

## Legal Considerations for Projects in the Middle East in Light of the Current Conflict

The ongoing conflict in the Middle East has disrupted supply chains, especially in the oil and gas sector. Major operators in the region have already declared Force Majeure and announced output reductions due to the conflict. As the conflict continues, its effects are also likely to impact major projects, potentially causing delays and increased costs. While these disruptions may not yet be severe enough to cause major delays, parties should be aware of the legal frameworks governing their rights and any liabilities arising from such delays. This Client Alert addresses these points for projects in the United Arab Emirates (the “UAE”) and the Kingdom of Saudi Arabia (the “KSA”), and provides a list of factors that parties should consider. Curtis’ Oman office has already issued an alert regarding Oman, available [here](#).

### Impossibility and Force Majeure

Both the laws of the UAE and KSA recognize Force Majeure as an event that excuses a party’s performance under the contract and also releases a party from liability for losses caused by the Force Majeure.

The KSA’s Civil Transactions Law, issued under Royal Decree No. M/191, dated June 18, 2023 (the “KSA Civil Transactions Law”), explicitly provides that an “obligor’s obligation shall be extinguished if it proves that its failure to perform is caused by an event outside its control. The corresponding obligation, if any, shall also be extinguished.” (Article 294.) Article 110 of the KSA Civil Transactions Law encapsulates the same principle. The UAE’s Federal Law No. (5) of 1985 regarding civil transactions (the “UAE Civil Transactions Law”) similarly provides that a “right shall be extinguished if the obligor proves that its performance has become impossible by an extraneous cause beyond its control.”<sup>1</sup> (Article 472.) The same law provides that a Force Majeure event that renders an obligation impossible to perform releases the corresponding obligation and allows for the contract to be rescinded *ipso facto*. (Article 273.)

In addition, both the KSA Civil Transactions Law and the UAE Civil Transactions Law absolve an obligor of the obligation to compensate where the loss is attributable to the Force Majeure. The KSA Civil Transactions Law provides that a “party shall have no liability if it proves that the loss arose from a cause beyond its control, such as a Force

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<sup>1</sup> In addition to the UAE Civil Transactions Law, other laws may apply to projects in the UAE. Many contracts fall under the laws of the Dubai International Financial Centre (“DIFC”) and the Abu Dhabi Global Market (“ADGM”), which differ from the UAE Civil Transactions Law. This Client Alert focuses solely on the UAE Civil Transactions Law. Rights and potential liabilities of parties under the laws of the DIFC and the ADGM will be discussed in future alerts.

Majeure, the fault of a third party, or the fault of the aggrieved party, unless agreed otherwise.” (Article 125.) The UAE Civil Transactions Law includes the same principle in Article 287.

While both the KSA Civil Transactions Law and the UAE Civil Transactions Law address the consequences of a Force Majeure event, neither defines the event. In practice, parties include definitions of Force Majeure in their agreements (including non-exhaustive lists of such events), which courts in the UAE and the KSA usually recognize and enforce. However, it is generally understood that for an event to be considered Force Majeure, it must be unexpected, unavoidable, and render performance impossible.

Additionally, while the KSA Civil Transactions Law and the UAE Civil Transactions Law contemplate contract termination due to Force Majeure, whether this is possible depends on the extent to which it affects the parties’ ability to continue performing under their contract. As a general rule, short-term events lead to a temporary suspension rather than termination of the parties’ obligations. Conversely, events with a more lasting effect could lead to termination.

Whether an event qualifies as a Force Majeure cannot be determined in the abstract, as this depends on the specific circumstances and the nature of the obligation allegedly affected. Therefore, parties should seek legal advice when they encounter an event they believe may impact their performance obligations.

### Hardship and Fundamental Changes in the Circumstances

In addition to Force Majeure, the laws of both the UAE and KSA recognize the principle of changed circumstances (also known as the doctrine of *hardship* or *state of emergency*). Under this doctrine, the obligor may be able to obtain an amendment to its agreement with the obligee to restore their “economic equilibrium” after unforeseen events of general application have seriously impacted their obligations, and the parties’ economic realities have shifted significantly from what they expected when entering into the agreement.

The KSA Civil Transactions Law includes this principle in Article 97, while the UAE Civil Transactions Law addresses it in Article 249. The principle is also enshrined in Islamic jurisprudence and is widely accepted as a Sharia-based doctrine.<sup>2</sup> In addition to the general principle in Article 97, the KSA Civil Transactions Law has a specific provision related to this doctrine for lump-sum construction contracts. That provision is Article 471 of the KSA Civil Transactions Law, which permits courts to modify lump-sum contracts if the economic balance between the obligations of the employer and the contractor has “collapsed” due to exceptional circumstances of general application that the parties could

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<sup>2</sup> See Saudi Supreme Court’s decree No. 45/M, dated 8/5/1442 Hijri (December 23, 2020).

not have foreseen at the time of contracting. Under this provision, a court may extend the contract's terms, increase or decrease the contract's price, or rescind the contract.

Whether an event falls under this doctrine requires a careful review of the contract's terms and how the current events impact the parties' obligations. Importantly, if a party believes that the current conflict justifies amending its agreement, it should seek immediate legal advice, as any delay could weaken efforts to secure the necessary amendments and, in some cases, prevent them altogether.

Finally, it should be noted that in addition to the KSA Civil Transactions Law, parties can consider the Saudi Supreme Court's decree No. 45/M, dated 8/5/1442 Hijri (December 23, 2020), which stated that the COVID-19 pandemic could qualify as a Force Majeure if it made fulfilling an obligation impossible, and as a hardship if it caused the obligor to suffer an "extraordinary loss" when performing an existing obligation. While the impact of the COVID-19 pandemic differs from that of the current conflict, decree No. 45/M can shed light on how courts in the KSA may view the impact of the current conflict on the parties' existing obligations.

#### Important Factors to Consider

Given the foregoing, parties should consider the following points when evaluating their positions:

- i. If a party believes its contractual obligation has become impossible or excessively onerous, it should consider immediately notifying its counterparty. In doing so, it should consider any notice requirements under the relevant contract or applicable law.
- ii. In such cases, it is also important to consider the contract terms to determine whether they allocate risks between the parties and, if so, how.
- iii. In the event that an obligation becomes excessively onerous, the affected party should consider proposing the necessary amendment to its counterparty as soon as possible. Any delay could militate against obtaining the required changes if the matter is brought before the courts.
- iv. The affected party should also consider taking any available steps to mitigate the impact of the event at issue. Failure to do so could be a contractual breach. It may also undermine any subsequent claim of Force Majeure or changed circumstances.
- v. Finally, in all cases, parties should keep a record of all documents reflecting the event's impact on their obligations and any mitigation efforts.

## About Curtis

Curtis, Mallet-Prevost, Colt & Mosle LLP is a leading international law firm. Headquartered in New York, Curtis has 19 offices in the United States, Latin America, Europe, the Middle East and Asia. Curtis represents a wide range of clients, including multinational corporations and financial institutions, governments and state-owned companies, money managers, sovereign wealth funds, family-owned businesses, individuals and entrepreneurs.

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