



Navigate Construction Arbitration Landscape with The ADROIT's Newsletter designed for Legal and Construction Professionals

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- 👉 The Legal Segment: Deep dive into pivotal legal topics
- 👉 Arbitration Updates: Key trends and case highlights from the last quarter
- 👉 Virtual Spotlight: Recap of impactful virtual events
- 👉 Firm's Recognition: Celebrating milestones and accolades
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ADROIT CLAIMS & ADR CONSULTANTS (ACAC)

ADR NEWS LETTER- Volume 05/26

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From the Desk of the Managing Editor

Dear Colleagues and Readers,

It gives me great pleasure to present the latest edition of the ADROIT ADR Newsletter, featuring key developments and practical insights in construction law and arbitration.

This edition highlights the commercial impact of the Iran conflict on construction projects, force majeure conditions in the Middle East, and important judicial developments including non-signatory joinder in arbitration and the validity of “No Claim” certificates executed under economic duress.

We also continue our commitment to professional development through our online learning initiatives in construction arbitration and international arbitration practice.

We sincerely thank our readers, contributors, clients, and professional associates for their continued support and trust. Through this newsletter, we remain committed to promoting clarity, professionalism, and excellence in dispute resolution.



A.Ramasubramanian B.E., LLB., FCIARB,
Managing Director/ Lead Consultant - ADR

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MONTHLY NEWSLETTER

IRAN WAR AND THE COMMERCIAL IMPACT ON CONSTRUCTION PROJECTS - CONTRACTORS CLAIM SCENARIOS.

- ✦ Topical issue do not automatically entitle main contractors to protections against claims related to force majeure events from sub-contractors.
- ✦ Rather they are an indicator of disruption that requires careful consideration against each unique contract in the supply chain.
- ✦ Due to armed hostilities, the combination of travel restrictions for staff and cargo, mandatory evacuation orders issued by some embassies, and state authorities' intermittent messages via public announcement systems calling on people to shelter in place, could give rise to claims under construction contracts.
- ✦ Above new normal cause the performance of works is impossible in that scenario or because it creates a hardship rendering performance of obligations excessively onerous without being strictly impossible.
- ✦ Both concepts – impossibility and hardship – are recognised in civil code systems operating in Middle East states such as the UAE, Qatar and the Kingdom of Saudi Arabia (KSA).
- ✦ The distinction between the two matters, because where the concept of impossibility is engaged, claims under force majeure clauses may be able to be made, whereas mere hardship does not constitute a force majeure event but may give rise to other types of claim such as disruptions

☛ “Critically, hardship claims under civil code principles typically entitle a party to judicial rebalancing of the contract rather than full release – meaning compensation, not termination, is the likely outcome.

☛ Contractors considering claims should keep a record of all public announcements, together with timestamps, and cross-reference them with on-site records,”

 ADROIT TEAM HELPS SECURING YOUR CLAIMS DUE TO THE ABOVE SCENERIOS.

✉ Email: info-me@adroitpmc.com

■ Mob: +971 56 433 7832

Author: A.Ramasubramanian
Managing Director/ Lead Consultant - ADR

FORCE MAJEURE CONDITIONS IN THE MIDDLE EAST

(A PROFESSIONAL PERSPECTIVE FOR MODERN PROJECTS)

In today's evolving project environment, the concept of force majeure has become an important part of responsible contract management. Across the Middle East, where infrastructure, real estate, energy, hospitality, industrial and public sector projects continue to expand, it is essential for project stakeholders to understand how exceptional events may affect contractual performance.

Force majeure is generally understood as an exceptional event or circumstance beyond the reasonable control of the parties, which could not have been reasonably anticipated, avoided or overcome and which prevents or materially affects the performance of contractual obligations. It is not intended to excuse ordinary commercial difficulty, poor planning, lack of resources or routine delay. Instead, it provides a balanced contractual mechanism for dealing with genuinely extraordinary situations in a fair and structured manner.

