vague notices that failed to identify either the impediment or the extent of the delay were held insufficient.[15] If the impediment is temporary, your obligations are suspended, not extinguished (be prepared to resume performance when the impediment lifts). There is no hardship mechanism in DIFC law, so if performance is possible but at a greatly increased cost, the statutory regime offers no relief. Your options are to perform, negotiate a variation, or refuse and accept the risk of a damages claim.

If your counterparty has stopped performing: Even if the counterparty's non-performance is excused by force majeure, Article 82(4) preserves your right to terminate the contract, withhold your own performance, or claim interest on money due. Force majeure excuses liability for damages, but it does not compel you to wait indefinitely. If the non-performance amounts to a fundamental breach (Article 86), you can terminate immediately without a cure period. If performance is merely delayed, you can set an additional reasonable period under Article 81, and terminate at the end of it if performance is still not forthcoming. Act promptly: under Article 87(2), the right to terminate is lost if notice is not given within a reasonable time.

5.3 ADGM

If you cannot perform: Check the contract first. If there is a force majeure clause, comply with it to the letter: notice requirements, mitigation obligations, time limits. English courts construe force majeure clauses restrictively, and procedural non-compliance can bar relief entirely. If there is no force majeure clause, your only route is frustration, which requires the contract to have become radically different from what was undertaken. Be realistic: *Tsakiroglou* showed that the availability of an alternative, even a far costlier one, may defeat a frustration argument. There is no hardship doctrine, no judicial power to adjust prices, and no implied force majeure term. If the contract does not protect you, the law probably will not either.

If your counterparty has stopped performing: Scrutinise any force majeure notice against the exact wording of the clause. Does the event actually fall within the defined triggers? Has the counterparty complied with the procedural requirements? Has it demonstrated that the event (and not some other factor) caused the non-performance? The party must show it was ready, willing and able to perform but for the force majeure event. If the contract has been frustrated (rather than merely delayed), it is discharged automatically — you do not have a choice in the matter.

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[15] *Daman Construction Cases* (DIFC CA 005 & CA 006,2013) <https://www.difccourts.ae/rules-decisions/judgments-orders/court-appeal/1-kenneth-david-rohan-2-andrew-james-mostyn-pugh-3-michelle-gemma-mostyn-pugh-4-stuart-james-cox-v-daman-real-estate-capital-par> accessed 10 March 2026.