Relevance to Middle East Projects: The Middle East region is known for ambitious development programmes, fast track construction schedules and high expectations for quality, safety and timely delivery. Many projects depend on international procurement, specialist equipment, imported materials, statutory approvals, utilities coordination, logistics networks and skilled project teams.

In such an environment, unforeseen circumstances may occasionally affect progress. These circumstances may include unusually severe weather conditions, natural events, public health restrictions, exceptional public authority directions, major logistics disruption, restrictions affecting import of materials or other events beyond the control of the contracting parties. When these situations arise, a properly drafted and properly administered force majeure clause helps provide clarity, fairness and continuity.

“Professional Principle: *The purpose of force majeure is not to create conflict. Its purpose is to provide a clear and fair method for dealing with exceptional events while preserving project cooperation and commercial balance.”*

Purpose of a Force Majeure Clause: A well drafted force majeure clause identifies the types of events that may qualify, the procedure for notification, the evidence required, the duties of the affected party and the relief available under the contract. Its objective is to allocate risk transparently and to avoid uncertainty when events beyond the control of the parties affect performance.

The clause should be applied carefully and objectively. The mere occurrence of an unusual event does not automatically create entitlement. The party affected must demonstrate that the event directly affected its ability to perform a contractual obligation and that reasonable steps were taken to reduce the impact.

Common Force Majeure Conditions: In a Middle East project context, force majeure conditions may arise from several neutral and non political categories of events. The applicability of each event always depends on the exact wording of the contract, the governing law, the factual circumstances and the supporting records available.

- Unusually severe weather conditions go beyond normal seasonal expectations.
- Natural events such as flooding, cyclones, earthquakes or extraordinary climatic conditions.
- Public health emergencies and related official restrictions affect work execution.
- Exceptional public authority actions affecting permits, site access, movement or project execution.
- Major disruption to transportation, ports, shipping, customs processes or logistics networks.
- Unforeseeable restrictions affect the import or delivery of essential materials and equipment.
- Utility, statutory authority or third party interruptions beyond the reasonable control of the parties.

Notice and Communication: Timely notice is one of the most important requirements in force majeure administration. Most contracts require the affected party to notify the other party within a specified period after becoming aware of the event or its likely effect. A clear notice protects the interests of both parties by allowing early assessment, mitigation and decision making.

A professional notice should identify the event, explain how it affects performance, specify the obligations impacted, describe the expected consequences and confirm the steps being taken to reduce delay or disruption. Notices should be factual, measured and free from unnecessary allegations.

Documentation and Evidence: Effective documentation is essential. Force majeure is assessed on facts, records and contractual requirements. The affected party should maintain a complete and organised record showing the event, the impact, the causal link to project activities and the mitigation measures adopted.

Authority Records	Circulars, instructions, approvals, restrictions, correspondence and official notifications
Project Records	Site diaries, progress photographs, meeting minutes, manpower records and daily reports
Programme Records	Baseline programme, updates, delay analysis, recovery plans and critical path evidence
Procurement Records	Purchase orders, supplier correspondence, delivery schedules, shipping records and customs updates
Mitigation Records	Alternative sourcing, resequencing, coordination logs and recovery actions

Obligation to Mitigate: Force majeure does not remove the responsibility to act reasonably. The affected party should take practical steps to reduce the consequences of the event wherever possible. Mitigation may include resequencing activities, identifying alternative suppliers, adjusting logistics routes, protecting completed works, increasing coordination with authorities or submitting a revised recovery plan. The purpose of mitigation is to support project continuity and reduce the overall impact on time, cost, quality and stakeholder expectations. A cooperative approach often leads to better outcomes than a purely adversarial approach.

Impact on Time and Cost: The consequences of Force Majeure should be assessed with reference to the contract, project records and the claim statement prepared by the professional claims expert. Where a qualifying event delays completion, the affected party may be entitled to an Extension of Time, subject to proof of causation and critical path impact. Time related cost should not be assessed solely on the Particular Conditions. It should be evaluated based on the full contractual framework, contemporaneous records, agreed correspondence and the expert's substantiated claim statement. The assessment should clearly establish the delay event, period of impact, mitigation measures and basis of entitlement.

Best Practices for Stakeholders: For employers, force majeure provisions should be reviewed during contract preparation so that risks are clearly allocated and the procedure for relief is transparent. Clear drafting reduces uncertainty and supports fair administration during exceptional events.

For contractors, early notice, accurate records, updated programmes and proactive communication are essential. A well prepared submission should demonstrate the event, contractual basis, impact, causation, mitigation and entitlement in a clear and professional manner.

For consultants and contract administrators, force majeure assessments should be carried out objectively and in accordance with the contract. The focus should remain on facts, contemporaneous records, critical path impact, reasonable mitigation and balanced project governance.

Practical Checklist

- Review the force majeure clause and any special conditions at the start of the project.
- Identify notice requirements, time limits and required supporting particulars.
- Issue timely, factual and contract compliant notices when an exceptional event arises.
- Maintain complete records showing the event, impact, causation and mitigation.
- Update the programme regularly and identify any effect on the critical path.
- Communicate professionally with all relevant stakeholders.
- Assess entitlement based on contract wording, evidence and actual impact.

Conclusion: Force majeure is an important contractual safeguard for projects in the Middle East. It promotes fairness when exceptional events beyond the control of the parties affect performance. However, it must be applied with discipline, supported by evidence and administered in accordance with the contract.

In a region where projects are increasingly large, technically complex and time sensitive, effective force majeure management is part of good project governance. Clear drafting, timely communication, accurate records and cooperative problem solving can help parties manage unforeseen events professionally and avoid unnecessary disputes. Ultimately, force majeure should not be viewed as a source of disagreement. It should be seen as a practical mechanism that supports balanced risk allocation, contractual fairness and successful project delivery.

Publication Note

This article is intended for general professional awareness and should be adapted to the specific contract, project circumstances and applicable law before being used for formal contractual correspondence.

Author: Manikandan Murugesan

Director – Middle East Operations
Adroit Claims

NON-SIGNATORY JOINDER CANNOT CIRCUMVENT ARBITRATION BETWEEN SHAREHOLDERS

Dubai court of cassation, 26 August 2025

Summary

This case concerned a shareholder dispute involving a Jebel Ali Free Zone (JAFZA) company. The claimant sued his fellow shareholder and the company before the Dubai Courts, seeking profit distributions and recognition/registration of a 40% shareholding.

The shareholder agreement between the two shareholders contained a valid arbitration clause. However, the company itself was not a signatory to that agreement. The Court of Appeal held that because the company was a “real party” to the dispute, the matter involved a multiplicity of parties, thereby rendering the arbitration clause inapplicable and giving jurisdiction to the Dubai Courts.

Judgement

The Dubai Court of Cassation overturned the Court of Appeal’s reasoning and upheld the arbitration clause, restoring the Court of First Instance’s dismissal for lack of jurisdiction.

The Court held that:

- The true dispute was between the shareholders regarding rights and obligations under the shareholder agreement.
- The company, not being a signatory, could not logically be considered a party to the contract that governed the dispute.
- The claimant’s joinder of the company was a strategic attempt to bypass arbitration, which the Court refused to permit.
- Any relief resulting from arbitration (such as share registration) could be executed through the first appellant, who was the company’s director and registered shareholder, making the company’s presence unnecessary.

Accordingly, the arbitration clause remained valid and binding, and the Dubai Courts lacked jurisdiction, requiring the dispute to be resolved through arbitration.

Author: Madhu Mithra
Senior Partner - International ADR

COERCION & "NO CLAIM" CERTIFICATES

National Highways Authority of India vs. IRB Pathankot Amritsar Toll Road Ltd. (08.03.2022 - DELHC) DE/0767/2022:

Key Takeaway: *A one-sided "no claim" supplementary agreement that bars a contractor's legitimate claims can be rendered voidable if proven to have been signed under economic duress, underscoring that consent must be freely given for an agreement to be fully binding, even in the context of arbitration where judicial review is limited.*

Dispute Origin: NHAI challenged an arbitral award that granted an extension of the concession period and compensation to IRB Pathankot Amritsar Toll Road Ltd. due to delays caused by NHAI.

Supplementary Agreement: IRB argued that a supplementary agreement, which included a "no claim" clause, was signed under economic duress. This was because obtaining the Provisional Completion Certificate, conditioned on signing this agreement, was crucial for IRB to collect tolls and repay lenders.

Arbitral Tribunal's Stance: The tribunal found the supplementary agreement to be one-sided, drafted by NHAI, and ultimately void. It concluded that IRB would not voluntarily give up significant claims without reciprocal consideration. The tribunal relied on evidence, including an Independent Engineer's recommendation for a 518-day extension due to NHAI's delays.

High Court's Decision: The Delhi High Court upheld the arbitral tribunal's award. It found that the tribunal's decision was based on evidence and that the scope of judicial review under Section 34 of the Arbitration and Conciliation Act is limited. The court agreed that the supplementary agreement signed under duress was voidable.

Legal Precedent: The respondent (IRB) cited the Supreme Court's decision in Delhi Airport Metro Express Pvt. Ltd. Vs. Delhi Metro Rail Corporation Ltd. to support the limited scope of review for arbitral awards.

Author: K Jainivas
Associate Partner - Arbitration

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👤⚖️ **Ramasubramanian Ammamuthu** | [LinkedIn](#)

👤⚖️ **Manikandan Murugesan** | [LinkedIn](#)

👤⚖️ **Madhu Mithra** | [LinkedIn](#)

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- Jainivas | [LinkedIn](#)
- Durga V | [LinkedIn](#)
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CONSTRUCTION ARBITRATION / CIArb PATHWAY MODULES / MEDIATION

For your Construction Claims and Arbitration Advisory, please reach us at:

email : ram.s@adroitpmc.com

COIMBATORE OFFICE

Registered office:
A-202 OAK Canopy,
Coimbatore -641005
Tamil Nadu, India

UAE OFFICE

ADROIT Middle East
Office No : 201/202, Al Hawaii Tower,
Near Financial Centre Metro Exit 2
Sheikh Zayed Road, Dubai - UAE.

OMAN OFFICE

ADROIT ME - Post Box 228,
Postal Code 211,
Muscat - Oman

Website : www.adroitpmc.com | [LinkedIn Profile](#)

NEWSLETTER EDITORIAL:

A.RAMASUBRAMANIAN B.E., LLB., FCIARB,

MANAGING DIRECTOR / LEAD CONSULTANT - ADR

Mail Id: ram.s@adroitpmc.com | [LinkedIn Profile](#)

MANIKANDAN MURUGESAN BE.,MCIARB,.MRICS.,MICCP.,MQSI.CIOB

DIRECTOR - MIDDLE EAST OPERATIONS

Mail Id: manikandan@adroitpmc.com | [LinkedIn Profile](#)

SANISH KUMAR

DIRECTOR OF OPERATIONS - UAE

Mail Id: sanish@adroitpmc.com

KARTHIKEYAN K, M.C.A.,LL.B.

LEGAL HEAD - COMMERCIAL COURTS

Mail Id: karthik@adroitpmc.com

MADHUMITHRA, BBA., LLB., ACIARB

SENIOR PARTNER - ADR,

Mail Id: madhu@adroitpmc.com | [LinkedIn Profile](#)

JAINIVAS BBA., LLB, ASSOCIATE PARTNER - ARBITRATION

Mail Id: jainivas@adroitpmc.com | [LinkedIn Profile](#)

OUR PARTNER

ATIM LAW FIRM - VIETNAM

HUYNH NGUYEN (HENRY), MANAGING PARTNER

Mail Id: huynhnt@atim.com.vn | [LinkedIn Profile](#)

COMPILATION -

POORNIMA, BBA., MBA, MANAGER - FINANCE AND CRM

Mail Id: poorni@adroitpmc.com | [LinkedIn profile](#)